

**Appendix C** - 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 is 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."*

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<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:
- a. Seeking that reference to be made to significant indigenous vegetation and significant habitats of indigenous fauna rather than as presently framed<sup>240</sup>;
  - b. Support for the objective in its current form<sup>241</sup>;
  - c. 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*’ detractor from landscape and visual amenity values.
449. Some submissions<sup>345</sup> suggested deleting reference to detractor 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

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### 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).

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### 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:

- a. It is not framed as an objective (an environmental end point) and it is difficult to discern how it could be redrafted in order to do so.
- b. The urban areas of the District are too small to constitute a landscape in their own right<sup>634</sup>.
- c. As above, the principal focus of Chapter 6 is on rural landscapes.

1146. None of the other objectives suggested appeared to us to add value against the background of the provisions recommended in Chapter 3.

#### **8.4. Policies – Categorising Rural Landscapes**

1147. As notified, Policies 6.3.1.1 and 6.3.1.2 provided for identification of ONLs and ONFs on the planning maps and classification of Rural Zoned landscapes as ONL, ONF and Rural Landscape Classification.

1148. The only submissions specifically seeking changes to them, sought their deletion<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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651 Submission 761

652 Submission 806

653 Submission 621: Supported in FS1097; Opposed in FS1282

654 Submission 340

1183. We also note a separate submission seeking recognition of the maintenance of the ability to view and appreciate the naturalness of the night sky and to avoid unnecessary light pollution in Chapter 3<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

# 21 RURAL



## 21.1 Zone Purpose

There are four rural zones in the District. The Rural Zone is the most extensive of these. The Gibbston Valley is recognised as a special character area for viticulture production and the management of this area is provided for in Chapter 23: Gibbston Character Zone. Opportunities for rural living activities are provided for in the Rural-Residential and Rural Lifestyle Zones (Chapter 22).

The purpose of the Rural Zone is to enable farming activities and provide for appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity.

A wide range of productive activities occur in the Rural Zone and because the majority of the District’s distinctive landscapes comprising open spaces, lakes and rivers with high visual quality and cultural value are located in the Rural Zone, there also exists a wide range of living, recreation, commercial and tourism activities and the desire for further opportunities for these activities.

Ski Area Sub-Zones are located within the Rural Zone. These Sub-Zones recognise the contribution tourism infrastructure makes to the economic and recreational values of the District. The purpose of the Ski Area Sub-Zones is to enable the continued development of Ski Areas as year round destinations for ski area, tourism and recreational activities within the identified Sub-Zones where the effects of the development are cumulatively minor.

In addition, the Rural Industrial Sub-Zone includes established industrial activities that are based on rural resources or support farming and rural productive activities.

A substantial proportion of the Outstanding Natural Landscapes of the district comprises private land managed in traditional pastoral farming systems. Rural land values tend to be driven by the high landscape and amenity values in the district. The long term sustainability of pastoral farming will depend upon farmers being able to achieve economic returns from utilising the natural and physical resources of their properties. For this reason, it is important to acknowledge the potential for a range of alternative uses of rural properties that utilise the qualities that make them so valuable.

The Rural Zone is divided into two areas. The first being the area for Outstanding Natural Landscapes and Outstanding Natural Features. The second area being the Rural Character Landscape. These areas give effect to Chapter 3 – Strategic Direction: Objectives 3.2.5.1 and 3.2.5.2, and the policies in Chapters 3 and 6 that implement those objectives.

## 21.2 Objectives and Policies

**21.2.1 Objective** - A range of land uses, including farming and established activities, are enabled while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values.

Policies	21.2.1.1	Enable farming activities while protecting, maintaining and enhancing the values of indigenous biodiversity, ecosystem services, recreational values, the landscape and surface of lakes and rivers and their margins.
	21.2.1.2	Allow Farm Buildings associated with landholdings of 100 hectares or more in area while managing effects of the location, scale and colour of the buildings on landscape values.



- 21.2.1.3 Require buildings to be set back a minimum distance from internal boundaries and road boundaries in order to mitigate potential adverse effects on landscape character, visual amenity, outlook from neighbouring properties and to avoid adverse effects on established and anticipated activities.
- 21.2.1.4 Minimise the dust, visual, noise and odour effects of activities by requiring them to locate a greater distance from formed roads, neighbouring properties, waterbodies and zones that are likely to contain residential and commercial activity.
- 21.2.1.5 Have regard to the location and direction of lights so they do not cause glare to other properties, roads, public places or views of the night sky.
- 21.2.1.6 Avoid adverse cumulative impacts on ecosystem services and nature conservation values.
- 21.2.1.7 Have regard to the spiritual beliefs, cultural traditions and practices of Tangata whenua.
- 21.2.1.8 Have regard to fire risk from vegetation and the potential risk to people and buildings, when assessing subdivision and development in the Rural Zone.
- 21.2.1.9 Provide adequate firefighting water and fire service vehicle access to ensure an efficient and effective emergency response.
- 21.2.1.10 Commercial activities in the Rural Zone should have a genuine link with the rural land or water resource, farming, horticulture or viticulture activities, or recreation activities associated with resources located within the Rural Zone.
- 21.2.1.11 Provide for the establishment of commercial, retail and industrial activities only where these would protect, maintain or enhance rural character, amenity values and landscape values.
- 21.2.1.12 Encourage production forestry to be consistent with topography and vegetation patterns, to locate outside of the Outstanding Natural Features and Landscapes and outside of significant natural areas, and ensure production forestry does not degrade the landscape character or visual amenity values of the Rural Character Landscape.
- 21.2.1.13 Ensure forestry harvesting avoids adverse effects with regards to siltation and erosion and sites are rehabilitated to minimise runoff, erosion and effects on landscape values.
- 21.2.1.14 Limit exotic forestry to species that do not have potential to spread and naturalise.
- 21.2.1.15 Ensure traffic from new commercial activities does not diminish rural amenity or affect the safe and efficient operation of the roading and trail network, or access to public places.
- 21.2.1.16 Provide for a range of activities that support the vitality, use and enjoyment of the Queenstown Trail and Upper Clutha Tracks networks on the basis that landscape and rural amenity is protected, maintained or enhanced and established activities are not compromised.

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### 21.2.2 Objective - The life supporting capacity of soils is sustained.

Policies	21.2.2.1	Allow for the establishment of a range of activities that utilise the soil resource in a sustainable manner.
	21.2.2.2	Maintain the productive potential and soil resource of Rural Zoned land and encourage land management practices and activities that benefit soil and vegetation cover.
	21.2.2.3	Protect the soil resource by controlling activities including earthworks, indigenous vegetation clearance and prohibit the planting and establishment of identified wilding exotic trees with the potential to spread and naturalise.

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### 21.2.3 Objective - The life supporting capacity of water is safeguarded through the integrated management of the effects of activities.

	21.2.3.1	In conjunction with the Otago Regional Council, regional plans and strategies: <ol style="list-style-type: none"> <li>a. encourage activities that use water efficiently, thereby conserving water quality and quantity;</li> <li>b. discourage activities that adversely affect the potable quality and life supporting capacity of water and associated ecosystems.</li> </ol>
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### 21.2.4 Objective - Situations where sensitive activities conflict with existing and anticipated activities are managed to minimise conflict between incompatible land uses.

Policies	21.2.4.1	New activities must recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas.
	21.2.4.2	Control the location and type of non-farming activities in the Rural Zone, so as to minimise conflict between permitted and established activities and those that may not be compatible with such activities.

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### 21.2.5 Objective - Mineral extraction opportunities are provided for on the basis the location, scale and effects would not degrade amenity, water, wetlands, landscape and indigenous biodiversity values.

Policies	21.2.5.1	Have regard to the importance and economic value of locally mined high-quality gravel, rock and other minerals including gold and tungsten.
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- 21.2.5.2 Provide for prospecting and small scale mineral exploration and recreational gold mining as activities with limited environmental impact.
- 21.2.5.3 Ensure that during and following the conclusion of mineral extractive activities, sites are progressively rehabilitated in a planned and co-ordinated manner, to enable the establishment of a land use appropriate to the area.
- 21.2.5.4 Ensure potentially significant adverse effects of extractive activities (including mineral exploration) are avoided, or remedied particularly where those activities have potential to degrade landscape quality, character and visual amenity, indigenous biodiversity, lakes and rivers, potable water quality and the life supporting capacity of water.
- 21.2.5.5 Avoid or mitigate the potential for other land uses, including development of other resources above, or in close proximity to mineral deposits, to adversely affect the extraction of known mineral deposits.
- 21.2.5.6 Encourage use of environmental compensation as a means to address unavoidable residual adverse effects from mineral extraction.

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**21.2.6 Objective - The future growth, development and consolidation of Ski Areas Activities within identified Ski Area Sub-Zones, is provided for, while adverse effects on the environment are avoided, remedied or mitigated.**

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| Policies | 21.2.6.1 Identify Ski Area Sub-Zones and encourage Ski Area Activities and complementary tourism activities to locate and consolidate within the Sub-Zones.   |
|          | 21.2.6.2 Control the visual impact of roads, buildings and infrastructure associated with Ski Area Activities.  |
|          | 21.2.6.3 Provide for the continuation of existing vehicle testing facilities within the Waiorau Snow Farm Ski Area Sub-Zone on the basis that the landscape and indigenous biodiversity values are not further degraded.  |
|          | 21.2.6.4 Provide for appropriate alternative (non-road) means of transport to and within Ski Area Sub-Zones, by way of passenger lift systems and ancillary structures and facilities.  |
|          | 21.2.6.5 Provide for Ski Area Sub-Zone Accommodation activities within Ski Area Sub-Zones, which are complementary to outdoor recreation activities within the Ski Area Sub-Zone, that can realise landscape and conservation benefits and that avoid, remedy or mitigate adverse effects on the environment. |

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**21.2.7 Objective** - An area that excludes activities which are sensitive to aircraft noise, is retained within an airport's Outer Control Boundary, to act as a buffer between airports and Activities Sensitive to Aircraft Noise.

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| Policies | 21.2.7.1 | Prohibit all new activities sensitive to aircraft noise on Rural Zoned land within the Outer Control Boundary at Queenstown Airport and Wanaka Airport to avoid adverse effects arising from aircraft operations on future activities sensitive to aircraft noise.   |
|          | 21.2.7.2 | Identify and maintain areas containing activities that are not sensitive to aircraft noise, within an airport's outer control boundary, to act as a buffer between the airport and activities sensitive to aircraft noise.   |
|          | 21.2.7.3 | Retain open space within the outer control boundary of airports in order to provide a buffer, particularly for safety and noise purposes, between the airport and other activities.  |
|          | 21.2.7.4 | Require as necessary mechanical ventilation for any alterations or additions to Critical Listening Environment within any existing buildings containing an Activity Sensitive to Aircraft Noise within the Queenstown Airport Outer Control Boundary and require sound insulation and mechanical ventilation for any alterations or additions to Critical Listening Environment within any existing buildings containing an Activity Sensitive to Aircraft Noise within the Queenstown Airport Air Noise Boundary. |
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**21.2.8 Objective** - Subdivision, use and development in areas that are unsuitable due to identified constraints not addressed by other provisions of this Plan, is avoided, or the effects of those constraints are remedied or mitigated.

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| Policies | 21.2.8.1 | Prevent subdivision and development within the building restriction areas identified on the District Plan maps, in particular: <ul style="list-style-type: none"> <li>a. in the Glenorchy area, protect the heritage value of the visually sensitive Bible Face landform from building and development and to maintain the rural backdrop that the Bible Face provides to the Glenorchy Township;</li> <li>b. in Ferry Hill, within the building line restriction identified on the planning maps.</li> </ul> |
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**21.2.9 Objective** - Provision for diversification of farming and other rural activities that protect landscape and natural resource values and maintains the character of rural landscapes.

- 21.2.9.1 Encourage revenue producing activities that can support the long-term sustainability of the rural areas of the district and that maintain or enhance landscape values and rural amenity.
- 21.2.9.2 Ensure that revenue producing activities utilise natural and physical resources (including existing buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural resources
- 21.2.9.3 Provide for the establishment of activities such as tourism, commercial recreation or visitor accommodation located within farms where these enable landscape values and indigenous biodiversity to be sustained in the longer term.

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**21.2.10 Objective** – Commercial Recreation in the Rural Zone is of a nature and scale that is commensurate to the amenity values of the location.

- Policies
- 21.2.10.1 The group size of commercial recreation activities will be managed so as to be consistent with the level of amenity anticipated in the surrounding environment.
  - 21.2.10.2 To manage the adverse effects of commercial recreation activities so as not to degrade rural quality or character or visual amenities and landscape values.
  - 21.2.10.3 To avoid, remedy or mitigate any adverse effects commercial activities may have on the range of recreational activities available in the District and the quality of the experience of the people partaking of these opportunities.
  - 21.2.10.4 To ensure the scale and location of buildings, noise and lighting associated with commercial recreation activities are consistent with the level of amenity existing and anticipated in the surrounding environment.

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**21.2.11 Objective** - The location, scale and intensity of informal airports is managed to maintain amenity values while protecting informal airports from incompatible land uses.

- Policies
- 21.2.11.1 Ensure informal airports are located, operated and managed so as to maintain the surrounding rural amenity.
  - 21.2.11.2 Protect rural amenity values, and amenity of other zones from the adverse effects that can arise from informal airports.
  - 21.2.11.3 Protect lawfully established and anticipated permitted informal airports from the establishment of incompatible activities in the immediate vicinity.

21.2.12	<b>Objective</b> - The natural character of lakes and rivers and their margins is protected, maintained or enhanced, while providing for appropriate activities on the surface of lakes and rivers, including recreation, commercial recreation and public transport.	
Policies	21.2.12.1	Have regard to statutory obligations, wāhi Tūpuna and the spiritual beliefs, and cultural traditions of tangata whenua where activities are undertaken on the surface of lakes and rivers and their margins.
	21.2.12.2	Enable people to have access to a wide range of recreational experiences on the lakes and rivers, based on the identified characteristics and environmental limits of the various parts of each lake and river.
	21.2.12.3	Avoid or mitigate the adverse effects of frequent, large-scale or intrusive commercial activities such as those with high levels of noise, vibration, speed and wash, in particular motorised craft, in areas of high passive recreational use, significant nature conservation values and wildlife habitat.
	21.2.12.4	Have regard to the whitewater values of the District's rivers and, in particular, the values of parts of the Kawarau, Nevis and Shotover Rivers as three of the few remaining major unmodified whitewater rivers in New Zealand, and to support measures to protect this characteristic of rivers.
	21.2.12.5	Protect, maintain or enhance the natural character and nature conservation values of lakes, rivers and their margins from inappropriate activities with particular regard to nesting and spawning areas, the intrinsic value of ecosystem services and areas of indigenous fauna habitat and recreational values.
	21.2.12.6	Recognise and provide for the maintenance and enhancement of public access to and enjoyment of the margins of the lakes and rivers.
	21.2.12.7	Ensure that the location, design and use of structures and facilities are such that any adverse effects on visual qualities, safety and conflicts with recreational and other activities on the lakes and rivers are avoided, remedied or mitigated.
	21.2.12.8	Encourage development and use of water based public ferry systems including necessary infrastructure and marinas, in a way that avoids adverse effects on the environment as far as possible, or where avoidance is not practicable, remedies and mitigates such adverse effects.
	21.2.12.9	Take into account the potential adverse effects on nature conservation values from the boat wake of commercial boating activities, having specific regard to the intensity and nature of commercial jet boat activities and the potential for turbidity and erosion.
	21.2.12.10	Ensure that the nature, scale and number of commercial boating operators and/or commercial boats on waterbodies do not exceed levels such that the safety of passengers and other users of the water body cannot be assured.

**21.2.13 Objective** - Rural industrial activities and infrastructure within the Rural Industrial Sub-Zones will support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.

- Policies
- 21.2.13.1 Provide for rural industrial activities and buildings within established nodes of industrial development while protecting, maintaining and enhancing landscape and amenity values.
  - 21.2.13.2 Provide for limited retail and administrative activities within the Rural Industrial Sub-Zone on the basis it is directly associated with and ancillary to the Rural Industrial Activity on the site.

## 21.3

### Other Provisions and Rules

#### 21.3.1 District Wide

Attention is drawn to the following District Wide chapters.

1	Introduction	2	Definitions	3	Strategic Direction
4	Urban Development	5	Tangata Whenua	6	Landscapes and Rural Character
25	Earthworks	26	Historic Heritage	27	Subdivision
28	Natural Hazards	29	Transport	30	Energy and Utilities
31	Signs	32	Protected Trees	33	Indigenous Vegetation
34	Wilding Exotic Trees	35	Temporary Activities and Relocated Buildings	36	Noise
37	Designations		Planning Maps		

#### 21.3.2 Interpreting and Applying the Rules

- 21.3.2.1 A permitted activity must comply with all the rules listed in the Activity and Standards tables, and any relevant district wide rules.
- 21.3.2.2 Where an activity does not comply with a Standard listed in the Standards tables, the activity status identified by the 'Non-Compliance Status' column shall apply. Where an activity breaches more than one Standard, the most restrictive status shall apply to the Activity.
- 21.3.2.3 For controlled and restricted discretionary activities, the Council shall restrict the exercise of its control or discretion to the matters listed in the rule.

- 21.3.2.4 Development and building activities are undertaken in accordance with the conditions of resource subdivision consent and may be subject to monitoring by the Council.
- 21.3.3.5 The existence of a farm building either permitted or approved by resource consent under Rule 21.4.2 or Table 5 – Standards for Farm Buildings shall not be considered the permitted baseline for residential or other non-farming activity development within the Rural Zone.
- 21.3.3.6 The Ski Area and Rural Industrial Sub-Zones, being Sub-Zones of the Rural Zone, require that all rules applicable to the Rural Zone apply unless stated to the contrary.
- 21.3.2.7 Building platforms identified on a site’s computer freehold register shall have been registered as part of a resource consent approval by the Council.
- 21.3.2.8 The surface and bed of lakes and rivers are zoned Rural, unless otherwise stated.
- 21.3.2.9 Internal alterations to buildings including the replacement of joinery is permitted.
- 21.3.2.10 These abbreviations are used in the following tables. Any activity which is not permitted (P) or prohibited (PR) requires resource consent.

P	Permitted	C	Controlled	RD	Restricted Discretionary
D	Discretionary	NC	Non-Complying	PR	Prohibited

### 21.3.3 Advice Notes

- 21.3.3.1 Compliance with any of the following standards, in particular the permitted standards, does not absolve any commitment to the conditions of any relevant resource consent, consent notice or covenant registered on the computer freehold register of any property.
- 21.3.3.2 In addition to any rules for mining, the Otago Regional Plan: Water, also has rules related to suction dredge mining.
- 21.3.3.3 Applications for building consent for permitted activities shall include information to demonstrate compliance with the following standards, and any conditions of the applicable resource consent conditions.



All activities, including any listed permitted activities shall be subject to the rules and standards contained in Tables 1 to 15.

Table 1 – Activities Generally

Table 2 – Standards Applying Generally in the Zone

Table 3 – Standards for Farm Activities (additional to those in Table 2)

Table 4 – Standards for Structures and Buildings (other than Farm Buildings) (additional to those in Table 2)

Table 5 – Standards for Farm Buildings (additional to those in Table 2)

Table 6 – Standards for Commercial Activities (additional to those in Table 2)

Table 7– Standards for Informal Airports (additional to those in Table 2)

Table 8 – Standards for Mining and Extraction Activities (additional to those in Table 2)

Table 9 – Activities in the Ski Area Sub-Zone (additional to those listed in Table 1)

Table 10 - Activities in Rural Industrial Sub-Zone (additional to those listed in Table 1)

Table 11 – Standards for Rural Industrial Sub-Zone

Table 12– Activities on the Surface of Lakes and Rivers

Table 13 – Standards for Activities on the Surface of Lakes and Rivers

Table 14 – Closeburn Station Activities

Table 15 – Closeburn Station: Standards for Buildings and Structures

	Table 1 - Activities - Rural Zone	Activity Status
	Farming Activities	
21.4.1	Farming Activity that complies with the standards in Table 2 and Table 3.	P
21.4.2	Construction of or addition to farm buildings that comply with the standards in Table 5.	P
21.4.3	Factory Farming limited to factory farming of pigs or poultry that complies with the standards in Table 2 and Table 3.	P
21.4.4	Factory Farming animals other than pigs or poultry.	NC
	Residential Activities	
21.4.5	One residential unit, which includes a single residential flat for each residential unit and any other accessory buildings, within any building platform approved by resource consent.	P
21.4.6	The construction and exterior alteration of buildings located within a building platform approved by resource consent, or registered on the applicable computer freehold register, subject to compliance with the standards in Table 2 and Table 4.	P
21.4.7	The exterior alteration of any lawfully established building where there is not an approved building platform on the site, subject to compliance with the standards in Table 2 and Table 4.	P

	Table 1 - Activities - Rural Zone	Activity Status
21.4.8	Domestic Livestock.	P
21.4.9	The use of land or buildings for residential activity except as provided for in any other rule.	D
21.4.10	The identification of a building platform not less than 70m <sup>2</sup> and not greater than 1000m <sup>2</sup> .	D
21.4.11	The construction of any building including the physical activity associated with buildings including roading, access, lighting, landscaping and earthworks, not provided for by any other rule.	D
	Commercial Activities	
21.4.12	Home Occupation that complies with the standards in Table 6.	P
21.4.13	Commercial recreational activities that comply with the standards in Table 6.	P
21.4.14	Roadside stalls that meet the standards in Table 6.	P
21.4.15		
21.4.16	Retail sales of farm and garden produce and wine grown, reared or produced on-site or handicrafts produced on the site and that comply with the standards in Table 6, not undertaken through a roadside stall under Rule 21.4.14.  Control is reserved to: a. the location of the activity and buildings; b. vehicle crossing location, car parking; c. rural amenity and landscape character.	C
21.4.17	Commercial activities ancillary to and located on the same site as commercial recreational or recreational activities.	D
21.4.18	Cafes and restaurants located in a winery complex within a vineyard.	D
21.4.19	Visitor Accommodation outside of a Ski Area Sub-Zone.	D
21.4.20	Forestry Activities within the Rural Character Landscapes.	D
21.4.21	Retail Sales  Retail sales where the access is onto a State Highway, with the exception of the activities provided for by Rule 21.4.14 or Rule 21.4.16.	NC
	Other Activities	
21.4.22	Recreation and/or Recreational Activity.	P
21.4.23	Informal Airports that comply with Table 7.	P

Table 1 - Activities - Rural Zone		Activity Status
21.4.24	<p>Passenger Lift Systems not located within a Ski Area Sub-Zone</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>the impact on landscape values from any alignment, earthworks, design and surface treatment, including measures to mitigate landscape effects including visual quality and amenity values;</li> <li>the route alignment and the whether any system or access breaks the line and form of skylines, ridges, hills and prominent slopes;</li> <li>earthworks associated with construction of the Passenger Lift System;</li> <li>the materials used, colours, lighting and light reflectance;</li> <li>geotechnical matters;</li> <li>ecological values and any proposed ecological mitigation works.;</li> <li>balancing environmental considerations with operational requirements of Ski Area Activities;</li> <li>the positive effects arising from providing alternative non-vehicular access and linking Ski Area Sub-Zones to the roading network.</li> </ol>	RD
21.4.25	<p>Ski Area Activities not located within a Ski Area Sub-Zone, with the exception of:</p> <ol style="list-style-type: none"> <li>non-commercial skiing which is permitted as recreation activity under Rule 21.4.22;</li> <li>commercial heli skiing not located within a Ski Area Sub-Zone is a commercial recreation activity and Rule 21.4.13 applies;</li> <li>Passenger Lift Systems to which Rule 21.4.24 applies.</li> </ol>	NC
21.4.26	<p>Any building within a Building Restriction Area identified on the Planning Maps.</p> <p>Activities within the Outer Control Boundary at Queenstown Airport and Wanaka Airport</p>	NC
21.4.27	<p>New Building Platforms and Activities Sensitive to Aircraft Noise within the Outer Control Boundary - Wanaka Airport</p> <p>On any site located within the Outer Control Boundary, any new activity sensitive to aircraft noise or new building platform to be used for an activity sensitive to aircraft noise (except an activity sensitive to aircraft noise located on a building platform approved before 20 October 2010).</p>	PR
21.4.28	<p>Activities Sensitive to Aircraft Noise within the Outer Control Boundary - Queenstown Airport</p> <p>On any site located within the Outer Control Boundary, which includes the Air Noise Boundary, as indicated on the District Plan Maps, any new Activity Sensitive to Aircraft Noise.</p> <p>Mining Activities</p>	PR
21.4.29	<p>The following mining and extraction activities that comply with the standards in Table 8 are permitted:</p> <ol style="list-style-type: none"> <li>mineral prospecting;</li> <li>mining by means of hand-held, non-motorised equipment and suction dredging, where the total motive power of any dredge does not exceed 10 horsepower (7.5 kilowatt); and</li> <li>the mining of aggregate for farming activities provided the total volume does not exceed 1000m<sup>3</sup> in any one year.</li> </ol>	P

Table 1 - Activities - Rural Zone		Activity Status
21.4.30	<p>Mineral exploration that does not involve more than 20m<sup>3</sup> in volume in any one hectare</p> <p>Control is reserved to:</p> <ul style="list-style-type: none"> <li>a. the adverse effects on landscape, nature conservation values and water quality;</li> <li>b. ensuring rehabilitation of the site is completed that ensures:                             <ul style="list-style-type: none"> <li>i. the long-term stability of the site;</li> <li>ii. that the landforms or vegetation on finished areas are visually integrated into the landscape;</li> <li>iii. water quality is maintained;</li> <li>iv. that the land is returned to its original productive capacity;</li> </ul> </li> <li>c. that the land is rehabilitated to indigenous vegetation where the pre-existing land cover immediately prior to the exploration, comprised indigenous vegetation as determined utilising Section 33.3.3 of Chapter 33.</li> </ul>	C
21.4.31	Any mining activity or mineral prospecting other than provided for in Rules 21.4.29 and 21.4.30.	D
	Industrial Activities outside the Rural Industrial Sub-Zone	
21.4.32	Industrial Activities directly associated with wineries and underground cellars within a vineyard.	D
21.4.33	Industrial Activities outside the Rural Industrial Sub-Zone other than those provided for by Rule 21.4.32.	NC
	Default Activity Status When Not Listed	
21.4.34	Any activity not otherwise provided for in Tables 1, 9, 10, 12 or 14.	NC

Table 2	Table 2 - Standards Applying Generally in the Zone. The following standards apply to any of the activities described in Tables 1, 9, 10, 12 and 14 in addition to the specific standards in Tables 3- 8, 11, 13 and 15 unless otherwise stated.	Non-compliance Status
21.5.1	<p>Setback from Internal Boundaries</p> <p>The setback of any building from internal boundaries shall be 15m.</p> <p>Except this rule shall not apply within the Rural Industrial Sub-Zone. Refer to Table 11.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. rural amenity and landscape character;</li> <li>b. privacy, outlook and amenity from adjoining properties.</li> </ul>
21.5.2	<p>Setback from Roads</p> <p>The setback of any building from a road boundary shall be 20m, except, the minimum setback of any building from State Highway 6 between Lake Hayes and the Shotover River shall be 50m. The minimum setback of any building for other sections of State Highway 6 where the speed limit is 70 km/hr or greater shall be 40m.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. rural Amenity and landscape character;</li> <li>b. open space;</li> <li>c. the adverse effects on the proposed activity from noise, glare and vibration from the established road.</li> </ul>
21.5.3	<p>Setback from Neighbours of Buildings Housing Animals</p> <p>The setback from internal boundaries for any building housing animals shall be 30m.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. odour;</li> <li>b. noise;</li> <li>c. dust;</li> <li>d. vehicle movements.</li> </ul>
21.5.4	<p>Setback of buildings from Water bodies</p> <p>The minimum setback of any building from the bed of a wetland, river or lake shall be 20m.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. indigenous biodiversity values;</li> <li>b. visual amenity values;</li> <li>c. landscape and natural character;</li> <li>d. open space;</li> <li>e. whether the waterbody is subject to flooding or natural hazards and any mitigation to manage the adverse effects of the location of the building.</li> </ul>

Table 2	Table 2 - Standards Applying Generally in the Zone. The following standards apply to any of the activities described in Tables 1, 9, 10, 12 and 14 in addition to the specific standards in Tables 3- 8, 11, 13 and 15 unless otherwise stated.	Non- compliance Status
21.5.5	<p>Airport Noise – Wanaka Airport</p> <p>Alterations or additions to existing buildings, or construction of a building on a building platform approved before 20 October 2010, that contain an Activity Sensitive to Aircraft Noise and are within the Outer Control Boundary, must be designed to achieve an internal design sound level of 40 dB Ldn, based on the 2036 noise contours, at the same time as meeting the ventilation requirements in Rule 36.6.2, Chapter 36. Compliance can either be demonstrated by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the internal design sound level, or by installation of mechanical ventilation to achieve the requirements in Rule 36.6.2, Chapter 36.</p>	NC
21.5.6	<p>Airport Noise – Alteration or Addition to Existing Buildings (excluding any alterations of additions to any non-critical listening environment) within the Queenstown Airport Noise Boundaries</p> <p>a. Within the Queenstown Airport Air Noise Boundary (ANB) - Alterations and additions to existing buildings containing an Activity Sensitive to Aircraft Noise must be designed to achieve an Indoor Design Sound Level of 40 dB Ldn, within any Critical Listening Environment, based on the 2037 Noise Contours. Compliance must be demonstrated by either adhering to the sound insulation requirements in Rule 36.6.1 of Chapter 36 and installation of mechanical ventilation to achieve the requirements in Rule 36.6.2 of Chapter 36, or by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the Indoor Design Sound Level with the windows open.</p> <p>b. Between the Queenstown Airport Outer Control Boundary and the ANB – Alterations and additions to existing buildings containing an Activity Sensitive to Aircraft Noise must be designed to achieve an Indoor Design Sound Level of 40 dB Ldn within any Critical Listening Environment, based on the 2037 Noise Contours. Compliance must be demonstrated by either installation of mechanical ventilation to achieve the requirements in Rule 36.6.2 of Chapter 36 or by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the Indoor Design Sound Level with the windows open.</p> <p>Standards (a) and (b) exclude any alterations or additions to any non-critical listening environment.</p>	NC
21.5.7	<p>Lighting and Glare</p> <p>21.5.7.1 All fixed exterior lighting must be directed away from adjoining sites and roads; and</p> <p>21.5.7.2 No activity on any site will result in greater than a 3.0 lux spill (horizontal and vertical) of light onto any other site measured at any point inside the boundary of the other site, provided that this rule shall not apply where it can be demonstrated that the design of adjacent buildings adequately mitigates such effects.</p> <p>21.5.7.3 There must be no upward light spill.</p>	NC

## 21.6

# Rule - Standards for Farm Activities

Table 3 – Standards for Farm Activities.		Non-Compliance Status
The following standards apply to Farm Activities.		
21.6.1	<p>Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing)</p> <p>All effluent holding tanks, effluent treatment and effluent storage ponds, must be located at least 300 metres from any formed road or adjoining property.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>odour;</li> <li>visual prominence;</li> <li>landscape character;</li> <li>effects on surrounding properties.</li> </ol>
21.6.2	<p>Factory Farming (excluding the boarding of animals)</p> <p>Factory farming (excluding the boarding of animals) must be located at least 2 kilometres from a Residential, Rural Residential, Rural Lifestyle, Town Centre, Local Shopping Centre Zone, Millbrook Resort Zone, Waterfall Park Zone or Jacks Point Zone.</p>	D
21.6.3	<p>Factory Farming of Pigs</p> <p>21.6.3.1 The number of housed pigs must not exceed 50 sows or 500 pigs of mixed ages;</p> <p>21.6.3.2 Housed pigs must not be located closer than 500m from a property boundary;</p> <p>21.6.3.4 The number of outdoor pigs must not exceed 100 pigs and their progeny up to weaner stage;</p> <p>21.6.3.5 Outdoor sows must be ringed at all times; and/or</p> <p>21.6.3.6 The stocking rate of outdoor pigs must not exceed 15 pigs per hectare, excluding progeny up to weaner stage.</p>	NC
21.6.4	<p>Factory farming of poultry</p> <p>21.6.4.1 The number of birds must not exceed 10,000 birds.</p> <p>21.6.4.2 Birds must be housed at least 300m from a site boundary.</p>	NC

# 21.7

## Rules - Standards for Buildings

Table 4 – Standards for Structures and Buildings		Non-Compliance Status
The following standards apply to structures and buildings, other than Farm Buildings.		
21.7.1	<p>Structures</p> <p>Any structure which is greater than 5 metres in length, and between 1 metre and 2 metres in height must be located a minimum distance of 10 metres from a road boundary, except for:</p> <p>21.7.1.1 Post and rail, post and wire and post and mesh fences, including deer fences;</p> <p>21.7.1.2 Any structure associated with farming activities as defined in this plan.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. effects on landscape character, views and amenity, particularly from public roads;</li> <li>b. the materials used, including their colour, reflectivity and permeability;</li> <li>c. whether the structure will be consistent with traditional rural elements.</li> </ul>
21.7.2	<p>Buildings</p> <p>Any building, including any structure larger than 5m<sup>2</sup>, that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building, are subject to the following:</p> <p>All exterior surfaces* must be coloured in the range of browns, greens or greys, including;</p> <p>21.7.2.1 Pre-painted steel and all roofs must have a light reflectance value not greater than 20%; and</p> <p>21.7.2.2 All other surface ** finishes except for schist, must have a light reflectance value of not greater than 30%.</p> <p>21.7.2.3 In the case of alterations to an existing building not located within a building platform, it does not increase the ground floor area by more than 30% in any ten year period.</p> <p>Except this rule does not apply within the Ski Area Sub-Zones.</p> <p>* Excludes soffits, windows and skylights (but not glass balustrades).</p> <p>** Includes cladding and built landscaping that cannot be measured by way of light reflectance value but is deemed by the Council to be suitably recessive and have the same effect as achieving a light reflectance value of 30%.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. external appearance;</li> <li>b. visual prominence from both public places and private locations;</li> <li>c. landscape character;</li> <li>d. visual amenity.</li> </ul>



Table 4 – Standards for Structures and Buildings The following standards apply to structures and buildings, other than Farm Buildings.		Non-Compliance Status
21.7.3	<p>Building size</p> <p>The ground floor area of any building must not exceed 500m<sup>2</sup>.</p> <p>Except this rule does not apply to buildings specifically provided for within the Ski Area Sub-Zones.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>external appearance;</li> <li>visual prominence from both public places and private locations;</li> <li>landscape character;</li> <li>visual amenity;</li> <li>privacy, outlook and amenity from adjoining properties.</li> </ol>
21.7.4	<p>Building Height</p> <p>The maximum height shall be 8m.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>rural amenity and landscape character;</li> <li>privacy, outlook and amenity from adjoining properties;</li> <li>visual prominence from both public places and private locations.</li> </ol>
21.7.5	<p>Fire Fighting water and access</p> <p>All new buildings, where there is no reticulated water supply or any reticulated water supply is not sufficient for fire-fighting water supply, must make the following provision for fire-fighting:</p> <p>21.7.5.1 A water supply of 45,000 litres and any necessary couplings.</p> <p>21.7.5.2 A hardstand area adjacent to the firefighting water supply capable of supporting fire service vehicles.</p> <p>21.7.5.3 Firefighting water connection point within 6m of the hardstand, and 90m of the dwelling.</p> <p>21.7.5.4 Access from the property boundary to the firefighting water connection capable of accommodating and supporting fire service vehicles.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>the extent to which SNZ PAS 4509: 2008 can be met including the adequacy of the water supply;</li> <li>the accessibility of the firefighting water connection point for fire service vehicles;</li> <li>whether and the extent to which the building is assessed as a low fire risk.</li> </ol>

# 21.8

## Rules - Standards for Farm Buildings

Table 5 - Standards for Farm Buildings The following standards apply to Farm Buildings.		Non-compliance Status
21.8.1	<p>Construction, Extension or Replacement of a Farm Building</p> <p>The construction, replacement or extension of a farm building is a permitted activity subject to the following standards:</p> <p>21.8.1.1 The landholding the farm building is located within must be greater than 100ha; and</p> <p>21.8.1.2 The density of all buildings on the landholding, inclusive of the proposed building(s) must not exceed one farm building per 50 hectares; and</p> <p>21.8.1.3 The farm building must not be located within or on an Outstanding Natural Feature (ONF); and</p> <p>21.8.1.4 If located within the Outstanding Natural Landscape (ONL) the farm building must not exceed 4 metres in height and the ground floor area must not exceed 100m<sup>2</sup>; and</p> <p>21.8.1.5 The farm building must not be located at an elevation exceeding 600 masl; and</p> <p>21.8.1.6 If located within the Rural Character Landscape (RCL), the farm building must not exceed 5m in height and the ground floor area must not exceed 300m<sup>2</sup>; and</p> <p>21.8.1.7 Farm buildings must not protrude onto a skyline or above a terrace edge when viewed from adjoining sites, or formed roads within 2km of the location of the proposed building.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. the extent to which the scale and location of the Farm Building is appropriate in terms of:</p> <ul style="list-style-type: none"> <li>i. rural amenity values;</li> <li>ii. landscape character;</li> <li>iii. privacy, outlook and rural amenity from adjoining properties;</li> <li>iv. visibility, including lighting.</li> </ul>
21.8.2	<p>Exterior colours of farm buildings</p> <p>21.8.2.1 All exterior surfaces, except for schist, must be coloured in the range of browns, greens or greys (except soffits).</p> <p>21.8.2.2 Pre-painted steel, and all roofs must have a reflectance value not greater than 20%.</p> <p>21.8.2.3 Surface finishes, except for schist, must have a reflectance value of not greater than 30%.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. external appearance;</li> <li>b. visual prominence from both public places and private locations;</li> <li>c. landscape character.;</li> <li>d. visual amenity.</li> </ul>

Table 5 - Standards for Farm Buildings The following standards apply to Farm Buildings.		Non-compliance Status
21.8.3	<p><b>Building Height</b></p> <p>The height of any farm building must not exceed 10m.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. rural amenity values;</li> <li>b. landscape character;</li> <li>c. privacy, outlook and amenity from adjoining properties.</li> </ul>
21.8.4	<p><b>Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing)</b></p> <p>All milking sheds or buildings used to house, or feed milking stock must be located at least 300 metres from any adjoining property, lake, river or formed road.</p>	D

## 21.9 Rules - Standards for Commercial Activities

Table 6 - Standards for Commercial Activities		Non-compliance Status
21.9.1	Commercial recreational activities must be undertaken on land, outdoors and must not involve more than 12 persons in any one group.	D
21.9.2	<p><b>Home Occupation</b></p> <p>21.9.2.1 The maximum net floor area of home occupation activities must not exceed 150m<sup>2</sup>.</p> <p>21.9.2.2 Goods materials or equipment must not be stored outside a building.</p> <p>21.9.2.3 All manufacturing, altering, repairing, dismantling or processing of any goods or articles must be carried out within a building.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. the nature, scale and intensity of the activity in the context of the surrounding rural area;</li> <li>b. visual amenity from neighbouring properties and public places;</li> <li>c. noise, odour and dust;</li> <li>d. the extent to which the activity requires a rural location because of its link to any rural resource in the Rural Zone;</li> <li>e. access safety and transportation effects.</li> </ul>

Table 6 - Standards for Commercial Activities		Non-compliance Status
21.9.3	<p>Roadside Stalls</p> <p>21.9.3.1 The ground floor area of the roadside stall must not exceed 5m<sup>2</sup>;</p> <p>21.9.3.2 The height must not exceed 2m<sup>2</sup>;</p> <p>21.9.3.3 The minimum sight distance from the roadside stall access must be at least 200m;</p> <p>21.9.3.4 The roadside stall must not be located on legal road reserve.</p>	D
21.9.4	<p>Retail Sales</p> <p>Buildings that have a gross floor area that is greater than 25m<sup>2</sup> to be used for retail sales identified in Table 1 must be setback from road boundaries by at least 30m.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. landscape character and visual amenity;</li> <li>b. access safety and transportation effects;</li> <li>c. on-site parking.</li> </ul>

## 21.10 Rules - Standards for Informal Airports

Table 7 - Standards for Informal Airports		Non-compliance Status
21.10.1	<p>Informal Airports Located on Public Conservation and Crown Pastoral Land</p> <p>Informal airports that comply with the following standards shall be permitted activities:</p> <p>21.10.1.1 Informal airports located on Public Conservation Land where the operator of the aircraft is operating in accordance with a Concession issued pursuant to Section 17 of the Conservation Act 1987.</p> <p>21.10.1.2 Informal airports located on Crown Pastoral Land where the operator of the aircraft is operating in accordance with a Recreation Permit issued pursuant to Section 66A of the Land Act 1948.</p> <p>21.10.1.3 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities, or the Department of Conservation or its agents.</p> <p>21.10.1.4 In relation to Rules 21.10.1.1 and 21.10.1.2, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit or approved building platform not located on the same site.</p>	D

Table 7 - Standards for Informal Airports		Non-compliance Status
21.10.2	<p>Informal Airports Located on other Rural Zoned Land</p> <p>Informal Airports that comply with the following standards shall be permitted activities:</p> <p>21.10.2.1 Informal airports on any site that do not exceed a frequency of use of 2 flights* per day;</p> <p>21.10.2.2 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities;</p> <p>21.10.2.3 In relation to point Rule 21.10.2.1, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit of building platform not located on the same site.</p> <p>* note for the purposes of this Rule a flight includes two aircraft movements i.e. an arrival and departure.</p>	D

## 21.11 Rules - Standards for Mining

Table 8 – Standards for Mining and Extraction Activities		non-compliance Status
21.11.1	<p>21.11.1.1 The activity will not be undertaken on an Outstanding Natural Feature.</p> <p>21.11.1.2 The activity will not be undertaken in the bed of a lake or river.</p>	NC

## 21.12 Rules - Ski Area and Sub-Zone

Table 9 - Activities in the Ski Area Sub-Zone		Activity Status
Additional to those activities listed in Table 1.		
21.12.1	Ski Area Activities	P
21.12.2	<p>Construction, relocation, addition or alteration of a building</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> <li>location, external appearance and size, colour, visual dominance;</li> <li>associated earthworks, access and landscaping;</li> <li>provision of water supply, sewage treatment and disposal, electricity and communication services (where necessary);</li> <li>lighting.</li> </ol>	C

	Table 9 - Activities in the Ski Area Sub-Zone Additional to those activities listed in Table 1.	Activity Status
21.12.3	<p>Passenger Lift Systems</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> <li>a. the extent to which the passenger lift system breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes;</li> <li>b. whether the materials and colour to be used are consistent with the rural landscape of which passenger lift system will form a part;</li> <li>c. the extent of any earthworks required to construct the passenger lift system, in terms of the limitations set out in Chapter 25 Earthworks;</li> <li>d. balancing environmental considerations with operational characteristics.</li> </ol>	C
21.12.4	<p>Night lighting</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> <li>a. hours of operation;</li> <li>b. duration and intensity;</li> <li>c. impact on surrounding properties.</li> </ol>	C
21.12.5	<p>Vehicle Testing</p> <p>In the Waiorau Snow Farm Ski Area Activity Sub-Zone; the construction of access ways and tracks associated with the testing of vehicles, their parts and accessories.</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> <li>a. gravel and silt run off;</li> <li>b. stormwater, erosion and siltation;</li> <li>c. the sprawl of tracks and the extent to which earthworks modify the landform;</li> <li>d. stability of over-steepened embankments.</li> </ol>	C
21.12.6	<p>Retail activities ancillary to Ski Area Activities</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> <li>a. location;</li> <li>b. hours of operation with regard to consistency with ski-area activities;</li> <li>c. amenity effects, including loss of remoteness or isolation;</li> <li>d. traffic congestion, access and safety;</li> <li>e. waste disposal;</li> <li>f. cumulative effects.</li> </ol>	C

Table 9 - Activities in the Ski Area Sub-Zone Additional to those activities listed in Table 1.		Activity Status
21.12.7	<p>Ski Area Sub-Zone Accommodation</p> <p>Comprising a duration of stay of up to 6 months in any 12-month period and including worker accommodation.</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. scale and intensity and whether these would have adverse effects on amenity, including loss of remoteness or isolation;</li> <li>b. location, including whether that because of the scale and intensity the visitor accommodation should be located near the base building area (if any);</li> <li>c. parking;</li> <li>d. provision of water supply, sewage treatment and disposal;</li> <li>e. cumulative effects;</li> <li>f. natural hazards.</li> </ul>	RD
21.12.8	Earthworks, buildings and infrastructure within the No Building and Earthworks Line in the Remarkables Ski Area Sub-Zone	PR

## 21.13 Rules - Activities in Rural Industrial Sub-Zone

Table 10 – Activities in Rural Industrial Sub-Zone Additional to those activities listed in Table 1.		Activity Status
21.13.1	Retail activities within the Rural Industrial Sub-Zone that involve the sale of goods produced, processed or manufactured on site or ancillary to Rural Industrial activities that comply with Table 11.	P
21.13.2	Administrative offices ancillary to and located on the same site as Rural Industrial activities being undertaken within the Rural Industrial Sub-Zone that comply with Table 11.	P
21.13.3	Rural Industrial Activities within a Rural Industrial Sub-Zone that comply with Table 11.	P
21.13.4	Buildings for Rural Industrial Activities within the Rural Industrial Sub-Zone that comply with Table 11.	P

## 21.14

# Rules - Standards for Activities within Rural Industrial Sub-Zone

Table 11 – Standards for activities within the Rural Industrial Sub Zone These Standards apply to activities listed in Table 1 and Table 10.		Non-Compliance Status
21.14.1	<p><b>Buildings</b></p> <p>Any building, including any structure larger than 5m<sup>2</sup>, that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building are subject to the following:</p> <p>All exterior surface must be coloured in the range of browns, greens or greys (except soffits), including;</p> <p>21.15.1.1 Pre-painted steel and all roofs must have a reflectance value not greater than 20%; and,</p> <p>21.15.1.2 All other surface finishes must have a reflectance value of not greater than 30%.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. external appearance;</li> <li>b. visual prominence from both public places and private locations;</li> <li>c. landscape character.</li> </ul>
21.14.2	<p><b>Building size</b></p> <p>The ground floor area of any building must not exceed 500m<sup>2</sup>.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. external appearance;</li> <li>b. visual prominence from both public places and private locations;</li> <li>c. visual amenity;</li> <li>d. privacy, outlook and amenity from adjoining properties.</li> </ul>
21.14.3	<p><b>Building Height</b></p> <p>The height for of any industrial building must not exceed 10m.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. rural amenity and landscape character;</li> <li>b. privacy, outlook and amenity from adjoining properties.</li> </ul>



Table 11 – Standards for activities within the Rural Industrial Sub Zone These Standards apply to activities listed in Table 1 and Table 10.		Non-Compliance Status
21.14.4	<p>Setback from Sub-Zone Boundaries</p> <p>The minimum setback of any building within the Rural Industrial Sub-Zone shall be 10m from the Sub-Zone boundaries.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. the requirement for landscaping to act as a buffer between the Rural Industrial Sub-Zone and neighbouring properties and whether there is adequate room for landscaping within the reduced setback;</li> <li>b. rural amenity and landscape character;</li> <li>c. Privacy, outlook and amenity from adjoining properties.</li> </ul>
21.14.5	<p>Retail Activities</p> <p>Retail activities including the display of items for sale must be undertaken within a building and must not exceed 10% of the building's total floor area.</p>	NC

## 21.15 Rules - Activities on the Surface of Lakes and Rivers

Table 12 - Activities on the Surface of Lakes and Rivers		Activity Status
21.15.1	Activities on the surface of lakes and river not otherwise controlled or restricted by rules in Table 14.	P
21.15.2	<p>Motorised Recreational and Commercial Boating Activities</p> <p>The use of motorised craft for the purpose of emergency search and rescue, hydrological survey, public scientific research, resource management monitoring or water weed control, or for access to adjoining land for farming activities.</p>	P

Table 12 - Activities on the Surface of Lakes and Rivers		Activity Status
21.15.3	<p>Motorised Recreational Boating Activities</p> <p>Hawea River, motorised recreational boating activities on no more than six (6) days in each year subject to the following conditions:</p> <ul style="list-style-type: none"> <li>a. at least four (4) days of such activity are to be in the months January to April, November and December;</li> <li>b. the Jet Boat Association of New Zealand ("JBANZ") (JBANZ or one of the Otago and Southland Branches as its delegate) administers the activity on each day;</li> <li>c. the prior written approval of Central Otago Whitewater Inc is obtained if that organisation is satisfied that none of its member user groups are organising activities on the relevant days; and</li> <li>d. JBANZ gives two (2) calendar months written notice to the Council's Harbour-Master of both the proposed dates and the proposed operating schedule;</li> <li>e. the Council's Harbour-Master satisfies himself that none of the regular kayaking, rafting or other whitewater (non-motorised) river user groups or institutions (not members of Central Otago Whitewater Inc) were intending to use the Hawea River on that day, and issues an approved operating schedule;</li> <li>f. JBANZ carries out, as its expense, public notification on two occasions 14 and 7 days before the proposed jet boating;</li> <li>g. public notification for the purposes of (f) means a public notice with double-size font heading in both the Otago Daily Times and the Southland Times, and written notices posted at the regular entry points to the Hawea River.</li> </ul>	P
21.15.4	<p>Jetboat Race Events</p> <p>Jetboat Race Events on the Clutha River, between the Lake Outlet boat ramp and the Albert Town road bridge not exceeding 6 race days in any calendar year.</p> <p>Control is reserved to:</p> <ul style="list-style-type: none"> <li>a. the date, time, duration and scale of the jetboat race event, including its proximity to other such events, such as to avoid or mitigate adverse effects on residential and recreational activities in the vicinity;</li> <li>b. the adequacy of public notice of the event;</li> <li>c. public safety.</li> </ul>	C
21.15.5		

	Table 12 - Activities on the Surface of Lakes and Rivers	Activity Status
21.15.6	<p>Jetties and Moorings in the Frankton Arm</p> <p>Jetties and moorings in the Frankton Arm, identified as the area located to the east of the Outstanding Natural Landscape line as shown on the District Plan Maps.</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>whether they are dominant or obtrusive elements in the shore scape or lake view, particularly when viewed from any public place, including whether they are situated in natural bays and not headlands;</li> <li>whether the structure causes an impediment to craft manoeuvring and using shore waters.</li> <li>the degree to which the structure will diminish the recreational experience of people using public areas around the shoreline;</li> <li>the effects associated with congestion and clutter around the shoreline. Including whether the structure contributes to an adverse cumulative effect;</li> <li>whether the structure will be used by a number and range of people and craft, including the general public;</li> <li>the degree to which the structure would be compatible with landscape and amenity values, including colour, materials, design.</li> </ol>	RD
21.15.7	<p>Structures and Moorings</p> <p>Subject to Rule 21.15.8 any structure or mooring that passes across or through the surface of any lake or river or is attached to the bank of any lake and river, other than where fences cross lakes and rivers.</p>	D
21.15.8	<p>Structures and Moorings</p> <p>Any structures or mooring that passes across or through the surface of any lake or river or attached to the bank or any lake or river in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying.</p>	NC
21.15.9	<p>Motorised and non-motorised Commercial Boating Activities</p> <p>Except where otherwise limited by a rule in Table 12.</p> <p>Note: Any person wishing to commence commercial boating activities could require a concession under the QLDC Navigation Safety Bylaw. There is an exclusive concession currently granted to a commercial boating operator on the Shotover River between Edith Cavell Bridge and Tucker Beach until 1 April 2009 with four rights of renewal of five years each.</p>	D

Table 12 - Activities on the Surface of Lakes and Rivers		Activity Status
21.15.10	<p>Motorised Recreational and Commercial Boating Activities</p> <p>The use of motorised craft on the following lakes and rivers is prohibited except as provided for under Rules 21.15.2 or 21.15.3.</p> <p>21.15.10.1 Hawea River.</p> <p>21.15.10.2 Lake Hayes - Commercial boating activities only.</p> <p>21.15.10.3 Any tributary of the Dart and Rees rivers (except the Beansburn and Rockburn tributaries of the Dart River) or upstream of Muddy Creek on the Rees River.</p> <p>21.15.10.4 Young River or any tributary of the Young or Wilkin Rivers and any other tributaries of the Makarora River.</p> <p>21.15.10.5 Dingle Burn and Timaru Creek.</p> <p>21.15.10.6 The tributaries of the Hunter River.</p> <p>21.15.10.7 Hunter River during the months of May to October inclusive.</p> <p>21.15.10.8 Motatapu River.</p> <p>21.15.10.9 Any tributary of the Matukituki River.</p> <p>21.15.10.10 Clutha River - More than six jet boat race days per year as allowed by Rule 21.15.4.</p>	PR

## 21.16 Rules - Standards for Surface of Lakes and Rivers

Table 13 - Standards for Surface of Lakes and Rivers		Non-Compliance Status
These Standards apply to the Activities listed in Table 12.		
21.16.1	<p>Boating craft used for Accommodation</p> <p>Boating craft on the surface of the lakes and rivers may be used for accommodation, providing that:</p> <p>21.16.1.1 The craft must only be used for overnight recreational accommodation; and</p> <p>21.16.1.2 The craft must not be used as part of any commercial activity; and</p> <p>21.16.1.3 All effluent must be contained on board the craft and removed ensuring that no effluent is discharged into the lake or river.</p>	NC

	Table 13 - Standards for Surface of Lakes and Rivers These Standards apply to the Activities listed in Table 12.	Non-Compliance Status
21.16.2	<p>Jetties and Moorings in the Frankton Arm</p> <p>Jetties and moorings in the Frankton Arm, identified as the area located to the east of the Outstanding Natural Landscape line as shown on the District Plan Maps.</p> <p>No new jetty within the Frankton Arm identified as the area east of the Outstanding Natural Landscape Line shall:</p> <p>21.16.2.1 Be closer than 200 metres to any existing jetty;</p> <p>21.16.2.2 Exceed 20 metres in length;</p> <p>21.16.2.3 Exceed four berths per jetty, of which at least one berth is available to the public at all times;</p> <p>21.16.2.4 Be constructed further than 200 metres from a property in which at least one of the registered owners of the jetty resides.</p>	NC
21.16.3	<p>The following activities are subject to compliance with the following standards:</p> <p>21.16.3.1 Kawarau River, Lower Shotover River downstream of Tucker Beach and Lake Wakatipu within Frankton Arm - Commercial motorised craft, other than public transport ferry activities, may only operate between the hours of 0800 to 2000.</p> <p>21.16.3.2 Lake Wanaka, Lake Hawea and Lake Wakatipu - Commercial jetski operations must only be undertaken between the hours of 0800 to 2100 on Lakes Wanaka and Hawea and 0800 and 2000 on Lake Wakatipu.</p> <p>21.16.3.3 Dart and Rees Rivers - Commercial motorised craft must only operate between the hours of 0800 to 1800, except that above the confluence with the Beansburn on the Dart River commercial motorised craft must only operate between the hours of 1000 to 1700.</p> <p>21.16.3.4 Dart River – The total number of commercial motorised boating activities must not exceed 26 trips in any one day. No more than two commercial jet boat operators may operate upstream of the confluence of the Beansburn, other than for tramper and angler access only.</p>	NC

## 21.17

## Rules - Closeburn Station Activities

Table 14 - Closeburn Station: Activities		Activity
21.17.1	<p>The construction of a single residential unit and any accessory building(s) within lots 1 to 6, 8 to 21 DP 26634 located at Closeburn Station.</p> <p>Control is reserved to:</p> <ul style="list-style-type: none"> <li>a. external appearances and landscaping, with regard to conditions 2.2(a), (b), (e) and (f) of resource consent RM950829;</li> <li>b. associated earthworks, lighting, access and landscaping;</li> <li>c. provision of water supply, sewage treatment and disposal, electricity and telecommunications services.</li> </ul>	C

## 21.18

## Rules - Closeburn Station Standards

Table 15 - Closeburn Station: Standards for Buildings and Structures		Non-compliance Status
21.18.1	<p>Setback from Internal Boundaries</p> <p>21.18.1.1 The minimum setback from internal boundaries for buildings within lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station shall be 2 metres.</p> <p>21.18.1.2 There shall be no minimum setback from internal boundaries within lots 7 and 22 to 27 DP300573 at Closeburn Station.</p>	D
21.18.2	<p>Building Height</p> <p>21.18.2.1 The maximum height of any building, other than accessory buildings, within Lots 1 and 6 and 8 to 21 DP 26634 at Closeburn Station shall be 7m.</p> <p>21.18.2.2 The maximum height of any accessory building within Lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station shall be 5m.</p> <p>21.18.2.4 The maximum height of any building within Lot 23 DP 300573 at Closeburn Station shall be 5.5m.</p> <p>21.18.2.5 The maximum height of any building within Lot 24 DP 300573 at Closeburn Station shall be 5m.</p>	NC

	Table 15 - Closeburn Station: Standards for Buildings and Structures	Non-compliance Status
21.18.3	<b>Residential Density</b> In the Rural Zone at Closeburn Station, there shall be no more than one residential unit per allotment (being lots 1-27 DP 26634); excluding the large rural lots (being lots 100 and 101 DP 26634) held in common ownership.	NC
21.18.4	<b>Building Coverage</b> In lots 1-27 at Closeburn Station, the maximum residential building coverage of all activities on any site shall be 35%.	NC

## 21.19

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## 21.20

# Rules Non-Notification of Applications

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Any application for resource consent for the following matters shall not require the written approval of other persons and shall not be notified or limited-notified:

- 21.20.1      Controlled activity retail sales of farm and garden produce and handicrafts grown or produced on site (Rule 21.4.16), except where the access is onto a State highway.
- 21.20.2      Controlled activity mineral exploration (Rule 21.4.30).
- 21.20.3      Controlled activity buildings at Closeburn Station (Rule 21.17.1).

# 21.21

## Assessment Matters (Landscape)

### 21.21.1 Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL).

The assessment matters set out below are derived from Policies 3.3.30, 6.3.10 and 6.3.12 to 6.3.18 inclusive. Applications shall be considered with regard to the following assessment matters:

- 21.21.1.1 In applying the assessment matters, the Council will work from the presumption that in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations and that 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.
- 21.21.1.2 Existing vegetation that:
  - a. was either planted after, or, self-seeded and less than 1 metre in height at 28 September 2002; and,
  - b. obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:
    - i. as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and
    - ii. as part of the permitted baseline.
- 21.21.1.3 Effects on landscape quality and character
 

In considering whether the proposed development will maintain or enhance the quality and character of Outstanding Natural Features and Landscapes, the Council shall be satisfied of the extent to which the proposed development will affect landscape quality and character, taking into account the following elements:

  - a. physical attributes:
    - i. geological, topographical, geographic elements in the context of whether these formative processes have a profound influence on landscape character;
    - ii. vegetation (exotic and indigenous);
    - iii. the presence of waterbodies including lakes, rivers, streams, wetlands.



- b. visual attributes:
  - i. legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;
  - ii. aesthetic values including memorability and naturalness;
  - iii. transient values including values at certain times of the day or year;
  - iv. human influence and management – settlements, land management patterns, buildings, roads.
- c. Appreciation and cultural attributes:
  - i. Whether the elements identified in (a) and (b) are shared and recognised;
  - ii. Cultural and spiritual values for tangata whenua;
  - iii. Historical and heritage associations.
 

The Council acknowledges that Tangata Whenua beliefs and values for a specific location may not be known without input from iwi.
- d. In the context of (a) to (c) above, the degree to which the proposed development will affect the existing landscape quality and character, including whether the proposed development accords with or degrades landscape quality and character, and to what degree.
- e. any proposed new boundaries will not give rise to artificial or unnatural lines (such as planting and fence lines) or otherwise degrade the landscape character.

#### 21.21.1.4 Effects on visual amenity

In considering whether the potential visibility of the proposed development will maintain and enhance visual amenity, values the Council shall be satisfied that:

- a. the extent to which the proposed development will not be visible or will be reasonably difficult to see when viewed from public roads and other public places. In the case of proposed development in the vicinity of unformed legal roads, the Council shall also consider present use and the practicalities and likelihood of potential use of unformed legal roads for vehicular and/or pedestrian, cycling, equestrian and other means of access;
- b. the proposed development will not be visually prominent such that it detracts from public or private views of and within Outstanding Natural Features and Landscapes;
- c. the proposal will be appropriately screened or hidden from view by elements that are in keeping with the character of the landscape;
- d. the proposed development will not reduce the visual amenity values of the wider landscape (not just the immediate landscape);
- e. structures will not be located where they will break the line and form of any ridges, hills and slopes;
- f. any roads, access, lighting, earthworks and landscaping will not reduce the visual amenity of the landscape.

21.21.1.5 Design and density of Development

In considering the appropriateness of the design and density of the proposed development, whether and to what extent:

- a. opportunity has been taken to aggregate built development to utilise common access ways including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);
- b. there is merit in clustering the proposed building(s) or building platform(s) within areas that are least sensitive to change;
- c. development, including access, is located within the parts of the site where it would be least visible from public and private locations;
- d. development, including access, is located in the parts of the site where it has the least impact on landscape character.

21.21.1.6 Cumulative effects of subdivision and development on the landscape

Taking into account whether and to what extent existing, consented or permitted development (including unimplemented but existing resource consent or zoning) may already have degraded:

- a. the landscape quality or character; or,
- b. the visual amenity values of the landscape.

The Council shall be satisfied the proposed development, in combination with these factors will not further adversely affect the landscape quality, character, or visual amenity values.

## 21.21.2 Rural Character Landscape (RCL)

The assessment matters below have been derived from Policies 3.3.32, 6.3.10 and 6.3.19 to 6.3.29 inclusive. Applications shall be considered with regard to the following assessment matters because in the Rural Character Landscapes the applicable activities are unsuitable in many locations.

21.21.2.1 Existing vegetation that:

- a. was either planted after, or, self seeded and less than 1 metre in height at 28 September 2002; and,
- b. obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:
  - i. as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and
  - ii. as part of the permitted baseline.

21.21.2.2 Effects on landscape quality and character:

The following shall be taken into account:

- a. where the site is adjacent to an Outstanding Natural Feature or Landscape, whether and the extent to which the proposed development will adversely affect the quality and character of the adjacent Outstanding Natural Feature or Landscape;
- b. whether and the extent to which the scale and nature of the proposed development will degrade the quality and character of the surrounding Rural Character Landscape;
- c. whether the design and any landscaping would be compatible with or would enhance the quality and character of the Rural Character Landscape.

21.21.2.3 Effects on visual amenity:

Whether the development will result in a loss of the visual amenity of the Rural Character Landscape, having regard to whether and the extent to which:

- a. the visual prominence of the proposed development from any public places will reduce the visual amenity of the Rural Character Landscape. In the case of proposed development which is visible from unformed legal roads, regard shall be had to the frequency and intensity of the present use and, the practicalities and likelihood of potential use of these unformed legal roads as access;
- b. the proposed development is likely to be visually prominent such that it detracts from private views;
- c. any screening or other mitigation by any proposed method such as earthworks and/or new planting will detract from or obstruct views of the Rural Character Landscape from both public and private locations;
- d. the proposed development is enclosed by any confining elements of topography and/or vegetation and the ability of these elements to reduce visibility from public and private locations;
- e. any proposed roads, boundaries and associated planting, lighting, earthworks and landscaping will reduce visual amenity, with particular regard to elements which are inconsistent with the existing natural topography and patterns;
- f. boundaries follow, wherever reasonably possible and practicable, the natural lines of the landscape or landscape units.

21.21.2.4 Design and density of development:

In considering the appropriateness of the design and density of the proposed development, whether and to what extent:

- a. opportunity has been taken to aggregate built development to utilise common access ways including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);
- b. there is merit in clustering the proposed building(s) or building platform(s) having regard to the overall density and intensity of the proposed development and whether this would exceed the ability of the landscape to absorb change;

- c. development, including access, is located within the parts of the site where they will be least visible from public and private locations;
- d. development, including access, is located in the parts of the site where they will have the least impact on landscape character.

21.21.2.5 Tangata Whenua, biodiversity and geological values:

- a. whether and to what extent the proposed development will degrade Tangata Whenua values including Tōpuni or nohoanga, indigenous biodiversity, geological or geomorphological values or features and, the positive effects any proposed or existing protection or regeneration of these values or features will have.

The Council acknowledges that Tangata Whenua beliefs and values for a specific location may not be known without input from iwi.

21.21.2.6 Cumulative effects of development on the landscape:

Taking into account whether and to what extent any existing, consented or permitted development (including unimplemented but existing resource consent or zoning) has degraded landscape quality, character, and visual amenity values. The Council shall be satisfied;

- a. the proposed development will not further degrade landscape quality, character and visual amenity values, with particular regard to situations that would result in a loss of valued quality, character and openness due to the prevalence of residential or non-farming activity within the Rural Landscape.
- b. where in the case resource consent may be granted to the proposed development but it represents a threshold to which the landscape could absorb any further development, whether any further cumulative adverse effects would be avoided by way of imposing a covenant, consent notice or other legal instrument that maintains open space.

### 21.21.3 Other factors and positive effects, applicable in all the landscape categories (ONF, ONL and RCL)

- 21.21.3.1 In the case of a proposed residential activity or specific development, whether a specific building design, rather than nominating a building platform, helps demonstrate whether the proposed development is appropriate.
- 21.21.3.2 Other than where the proposed development is a subdivision and/or residential activity, whether the proposed development, including any buildings and the activity itself, are consistent with rural activities or the rural resource and would maintain or enhance the quality and character of the landscape.
- 21.21.3.3 In considering whether there are any positive effects in relation to the proposed development, or remedying or mitigating the continuing adverse effects of past subdivision or development, the Council shall take the following matters into account:

- a. whether the proposed subdivision or development provides an opportunity to protect the landscape from further development and may include open space covenants or esplanade reserves;
- b. whether the proposed subdivision or development would enhance the character of the landscape, or protects and enhances indigenous biodiversity values, in particular the habitat of any threatened species, or land environment identified as chronically or acutely threatened on the Land Environments New Zealand (LENZ) threatened environment status;
- c. any positive effects including environmental compensation, easements for public access such as walking, cycling or bridleways or access to lakes, rivers or conservation areas;
- d. any opportunities to retire marginal farming land and revert it to indigenous vegetation;
- e. where adverse effects cannot be avoided, mitigated or remedied, the merits of any compensation;
- f. whether the proposed development assists in retaining the land use in low intensity farming where that activity maintains the valued landscape character.

# QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 4A

Report and Recommendations of Independent Commissioners Regarding  
Chapter 21, Chapter 22, Chapter 23, Chapter 33 and Chapter 34

## Commissioners

Denis Nugent (Chair)

Brad Coombs

Mark St Clair

## PART B: CHAPTER 21 – RURAL

### 2 PRELIMINARY

#### 2.1 Over-arching Submissions and Structure of the Chapter

53. At a high level there were a number of submissions that addressed the approach and structure of Chapter 21. We deal with those submissions first.

#### 2.2 Farming and other Activities relying on the Rural Resource

54. Submissions in relation to the structure of the chapter focussed on the inclusion of other activities that rely on the rural resource<sup>110</sup>. Addressing the Purpose of Chapter 21, Mr Brown in evidence considered that there was an over-emphasis on the importance of farming, noting that there was an inconsistency between Chapters 3 and 21 in this regard<sup>111</sup>. In addition, Mr Brown recommended changing the 'batting order' of the objectives and policies as set out in Chapter 21 to put other activities in the Rural Zone on an equal footing with that of farming<sup>112</sup>.

55. Mr Barr in reply, supported a change to the purpose so that it would "*provide for appropriate other activities that rely on rural resources*" (our emphasis), but noted that there was no hierarchy or preference in terms of the layout of the objectives and therefore he did not support the change in their order proposed by Mr Brown.<sup>113</sup>

56. This theme of a considered preference within the chapter of farming over non-farming activities and, more specifically a failure to provide for tourism, was also raised by a number of other submitters<sup>114</sup>. In evidence and presentations to us, Ms Black and Mr Farrell for R/L questioned the contribution of farming<sup>115</sup> to maintain the rural landscape and highlighted issues with the proposed objectives and policies making it difficult to obtain consent for tourism proposals<sup>116</sup>.

57. Similarly, the submission from UCES<sup>117</sup> sought that the provisions of the ODP relating to subdivision and development in the rural area be rolled over to the PDP. The reasons expressed in the submission for this relief, were in summary because the PDP in its notified form:

- did not protect natural landscape values, in particular ONLs;
- was too permissive;
- was contrary to section 6 of the Act and does not have particular regard to section 7 matters; and
- was biased towards farming over other activities, resulting in a weakening of the protection of landscape values.

58. Mr Haworth addressed these matters in his presentation to us and considered, "Farming as a mechanism for protecting landscape values in these areas has been a spectacular failure."<sup>118</sup> He called evidence in support from Ms Lucas, a landscape architect, who critiqued the provisions in Chapter 6 of the PDP and, noting its deficiencies, considered that those

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<sup>110</sup> E.g. Submissions 122, 343, 345, 375, 407, 430, 437, 456, 610, 613, 615, 806, FS 1229

<sup>111</sup> J Brown, Evidence, Pages 3- 4, Para 2.3

<sup>112</sup> J Brown, Evidence, Pages 5 - 6, Paras 2.8-2.9

<sup>113</sup> C Barr, Reply, Page 2, Para 2.2

<sup>114</sup> E.g. Submissions 607, 621, 806

<sup>115</sup> F Black, Evidence, Page 3 - 5, Paras 3.8 – 3.16

<sup>116</sup> F Black, Evidence, Page 5 , Para 3.17

<sup>117</sup> Submission 145

<sup>118</sup> J Haworth, Evidence, Page 5, Para 1

deficiencies had been carried through to Chapter 21. Ms Lucas noted that much of Rural Zone was not appropriate for farming and that the objectives and policies did not protected natural character<sup>119</sup>.

59. In evidence on behalf of Federated Farmers<sup>120</sup>, Mr Cooper noted the permitted activity status for farming, but considered that this came at a significant opportunity cost for farmers. That said, Mr Cooper, on balance, agreed that those costs needed to be assessed against the benefits of providing for farming as a permitted activity in the Rural Zone, including the impacts on landscape amenity.<sup>121</sup>
60. Mr Barr, in his Section 42A Report, accepted that farming had been singled out as a permitted land use, but he also considered that the framework of the PDP was suitable for managing the impacts of farming on natural and physical resources.<sup>122</sup> In relation to other activities that rely on the rural resource, Mr Barr in reply, considered that those activities were appropriately contemplated, given the importance of protecting the Rural Zone's landscape resource.<sup>123</sup> In reaching this conclusion, Mr Barr relied on the landscape evidence of Dr Read and the economic evidence of Mr Osborne presented as part of the Council's opening for this Hearing Stream.
61. Responding to these conflicting positions, we record that in Chapter 3 the Stream 1B Hearing Panel has already found that as an objective farming should be encouraged<sup>124</sup> and in Chapter 6, that policies should recognise farming and its contribution to the existing rural landscape<sup>125</sup>. Similarly, in relation to landscape, the Stream 1B Hearing Panel found that a suggested policy providing favourably for the visitor industry was too permissive<sup>126</sup> and instead recommended policy recognition for these types of activities on the basis they would protect, maintain or enhance the qualities of rural landscapes.<sup>127</sup>
62. Bearing this in mind, we concur that it is appropriate to provide for other activities that rely on the rural resource, but that such provision needs to be tempered by the equally important recognition of maintaining the qualities that the rural landscape provides. In reaching this conclusion, we found the presentation by Mr Hadley<sup>128</sup> useful in describing the known and predictable quality of the landscape under farming, while noting the reduced predictability resulting from other activities. In our view, tourism may not necessarily maintain the qualities that are important to maintenance of rural character (including openness, where it is an important characteristic) and amenity, and it is this latter point that needs to be addressed.
63. In order to achieve this we recommend:
  - a. Amending the Purpose of the chapter to provide for 'appropriate other activities' that rely on rural resources;
  - b. Objective 21.2.9 (as notified) be deleted and incorporated in Objective 21.2.1; and
  - c. Policies under 21.2.9 (as notified) be added to policies under Objective 21.2.1.

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<sup>119</sup> D Lucas, Evidence, Pages 5-11

<sup>120</sup> Submission 600

<sup>121</sup> D Cooper, Evidence, Paras 31-33

<sup>122</sup> C Barr, Section 42A Report, Page 17, Para 8.16

<sup>123</sup> C Barr, Reply, Page 9, Para 4.3

<sup>124</sup> Recommendation Report 3, Section 2.3

<sup>125</sup> Recommendation Report 3, Section 8.5

<sup>126</sup> Recommendation Report 3, Section 3.19

<sup>127</sup> Recommended Strategic Policy 3.3.20

<sup>128</sup> J Hadley, Evidence, Pages 2 -3



## 2.3 Rural Zone to Provide for Rural Living

64. Mr Goldsmith, appearing as counsel for a number of submitters<sup>129</sup>, put to us that Chapter 21 failed to provide for rural living, in particular in the Wakatipu Basin<sup>130</sup>. Mr J Brown<sup>131</sup> and Mr B Farrell<sup>132</sup> presented evidence in support of that position. Mr Brown recommended a new policy:

*Recognise the existing rural living character of the Wakatipu Basin Rural Landscape, and the benefits which flow from rural living development in the Wakatipu Basin, and enable further rural living development where it is consistent with the landscape character and amenity values of the locality.*<sup>133</sup>

65. Mr Barr, in his Reply Statement, considered that the policy framework for rural living was already provided for in Chapter 22 Rural Lifestyle and Rural Residential Zones. However, Mr Barr also opined, *“that there is merit associated with providing policies associated with rural living in the Rural Zone on the basis they do not duplicate or confuse the direction of the Landscape Chapter and assessment matters in part 21.7 that assist with implementing these policies.”*<sup>134</sup> Mr Barr emphasised the need to avoid conflict with the Strategic Directions and Landscape Chapters and noted that he did not support singling out the Wakatipu Basin or consider that benefits that follow from rural development had been established in evidence.<sup>135</sup>
66. Mr Barr did recommend a policy that recognised rural living within the limits of a locality and its capacity to absorb change, but nothing further.<sup>136</sup> Mr Barr’s recommendation for the policy was as follows;

*“Ensure that rural living is located where rural character, amenity and landscape values can be managed to ensure that over domestication of the rural landscape is avoided.”*<sup>137</sup>

67. We consider that there are three aspects to this issue that need to be addressed. The first is, and we agree with Mr Barr in this regard, that the policy framework for rural living is already provided for in Chapter 22 Rural Lifestyle and Rural Residential Zones. That said we recommend that a description be added to the purpose of each of the Rural Chapters setting out how the chapters are linked.
68. The second aspect is that in its Recommendation Report, the Stream 1B Hearing Panel addressed the matter of rural living as follows:

*“785. 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 Residential and Rural Lifestyle development.*

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<sup>129</sup> Submissions 502, 1256, 430, 532, 530, 531, 535, 534, 751, 523, 537, 515,

<sup>130</sup> W Goldsmith, Legal Submissions, Pages 3 - 4

<sup>131</sup> J Brown, Evidence, Dated 21 April 2016

<sup>132</sup> B Farrell, Evidence, Dated 21 April 2016

<sup>133</sup> J Brown, Summary Statement to Primary Evidence, Pages 1 -2, Para 4

<sup>134</sup> C Barr, Reply Statement, Page 19, para 6.8

<sup>135</sup> C Barr, Reply Statement, Page 20, paras 6.10-6.11

<sup>136</sup> C Barr, Reply Statement, Page 21, paras 6.14

<sup>137</sup> C Barr, Reply Statement, Page 21, paras 6.15

*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.”*

69. We similarly adopt that position in recommending rural living be specifically addressed in Chapter 22.
70. Finally, with reference to the Wakatipu Basin, we record that the Council has, as noted above, already notified the Stage 2 Variations which contains specific rural living opportunities for the Wakatipu Basin.
71. Considering all these matters, we are not convinced that rural living requires specific recognition within the Rural Chapter. We agree with the reasoning of Mr Barr in relation to the potential conflict with the Strategic and Landscape chapters and that benefits that follow from rural development have not been established. We therefore recommend that the submissions seeking the inclusion of policies providing for and enabling rural living in the Rural Zone be rejected.

## **2.4 A Separate Water Chapter**

72. Submissions from RJL<sup>138</sup> and Te Anau Developments<sup>139</sup> sought to “Extract provisions relating to the protection, use and development of the surface of lakes and rivers and their margins and insert them into specific chapter...”. Mr Farrell addressed this matter in his evidence<sup>140</sup>.
73. We note that the Stream 1B Hearing Panel has already considered this matter in Report 3 at Section 8.8, and agreed that there was insufficient emphasis on water issues in Chapter 6. This was addressed in that context by way of appropriate headings. That report noted Mr Farrell’s summary of his position that he sought to focus attention on water as an issue, rather than seek substantive changes to the existing provisions.
74. Mr Barr, in reply, was of the view that water issues were adequately addressed in a specific objective with associated policies and the activities and associated with lakes and rivers are contained in one table<sup>141</sup>. We partly agree with each of Mr Farrell and Mr Barr.
75. In terms of the structure of the activities and standards tables, we recommend that tables deal with first the general activities in the Rural Zone and then second with location-specific activities such as those on the surface of lakes and rivers. In addition, we recommend a reordering and

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<sup>138</sup> Submission 621

<sup>139</sup> Submission 607

<sup>140</sup> B Farrell, Evidence, Pages 10-11

<sup>141</sup> C Barr, Reply, Page 4

clarification of the activities and standards in relation to the surface of lakes and river table to better identify the activity status and relevant standards.

## 2.5 New Provisions – Wanaka Airport

76. QAC<sup>142</sup> sought the inclusion of new objectives and policies to recognise and provide for Wanaka Airport. The airport is zoned Rural and is subject to a Council designation but we were told that the designation does not serve the private operators with landside facilities at the airport. At the hearing, QAC explained the difficulties that this regime caused for the private operators.
77. Ms Sullivan, in evidence-in-chief, proposed provisions by way of amendments to the Rural Chapter, but following our questions of Mr Barr during Council's opening, provided supplementary evidence with a bespoke set of provisions for Wanaka as a subset of the Queenstown Airport Mixed Use Zone.
78. Having reached a preliminary conclusion that specific provisions for Wanaka Airport were appropriate, we requested that Council address this matter in reply. Mr Winchester, in reply for Council, advised that there was scope for a separate zone for the Wanaka Airport and that it could be completely separate or a component of the Queenstown Airport Mixed Use Zone in Chapter 17 of the PDP. Agreeing that further work on the particular provisions was required, we directed that the zone provisions for Wanaka Airport be transferred to Hearing Stream 7 Business Zones.
79. The Minute of the Chair, dated 16 June 2016, set out the directions detailed above. Those directions did not apply to the submissions of QAC seeking Runway End Protection Areas at Wanaka Airport. We deal with those submissions now.
80. QAC<sup>143</sup> sought two new policies to provide for Runway End Protection Areas (REPAs) at Wanaka Airport, worded as follows:

*Policy 21.2.X.3 Retain a buffer around Wanaka Airport to provide for the runway end protection areas at the Airport to maintain and enhance the safety of the public and those using aircraft at Wanaka Airport.*

*Policy 21.2.X.1 Avoid activities which may generate effects that compromise the safety of the operation of aircraft arriving at or departing from Wanaka Airport.*

81. The QAC submission also sought a new rule derived from these policies, being prohibited activity status for REPAs as follows:

*Within the Runway End Protection Areas, as indicated on the District Plan Maps,*

- a. Buildings except those required for aviation purposes*
- b. Activities which generate or have the potential to generate any of the following effects:*
  - i. mass assembly of people*
  - ii. release of any substance which would impair visibility or otherwise interfere with the operation of aircraft including the creation of smoke, dust and steam*

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<sup>142</sup> Submission 433

<sup>143</sup> Submission 433

- iii. *storage of hazardous substances*
- iv. *production of direct light beams or reflective glare which could interfere with the vision of a pilot*
- v. *production of radio or electrical interference which could affect aircraft communications or navigational equipment*
- vi. *attraction of birds*

82. We think it is appropriate to deal with the requested new policies and new rule together, as the rule relies on the policies.
83. In opening legal submissions for Council, Mr Winchester raised jurisdictional concerns regarding the applicability of the rule as related to creation of smoke and dust; those are matters within the jurisdiction of ORC. Mr Winchester also raised a fairness issue for affected landowners arising from imposition of prohibited activity status by way of submission, noting that many permitted farming activities would be negated by the new rule. He submitted that insufficient evidence had been provided to justify the prohibited activity status<sup>144</sup>.
84. Ms Wolt, in legal submissions for QAC<sup>145</sup>, submitted in summary that there was no requirement under the Act for submitters to consult, that the further submission process was the opportunity for affected land owners to raise any concerns, and that they had not done so. Ms Wolt drew our attention to the fact that one potentially affected land owner had submissions on the PDP prepared by consultants and that those submissions did not raise any concerns. In conclusion, Ms Wolt submitted that the concerns about fairness were unwarranted.
85. At this point, we record that we had initial concerns about the figure (Figure 3.1) showing the extent of the REPA included in the QAC Submission<sup>146</sup> as that figure was not superimposed over the cadastral or planning maps to show the extent the suggested REPA extended onto private land. Rather, the figure illustrated the dimensions of the REPA from the runway. The summary of submissions referred to the Appendix, but even if Figure 3.1 had been reproduced, in our view, it would not have been apparent to the airport neighbours that the REPA covered their land. Against this background, the failure of airport neighbours to lodge further submissions on this matter does not, in our view, indicate their acquiescence.
86. In supplementary evidence for QAC, Ms O’Sullivan provided some details from the Airbiz Report dated March 2013 from which Figure 3.1 was derived<sup>147</sup>. Ms O’Sullivan also included a Plan prepared by AirBiz dated 17 May 2016, showing the spatial extent of the REPA on an aerial photograph with the cadastral boundaries also superimposed<sup>148</sup>. We also received a further memorandum from Ms Wolt dated 3 June 2016, with the relevant extracts from the AirBiz March 2013 report and which included additional Figures 3.2 and 3.3 showing the REPA superimposed on the cadastral map.
87. Given that it was only at that stage that the extent of the REPA in a spatial context was identified, we do not see how any adjoining land owner could know how this might affect them. We do

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<sup>144</sup> J Winchester, Opening legal Submissions, Page 11, Paras 4.21 – 4.22

<sup>145</sup> R Wolt, Legal Submissions, Pages 22-24, Paras 111 - 122

<sup>146</sup> Submission 433, Annexure 3

<sup>147</sup> K O’Sullivan, Supplementary evidence, Pages 5 – 6, Paras 3.3 - 3.5

<sup>148</sup> K O’Sullivan, Supplementary evidence, Appendix C

not consider QAC's submission to be valid for this reason. If the suggested prohibited activity rule fails for this reason, so must the accompanying policies that support it. Even if this were not the case, we agree with Mr Winchester's submission that QAC has supplied insufficient evidence to justify the relief that it seeks. The suggested prohibited activity rule is extraordinarily wide (on the face of it, the rule would preclude the neighbouring farmers from ploughing their land if they had not done so within the previous 12 months because of the potential for it to attract birds). To support it, we would have expected a comprehensive and detailed section 32 analysis to be provided. Ms O'Sullivan expressed the opinion that there was adequate justification in terms of section 32 of the Act for a prohibited activity rule<sup>149</sup>. Ms O'Sullivan, however, focused on the development of ASANs, which are controlled by other rules, rather than the incremental effect of the suggested new rule, and thus in our view, significantly understated the implications of the suggested rule for neighbouring land owners. We do not therefore accept her view that the rule has been adequately justified in terms of section 32.

88. For completeness we note that the establishment of ASANs in the Rural Zone, over which these REPA would apply, would, in the main, be prohibited activities (notified Rule 21.4.28). For the small area affected by the proposed REPA outside the OCB, ASANs would require a discretionary activity consent. Thus, the regulatory regime we are recommending would enable consideration of the type of reverse sensitivity effects raised by QAC.
89. Accordingly, we recommend that submission from QAC for two new policies and an associated rule for the REPA at Wanaka Airport be rejected.

### 3 SECTION 21.1 – ZONE PURPOSE

90. We have already addressed a number of the submissions regarding this part of Chapter 21 in Sections 3.2 and 3.3 above, as they applied to the wider planning framework for the Rural Zone Chapter. We also record that the Zone Purpose is explanatory in nature and does not contain any objectives, policies or regulatory provisions.
91. Submissions from QAC<sup>150</sup> and Transpower<sup>151</sup> sought that infrastructure in the Rural Zone needed specific recognition. Mr Barr addressed this matter in the Section 42A Report noting;
- “Infrastructure and utilities are also contemplated in the Rural Zone and while not specifically identified in the Rural Zone policy framework they are sufficiently provided for in higher order provisions in the Strategic Direction Chapter and Landscape Chapter and the Energy and Utilities Chapter.”<sup>152</sup>*
92. Ms Craw, in evidence<sup>153</sup> for Transpower, agreed with that statement, provided that the Panel adopted changes to Chapter 3 Strategic Directions regarding recognition and provision of regionally significant infrastructure.
93. Ms O'Sullivan, in evidence for QAC, noted that Wanaka Airport was recognised in the ODP and suggested that it was appropriate to continue that recognition in the PDP. Her evidence was

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<sup>149</sup> K O'Sullivan, Supplementary evidence, Pages 7 - 8, Paras 3.8 – 3.10

<sup>150</sup> Submission 433

<sup>151</sup> Submission 805

<sup>152</sup> C Barr, Section 42A Report, Chapter 21, Para 8.3

<sup>153</sup> A Craw, Evidence, dated 21 April 2016, Paras 21-22

that it was also appropriate to incorporate PC35 provisions into the PDP in order to provide guidance to plan users.<sup>154</sup>

94. Forest & Bird<sup>155</sup> also sought the recognition of the loss of biodiversity on basin floors and NZTM<sup>156</sup> similarly sought recognition of mining. In evidence on behalf of NZTM, Mr Vivian was of the opinion that the combination of traditional rural activities, which include mining, are expected elements in a rural landscape and hence would not offend landscape character.<sup>157</sup>
95. In our view infrastructure and biodiversity are district wide issues that are appropriately addressed in the separate chapters, Energy and Utilities and Indigenous Vegetation and Biodiversity respectively, as well as at a higher level in the strategic chapters. Provision for Wanaka Airport has been deferred to the business hearings for the reasons set out above. We agree with Ms O’Sullivan’s additional point regarding the desirability of assisting plan users as a general principle, but find that incorporating individual matters from the chapter into the Purpose section would be repetitive. We think that Mr Vivian’s reasoning regarding the combination of traditional rural activities not offending rural landscape goes too far. Nonetheless, we note that mining is the subject of objectives and associated policies in this chapter. These matters do not need to be specified in the purpose statement of every chapter in which they occur. We therefore recommend that these submissions be rejected.
96. The changes we do recommend to this section are those that address the wider matters discussed in the previous section. We recommend that the opening paragraph read:

*There are four rural zones in the District. The Rural Zone is the most extensive of these. The Gibbston Valley is recognised as a special character area for viticulture production and the management of this area is provided for in Chapter 23: Gibbston Character Zone. Opportunities for rural living activities are provided for in the Rural-Residential and Rural Lifestyle Zones (Chapter 22).*

97. In the five paragraphs following, we recommend accepting the amendments recommended by Mr Barr<sup>158</sup>. Finally, we recommend deletion of the notified paragraph relating to the Gibbston Character Zone and the addition of the following paragraph to clarify how the landscape classifications are applied in the zone:

*The Rural Zone is divided into two ~~overlay~~ areas. The first being the ~~overlay~~ area for Outstanding Natural Landscapes and Outstanding Natural Features. The second ~~overlay~~ area being the Rural Character Landscape. These ~~overlay~~ areas give effect to Chapter 3 – Strategic Direction: Objectives 3.2.5.1 and 3.2.5.2, and the policies in Chapters 3 and 6 that implement those objectives.*

98. With those amendments, we recommend Section 21.1 be adopted as set out in Appendix 1.

## 4 SECTION 21.2 – OBJECTIVES AND POLICIES

### 4.1 Objective 21.2.1

99. Objective 21.2.1 as notified read as follows:

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<sup>154</sup> K O’Sullivan, Evidence, dated 22 April 2016, Page 9-10, Paras 4.8 – 4.13

<sup>155</sup> Submission 706

<sup>156</sup> Submission 519

<sup>157</sup> C Vivian, Evidence, Page 11, Para 4.28

<sup>158</sup> C Barr, Reply Statement, Appendix 1

*“Enable farming, permitted and established activities while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values.”*

100. The submissions on this objective primarily sought inclusion of activities that relied on the rural resource<sup>159</sup>, the addition of wording from the RMA such as “avoid, remedy or mitigate” or “from inappropriate use and development”<sup>160</sup> and removal of the word “protecting”<sup>161</sup>. Transpower sought the inclusion of ‘regionally significant infrastructure’.

101. As noted in Section 2.1 above, the Council lodged amended objectives and policies, reflecting our request for outcome orientated objectives. The amended version of Objective 21.2.1 read as follows:

*“A range of land uses including farming, permitted and established activities are enabled, while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values.”*

102. We record that this amended objective is broader than the objective as notified, by suggesting the range of enabled activities extends beyond farming and established activities, and circular by referring to permitted activities (which should only be permitted if giving effect to the objective). We have addressed the activities relying on the rural resource in Section 3.2 above. In addition, as we noted in Section 4, we consider infrastructure is more appropriately dealt with in Chapter 30 Energy and Utilities..

103. In his evidence for Darby Planning LP *et al*<sup>162</sup>, which sought to remove the word “protecting”, Mr Ferguson was of the view that the Section 42A Report wording of Objective 21.2.1 was not sufficiently clear in, “providing the balance between enabling appropriate rural based activities and recognising the important values in the rural environment.”<sup>163</sup> Mr Ferguson was also of the view that this balance needed to be continued into the associated policies. Similarly, in evidence tabled for X-Ray Trust, Ms Taylor was of the view that “protecting” was an inappropriately high management threshold and that it could prevent future development<sup>164</sup>.

104. We do not agree. Consistent with the findings in the report on the Strategic Chapters, we consider that removal of the word “protecting” would have exactly the opposite result from that sought by Mr Ferguson and Ms Taylor by creating an imbalance in favour of other activities to the detriment of landscape values. This would be inconsistent with the Strategic Objectives 3.2.5.1 and 3.2.5.2 which seek to protect ONLs and ONFs from the adverse effects of subdivision, use and development, and maintain and enhance rural character and visual amenity values in Rural Character Landscapes.

105. We are satisfied that the objective as recommended by Mr Barr reflects both the range of landscapes in the Rural Zone, and, with minor amendment, the range of activities that are appropriate within some or all of those landscapes. The policies to implement this objective should appropriately apply the terms “protecting, maintaining and enhancing” so as to

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<sup>159</sup> Submissions 343, 345, 375, 407, 430, 437, 456, 513, 515, 522, 531, 537, 546, 608, 621, 624, 806

<sup>160</sup> Submissions 513, 515, 522, 531, 537, 621, 624, 805

<sup>161</sup> Submissions 356, 608 – we record that these submissions similarly sought the removal of the word protect from Policy 21.2.1.1

<sup>162</sup> Submission 608

<sup>163</sup> C Fergusson, EIC, dated 21 April 2016, Para 54

<sup>164</sup> L Taylor, Evidence, Appendix A, Page 1

implement the higher order objectives and policies. Consequently, we recommend that the wording for Objective 21.2.1 be as follows:

*A range of land uses, including farming and established activities, are enabled while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values.*

106. In relation to wording from the RMA such as “avoid, remedy or mitigate” or “from inappropriate use and development”, Mr Brown in his evidence for Chapter 21 reiterated the view he put forward at the Strategic Chapters hearings that the, “RMA language should be the “default” language of the PDP and any non-RMA language should be used sparingly, ...”<sup>165</sup>, in order to avoid uncertainty and potentially litigation.
107. The Stream 1B Hearings Panel addressed this matter in detail<sup>166</sup> and concluded that, “we take the view that use of the language of the Act is not a panacea, and alternative wording should be used where the wording of the Act gives little or no guidance to decision makers as to how the PDP should be implemented.” We agree with that finding for the same reasons as are set out in Recommendation Report 3 and therefore recommend rejecting those submissions seeking inclusion of such wording in the objective.

#### **4.2 Policy 21.2.1.1**

108. Policy 21.2.1.1 as notified read as follows:

*“Enable farming activities while protecting, maintaining and enhancing the values of indigenous biodiversity, ecosystem services, recreational values, the landscape and surface of lakes and rivers and their margins.”*

109. The majority of submissions on this policy sought, in the same manner as for Objective 21.2.1, to include reference to activities that variously rely on rural resources, as well as inclusion of addition of wording from the RMA such as “avoid, remedy or mitigate”<sup>167</sup>, or softening of the policy through removal of the word “protecting”<sup>168</sup>, or inserting the words “significant” before the words indigenous biodiversity<sup>169</sup>, or amending the reference to landscape to “outstanding natural landscape values”<sup>170</sup>.
110. In evidence for RJJ *et al* Mr Farrell recommended that the policy be amended as follows:
- “Enable a range of activities that rely on the rural resource while, maintaining and enhancing indigenous biodiversity, ecosystem services, recreational values, landscape character and the surface of lakes and rivers and their margins.”*<sup>171</sup>
111. Mr Barr did not recommend any additional amendments to this policy in his Section 42A Report or in reply. We have already addressed the majority of these matters in Section 3.2 above. The additional amendments recommended by Mr Farrell in our view do not align the policy so that

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<sup>165</sup> J Brown, Evidence , Page 2, Para 1.9

<sup>166</sup> Recommendation Report 3, Section 1.9

<sup>167</sup> Submissions 343, 345, 375, 456, 515, 522, 531

<sup>168</sup> Submissions 356, 608

<sup>169</sup> Submissions 701, 784

<sup>170</sup> Submissions 621, 624

<sup>171</sup> B Farrell, Evidence, Page 15, Para 48



it implements Objective 21.1.1, and are also inconsistent with the Hearing Panel’s findings in regard to the Strategic Chapters.

112. We therefore recommend that Policy 21.2.1.1 remain as notified.

#### 4.3 Policy 21.2.1.2

113. Policy 21.2.1.2 as notified read as follows:

*“Provide for Farm Buildings associated with larger landholdings where the location, scale and colour of the buildings will not adversely affect landscape values.”*

114. Submissions to this policy variously sought;

- a. To remove the reference to “large landholdings”<sup>172</sup>;
- b. To delete reference to farm buildings and replace with reference to buildings that support rural and tourism based land uses<sup>173</sup>;
- c. To change the policy to not “significantly adversely affect landscape values”<sup>174</sup>;
- d. To roll-over provisions of the ODP so that farming activities are not permitted activities.<sup>175</sup>

115. The Section 42A Report recommended that the policy be amended as follows;

*“Provide for Farm Buildings associated with larger landholdings over 100 hectares in area where the location, scale and colour of the buildings will not adversely affect landscape values.”*

116. In his evidence, Mr Brown for Trojan Helmet *et al* considered that the policy should apply to all properties, not just larger holdings and that the purpose of what is proposed to be managed, the effect on landscape values, should be clearer<sup>176</sup>. Mr Farrell in evidence for RJL *et al* was of a similar view, considering that 100 hectares was too high a threshold for the provision of farm buildings and that a range of farm buildings should be provided for and were appropriate<sup>177</sup>. Mr Farrell did not support the amendment sought by RJL in relation to changing the policy to not “significantly adversely affect landscape values”, but rather recommended that policy be narrowed to adverse effects on the district’s significant landscape values. There was no direct evidence supporting the request to widen the reference to buildings that support rural and tourism based land uses. The argument of Mr Haworth for UCES, seeking that the provisions of the ODP be rolled over so that farming activities are not permitted activities have already been addressed in Section 3.2 above. However, later in the report we address the density of farm buildings in response to UCES’s submission.

117. In the Section 42A Report, Mr Barr considered that provision for farm buildings of a modest size and height, subject to standards controlling colour, density and location, is an efficient management regime that would lower transition costs for modest size buildings without compromising the landscape<sup>178</sup>. In evidence for Federated Farmers<sup>179</sup>, Mr Cooper emphasised the need to ensure that the associated costs were reasonable in terms of the policy

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<sup>172</sup> Submission 356, 437, 621, 624

<sup>173</sup> Submission 806

<sup>174</sup> Submission 356, 621

<sup>175</sup> Submission 145

<sup>176</sup> J Brown, Evidence, Para 2.11 – 2.12

<sup>177</sup> B Farrell, Evidence, Para 51

<sup>178</sup> C Barr, Summary of S42A Report, Para 4, Page 2

<sup>179</sup> D Cooper, Evidence, Paras 25-26

implementation. We note that while we heard from several farmers, none of them raised an issue with this policy.

118. In reply, Mr Barr did not agree with Mr Brown and Mr Farrell's view that the policy should apply to all properties. Mr Barr's opinion was that the policy needed to both recognise the permitted activity status for buildings on 100 hectares plus sites and require resource consents for buildings on smaller properties on the basis that their scale and location are appropriate<sup>180</sup>.
119. Mr Barr also addressed in his Reply Statement, evidence presented by Mr P Bunn<sup>181</sup> and Ms D MacColl<sup>182</sup> as to the policy and rules relating to farm buildings<sup>183</sup>. On a review of these submissions, we note that the submissions do not seek amendments to the farm building policy and rules and consequently, we have not considered that part of the submitters' evidence any further.
120. We concur with Mr Barr and find that the policy will provide for efficient provision of genuine farm buildings without a reduction in landscape and rural amenity values. While a 100 hectare cut-off is necessarily somewhat arbitrary, it both characterises 'genuine' farming operations and identifies properties that are of a sufficiently large scale that they can absorb additional buildings meeting the specified standards. We agree, however, with Mr Brown that the purpose of the policy needs to be made clear, that being the management of the potential adverse effects on the landscape values.
121. We therefore recommend that Policy 21.2.1.2 be worded as follows:

*"Allow Farm Buildings associated with landholdings of 100 hectares or more in area while managing the effects of the location, scale and colour of the buildings on landscape values."*

#### **4.4 Policies 21.2.1.3 – 21.2.1.8**

122. Policies 21.2.3 to 21.2.8 as notified read as follows:

21.2.1.3 *Require buildings to be set back a minimum distance from internal boundaries and road boundaries in order to mitigate potential adverse effects on landscape character, visual amenity, outlook from neighbouring properties and to avoid adverse effects on established and anticipated activities.*

21.2.1.4 *Minimise the dust, visual, noise and odour effects of activities by requiring facilities to locate a greater distance from formed roads, neighbouring properties, waterbodies and zones that are likely to contain residential and commercial activity.*

21.2.1.5 *Have regard to the location and direction of lights so they do not cause glare to other properties, roads, public places or the night sky.*

21.2.1.6 *Avoid adverse cumulative impacts on ecosystem services and nature conservation values.*

21.2.1.7 *Have regard to the spiritual beliefs, cultural traditions and practices of Tangata Whenua.*

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<sup>180</sup> C Barr, Reply, Page 17, Para 5.12

<sup>181</sup> Submission 265

<sup>182</sup> Submission 285 and 626

<sup>183</sup> C Barr, Reply, Pages 15 - 16, Paras 5.7 – 5.9

21.2.1.8 *Have regard to fire risk from vegetation and the potential risk to people and buildings, when assessing subdivision and development in the Rural Zone.*

123. Submissions to these policies variously sought;

Policies

21.2.1.3 remove the reference to “avoid adverse effects on established and anticipated activities”<sup>184</sup> or retain the policy as notified<sup>185</sup>;

21.2.1.4 remove reference to “requiring facilities to locate a greater distance from”<sup>186</sup>, retain the policy<sup>187</sup> and delete the policy entirely<sup>188</sup>;

21.2.1.5 retain the policy<sup>189</sup>;

21.2.1.6 insert “mitigate, remedy or offset” after the word avoid<sup>190</sup>, reword to address significant adverse impacts<sup>191</sup> or support as notified<sup>192</sup>;

21.2.1.7 delete the policy<sup>193</sup> and amend the policy to address impacts on Manawhenua<sup>194</sup>;

21.2.1.8 include provision for public transport<sup>195</sup>.

124. Specific evidence presented to us by Mr MacColl supporting the NZTA submission which supported the retention of Policy 21.2.1.3<sup>196</sup>. In evidence tabled for X-Ray Trust, Ms Taylor considered that Policy 21.2.1.3 sought to manage aesthetic effects as well as reverse sensitivity and that Objective 21.2.4 and the associated policies sufficiently dealt with the management of reverse sensitivity effects. Hence it was her view that reference to that matter in Policy 21.2.3.1 was not required<sup>197</sup>.

125. Mr Barr generally addressed these matters in the Section 42A Report<sup>198</sup> and again in his Reply Statement<sup>199</sup>. In the latter Mr Barr considered that the only amendment required to this suite of policies was to Policy 21.2.1.4 which he suggested be amended as follows:

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184 Submissions 356, 806

185 Submissions 600, 719

186 Submissions 356, 437

187 Submission 600

188 Submission 806

189 Submission 600

190 Submissions 356, 437

191 Submissions 356, 600, 719

192 Submissions 339, 706

193 Submission 806

194 Submission 810: Noting that this aspect of this submission was withdrawn by the representatives of the submitter when they appeared at the Stream1A Hearing. Refer to the discussion in Section 3.6 of Report 2. We have not referred to the point again in the balance of our report for that reason.

195 Submission 798

196 A MacColl, Evidence for NZTA, Page 5, Para 17

197 L Taylor, Evidence, Page 4, Para 5.4

198 Issue 1 – Farming Activity and non-farming activities.

199 Section 4

*“Minimise the dust, visual, noise and odour effects of activities by requiring them to locate a greater distance from formed roads, neighbouring properties, waterbodies and zones that are likely to contain residential and commercial activity.”*

126. We agree with Mr Barr, that this rewording provides greater clarity as to the purpose of this policy. We have already addressed in our previous findings the use of RMA language such as *“avoid, remedy, mitigate”*. In relation to Ms Taylor’s suggestion of deleting Policy 21.2.1.3, we consider that policy provides greater clarity as to the types of effects that it seeks to control. We received no evidence in relation to the other deletions and amendments sought in the submissions. We therefore recommend that Policies 21.2.1.3 and 2.2.1.5- 21.2.1.8 remain as notified and Policy 21.2.1.4 be amended as set out in the previous paragraph.

127. At this point we note that in Stream 1B Recommendation Report, the Hearing Panel did not recommend acceptance of the NZFSC submission seeking a specific objective for emergency services, but instead recommended that it be addressed in the detail of the PDP<sup>200</sup>. We address that matter now. In the first instance we note that Mr Barr, recommended a new policy to be inserted into Chapter 22 as follows:

*22.2.1.8 Provide adequate firefighting water and fire service vehicle access to ensure an efficient and effective emergency response.<sup>201</sup>*

128. Mr Barr considered this separate policy was required rather than amending Policy 22.2.1.7 which addressed separate matters and that the policy should sit under Objective 22.2.1 which addressed rural living opportunities<sup>202</sup>.

129. Mr Barr did not consider that such a policy and any subsequent rules were required in Chapter 21 as there were no development rights for rural living provided within that Chapter<sup>203</sup>. In response to our questions, Mr Barr stated that his recommended rules relating to fire fighting and water supply in Chapter 22 could be applied to Chapters 21 and 23<sup>204</sup>. We agree and also consider an appropriate policy framework is necessary. This is particularly so in this zone with its limited range of permitted activities. We agree with Ms McLeod<sup>205</sup> that fire safety is an issue outside of the Rural-Residential and Rural Lifestyle Zones.

130. Accordingly, we recommend that a new policy be inserted, numbered 21.2.1.9, worded as follows:

*Provide adequate firefighting water and fire service vehicle access to ensure an efficient and effective emergency response.*

131. We address the specific rules for firefighting water and fire service vehicle access later in this report.

#### **4.5 Objective 21.2.2**

132. As notified, Objective 21.2.2 read as follows:

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<sup>200</sup> Recommendation Report 3, Section 2.3

<sup>201</sup> C Barr, Chapter 22 Section 42A Report, Page 35, Para 16.13

<sup>202</sup> C Barr, Chapter 22 Section 42A Report, Page 35, Para 16.9 – 16.14

<sup>203</sup> C Barr, Section 42A Report, Pages 99 -100, Paras 20.1 – 20.5

<sup>204</sup> C Barr, Reply – Chapter 22, Page 13, Para 13.1

<sup>205</sup> Ms A McLeod, EIC, Page 13, Par 5.25

*“Sustain the life supporting capacity of soils”*

133. Submissions on the objective sought that it be retained or approved.<sup>206</sup> Mr Barr recommended amending the objective under the Council’s memoranda on revising the objectives to be more outcome focused.<sup>207</sup> Mr Barr’s recommended wording was as follows;

*“The life supporting capacity of soils is sustained.”*

134. We agree with that wording and that the amendment is a minor change under Clause 16(2) of the First Schedule which does not alter the intent.
135. As such, we recommend that Objective 21.2.2 be reworded as Mr Barr recommended.

#### **4.6 Policies 21.2.2.1 – 21.2.2.3**

136. As notified policies 21.2.2.1 – 21.2.2.3 read as follows:

*21.2.2.1 Allow for the establishment of a range of activities that utilise the soil resource in a sustainable manner.*

*21.2.2.2 Maintain the productive potential and soil resource of Rural Zoned land and encourage land management practices and activities that benefit soil and vegetation cover.*

*21.2.2.3 Protect the soil resource by controlling activities including earthworks, indigenous vegetation clearance and prohibit the planting and establishment of recognised wilding exotic trees with the potential to spread and naturalise.*

137. Submissions to these policies variously sought the deletion<sup>208</sup> or retention<sup>209</sup> of particular policies, although in the main, the requests were to soften the intent of the policies through rewording so the that policies applied to “significant soils”,<sup>210</sup> and Policy 21.2.2.3 be amended to “Protect, enhance or maintain the soil resource ...”<sup>211</sup> or “Protect, the soil resource by controlling earthworks, and appropriately managing the effects of ... the planting and establishment of recognised wilding exotic trees with the potential to spread and naturalise.”<sup>212</sup>
138. We heard no evidence in regard to these submission requests. Mr Barr recommended in the Section 42A Report that Policy 21.2.2.3 be amended as follows “...and establishment of identified wilding exotic trees ...” for consistency with recommendations made to Chapter 34 on Wilding Exotic Trees.<sup>213</sup>
139. These policies are part of the permitted activity framework for the Chapter in relation to appropriateness of farming within the context of landscape values to be protected, maintained or enhanced. Removal of the policies or softening their wording would not provide the direction required to assist achievement of the objective. We accept, however, the need for the

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<sup>206</sup> Submissions 289, 325, 356

<sup>207</sup> Council Memoranda dated 13 April 2016

<sup>208</sup> Submission 806

<sup>209</sup> Submissions 600, 806

<sup>210</sup> Submissions 643, 693, 702

<sup>211</sup> Submission 356

<sup>212</sup> Submission 600

<sup>213</sup> C Barr, Section 42A Report, Appendix 1

consequential amendment suggested by Mr Barr. We therefore recommend that the Policies 21.2.2.1 and 21.2.2.2 remain as notified and that 21.2.2.3 read as follows:

*“Protect the soil resource by controlling activities including earthworks, indigenous vegetation clearance and prohibit the planting and establishment of identified wilding exotic trees with the potential to spread and naturalise.”*

#### **4.7 Objective 21.2.3**

140. As notified, Objective 21.2.3 read as follows:

*“Safeguard the life supporting capacity of water through the integrated management of the effects of activities.”*

141. Submissions on the objective were generally supportive<sup>214</sup> with a specific request for inclusion of “...capacity of water and water bodies through ...”.<sup>215</sup> This submission was not directly addressed in the Section 42A Report or in evidence. We note that the definitions of water and water body in the RMA means that water bodies are included within ‘water’, and therefore consider that there is no advantage in expanding the objective.

142. Mr Barr recommended amending the objective under the Council’s memoranda on revising the objectives to be more outcome focused.<sup>216</sup> The suggested rewording was:

*“The life supporting capacity of water is safeguarded through the integrated management of the effects of activities.”*

143. We agree that this rewording captures the original intention in an appropriate outcome orientated manner and recommend that the objective be amended as such.

#### **4.8 Policy 21.2.3.1**

144. As notified, Policy 21.2.3.1 read as follows:

*“In conjunction with the Otago Regional Council, regional plans and strategies:*

- a. Encourage activities that use water efficiently, thereby conserving water quality and quantity*
- b. Discourage activities that adversely affect the potable quality and life supporting capacity of water and associated ecosystems.”*

145. Submissions to this policy variously sought its deletion<sup>217</sup> or retention<sup>218</sup>, its rewording so as to delete reference to “water quality and quantity” and/or reference to “potable quality, life-supporting capacity and ecosystems”.<sup>219</sup>

146. There was no direct reference to these submissions in the Section 42A Report or in evidence.

147. Given that the objective under which this policy sits refers to safeguarding life-supporting capacity, then it seems to us incongruous to remove reference to “water quality and quantity”

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<sup>214</sup> Submissions 289, 356, 600

<sup>215</sup> Submissions 339, 706

<sup>216</sup> Council Memoranda dated 13 April 2016

<sup>217</sup> Submission 590

<sup>218</sup> Submission 339, 706, 755,

<sup>219</sup> Submissions 600, 791, 794

or “potable quality, life-supporting capacity and ecosystems”, which are all relevant to achievement of that objective. We therefore, recommend that the policy as notified remains unchanged.

#### 4.9 New Policy on Wetlands

148. The Forest & Bird<sup>220</sup> and E Atly<sup>221</sup> sought an additional policy to avoid the degradation of natural wetlands. The reasons set out in the submissions included that it is a national priority project to protect wetlands and that rules other than those related to vegetation clearance were needed.

149. We could not identify where this matter was addressed in the Section 42A Report. In evidence for the Forest & Bird, Ms Maturin advised that the Society would be satisfied if this matter was added to Policy 21.2.12.5.<sup>222</sup> We therefore address the point later in this report in the context of Policy 21.2.12.5.

#### 4.10 Objective 21.2.4

150. As notified, Objective 21.2.4 read as follows:

*Manage situations where sensitive activities conflict with existing and anticipated activities in the Rural Zone.*

151. Submissions on this objective were generally in support of the wording as notified.<sup>223</sup> Transpower<sup>224</sup> sought that the Objective be amended to read as follows;

*Avoid situations where sensitive activities conflict with existing and anticipated activities and regional significant infrastructure in the Rural Zone, protecting the activities and regionally significant infrastructure from adverse effects, including reverse sensitivity effects.*

152. One other submission did not seek a specific change to the wording of the objective but wanted to “encourage a movement away from annual scrub burning in the Wakatipu Basin”.<sup>225</sup> We heard no evidence on this particular matter as to the link between the objective and the issue identified. We are both unsure of the linkage between the request and the objective, and whether the issue is within the Council’s jurisdiction. We therefore recommend that the submission be rejected.

153. Mr Barr recommended amending the objective under the Council’s memoranda on revising the objectives to be more outcome focused.<sup>226</sup> His suggested rewording was:

*Situations where sensitive activities conflict with existing and anticipated activities are managed.*

154. In evidence for Transpower, Ms Craw<sup>227</sup>

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<sup>220</sup> Submission 706

<sup>221</sup> Submission 336

<sup>222</sup> S Maturin, Evidence, Page 10, Para 62

<sup>223</sup> Submissions 134, 433, 600, 719, 723, 730, 732, 734, 736, 738, 739, 760, 843

<sup>224</sup> Submission 805

<sup>225</sup> Submission 380

<sup>226</sup> Council Memoranda dated 13 April 2016

<sup>227</sup> A Craw, Evidence, Page 6, Para 30-33

- a. Considered that Policy 3.2.8.1.1 in Council’s reply addressed Policies 10 and 11 of the NPSET 2008 to safeguard the National Grid from incompatible development
- b. Agreed with the Section 42A Report, that infrastructure did not need to be specifically identified within the objective
- c. Considered that “avoid” provided stronger protection than “manage”
- d. Suggested that if the Panel adopted Policy 3.2.8.1.1. ( Council’s reply version), then the wording in the previous paragraph would be appropriate.

155. In his evidence, Mr Brown <sup>228</sup> recommended the following wording for the objective;

*Reverse sensitivity effects are managed.*

156. This was on the basis that the reworded objective had the same intent, but was simpler. We agree that the intent might be the same (which, if correct, would also overcome potential jurisdictional hurdles given that the submission Mr Brown was addressing <sup>229</sup> sought amendments to the policies under this objective, rather than to the objective itself), but this also means that it does not solve the problem we see with the original objective – that it did not specify a clear outcome in respect of which any policies might be applied in order to achieve the objective. Transpower’s suggested wording would solve that problem, but in our view, a position of avoiding all conflict is unrealistic and unachievable without significant restrictions on new development that we do not believe can be justified. As is discussed in greater detail in the report on the strategic chapters, the NPSET 2008 does not require that outcome (as regards reverse sensitivity effects on the National Grid).

157. In reply, Mr Barr further revised his view on the wording of the objective as follows;

*Situations where sensitive activities conflict with existing and anticipated activities are managed to minimise conflict between incompatible land uses.*

158. Mr Barr’s reasons for the further amendments included clarification as to what was being managed and to what end result, and that use of the term ‘reverse sensitivity’ was not desirable as it applied to new activities coming to an existing nuisance.<sup>230</sup> We consider this wording is the most appropriate way to achieve the purpose of the Act given the alternatives offered.

159. We therefore recommend that Objective 2.4.1 be worded as follows;

*“Situations where sensitive activities conflict with existing and anticipated activities are managed to minimise conflict between incompatible land uses.”*

#### **4.11 Policies 21.2.4.1 – 21.2.4.2**

160. As notified, policies 21.2.4.1 – 21.2.4.2 read as follows:

*21.2.4.1 Recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas.*

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<sup>228</sup> J Brown, Evidence, Page 12, Para 2.17

<sup>229</sup> Submission 806 (Queenstown Park Ltd)

<sup>230</sup> C Barr, Reply, Appendix 2, Page 2



21.2.4.2 *Control the location and type of non-farming activities in the Rural Zone, to minimise or avoid conflict with activities that may not be compatible with permitted or established activities.*

161. Submissions to these policies variously sought their retention<sup>231</sup> or deletion<sup>232</sup>. Queenstown Park Limited<sup>233</sup> sought that the two policies be replaced with effects-based policies that would enable diversification and would be forward focused. However, the submission did not specify any particular wording. RJL and D & M Columb sought that Policy 21.2.4.2 be narrowed to apply to only new non-farming and tourism activities<sup>234</sup>, while TML and Straterra sought that the policy be amended to “manage” rather than “control” the location and type of non-farming activities and to “manage” conflict with activities “that may or may not be compatible with permitted or established activities.”<sup>235</sup>
162. In the Section 42A Report, Mr Barr suggested an amendment to Policy 21.4.2.1 as follows;
- New activities must recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas.*<sup>236</sup>
163. We were unable to find any reasons detailed in the Section 42A Report for this recommended amendment or a submission that sought this specific wording. That said, we do find that it clarifies the intent of the policy (as notified, it leaves open who is expected to recognise the specified matters) and consider that as such, that it is within scope.
164. In his evidence on behalf of TML, Mr Vivian<sup>237</sup> recommended a refinement of the policy from that sought in TML’s submission, such that it read:
- To manage the location and type of non-farming activities in the Rural Zone, in order to minimise or avoid conflict with activities that may not be compatible with permitted or established activities.*
165. In his evidence, Mr Farrell on behalf of RJL Ltd, expressed the view that Policy 21.2.4.2 as notified did not give satisfactory recognition to the benefits of tourism. He supported inserting specific reference to tourism activities and to limiting the policy to new activities.<sup>238</sup>
166. Mr Barr, did not provide any additional comment on these matters in reply.
167. There was no evidence presented as to why these policies should be deleted and in our view their deletion would not be the most appropriate way to achieve the objective.
168. While the amendments suggested by Mr Vivian provide some clarification of the intent and purpose of Policy 21.2.4.2, we find that this is already appropriately achieved with the current wording – we do not think there is a meaningful difference between management and control

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<sup>231</sup> Submissions 433, 600, 719, 723, 730, 732, 734, 736, 738, 739, 760, 843

<sup>232</sup> Submissions 693, 702, 806,

<sup>233</sup> Submission 806

<sup>234</sup> Submissions 621, 624

<sup>235</sup> Submissions 519, 598

<sup>236</sup> C Barr, Section 42A Report, Appendix 1

<sup>237</sup> C Vivian, EiC, paragraphs 4.30 – 4.37

<sup>238</sup> B Farrell, Evidence, Page 16, Paras 52 - 54

in this context. In relation to the benefits of tourism, we find that the potential effects of such activities should not be at the expense of unnecessary adverse effects on existing lawfully established activities. We consider that a policy focus on minimising conflict strikes an appropriate balance between the two given the objective it seeks to achieve. However, we consider this can be better expressed.

169. In relation to the specific wording changes recommended by Mr Farrell, we do not think it necessary to identify tourism as a non-farming type activity, but we agree that, consistently with the suggested change to Policy 21.2.4.1, that the focus of Policy 21.2.4.2 should be on new non-farming activities.

170. Lastly, we consider that the policy could be simplified to delete reference to avoiding conflict as an alternative given that minimisation includes avoidance where avoidance is possible.

171. Hence we recommend that policies 21.2.4.1 and 21.2.4.2 be worded as follows;

*21.2.4.1 New activities must recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas.*

*21.2.4.2 Control the location and type of new non-farming activities in the Rural Zone, so as to minimise conflict between permitted and established activities and those that may not be compatible such activities.*

#### **4.12 Definitions Relevant to Mining Objective and Policies**

172. Before addressing Objective 21.2.5 and associated policies, we consider it logical to address the definitions associated with mining activities in order that the meaning of the words within the objective and associated policies is clear.

173. NZTM<sup>239</sup> sought replacement of the PDP definitions for “mining activity” and “prospecting”, and new definitions for “exploration”, “mining” and “mine building” (this latter definition we address in Section 5.15 below).

174. Stage 2 Variations have proposed a new definition of mining activity. We have been advised that the submission and further submissions relating to that definition have been transferred to the Stage 2 Variations hearings. Thus we make no recommendation on those.

175. Mr Vivian in evidence for NZTM drew attention to the need also to include separate definitions of exploration and prospecting. In reply Mr Barr agreed with Mr Vivian.<sup>240</sup>

176. The wording for the new definition of “Exploration” sought by NZTM<sup>241</sup> was as follows;

*Means any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences of 1 or more minerals; and includes any drilling, dredging, or excavations (whether surface or subsurface) that are reasonably necessary to determine the nature and size of a mineral deposit or occurrence; and to explore has a corresponding meaning.*

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<sup>239</sup> Submission 519

<sup>240</sup> C Barr, Reply, Page 37, Para 13.2

<sup>241</sup> Submission 519, opposed by FS1040 and FS1356

177. Mr Barr did not directly address this definition except as it related to the permitted activity rules, but he did recommend the inclusion of the new definition.<sup>242</sup> We address the matter of permitted activity status later in the decision. Mr Vivian in evidence for NZTM was of the view that the definition was necessary to show the difference between prospecting, mining and exploration and to align the definition with the CMA.<sup>243</sup>
178. We do not have any issue in principle with the suggested definition, but it needs to be recognised that as defined, mineral exploration has potentially significant adverse environmental effects. Our consideration of policy and rules below reflect that possibility.
179. The wording for the definition of “Prospecting” sought by NZTM<sup>244</sup> (showing the revisions from the notified definition) was as follows;
- “Mineral Prospecting Means any activity undertaken for the purpose of identifying land likely to contain ~~exploitable~~ mineral deposits or occurrences; and includes the following activities:*
- a. Geological, geochemical, and geophysical surveys*
  - b. The taking of samples by hand or hand held methods*
  - c. Aerial surveys*
  - d. Taking small samples by low impact mechanical methods.”*
180. Mr Barr and Mr Vivian agreed that inclusion of reference to “*low impact mechanical methods*” was not necessary given the context in which the term is used. We disagree. Reference to prospecting in policies and rules that we discuss below, proceeds on the basis that prospecting is a low impact activity. We think that it is important that reference to mechanical sampling in the definition should reflect that position. We are also concerned that the definition is inclusive of the activities listed as bullet points. The consequence could be that activities not contemplated occur under the guise of Mineral Prospecting. We doubt that there is scope to replace the word “includes” and recommend, via the Stream 10 Hearing Panel, that the Council consider a variation to amend this definition.
181. In considering these amendments, we conclude that they are appropriate in terms of consistency and the clarity of the application of these terms within the provisions of the Plan.
182. NZTM also requested a new definition be included in the PDP for “*mining*” as it has a different range of effects compared to exploration and prospecting, and that it should align with the CMA. The wording sought by NZTM was as follows:

Mining

- a. means to take, win or extract , by whatever means, -
  - i. a mineral existing in its natural state in land, or
  - ii. a chemical substance from a mineral existing in its natural state in land and
- b. includes –
  - i. the injection of petroleum into an underground gas storage facility but

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<sup>242</sup> C Barr, Section 42A Report, Page 108, Para 21.21

<sup>243</sup> C Vivian, Evidence, Page 10, Para 4.21

<sup>244</sup> Submission 519, opposed by FS1040 and FS1356

- c. does not include prospecting or exploration for a mineral or chemical substance referred in in paragraph (a).

183. Mr Barr did not address this submission point directly in the Section 42A Report or in reply. Mr Vivian, again for NZTM, considered it important to include such a definition for reasons of consistency with the CMA, and that while all the aspects of the definition were not necessarily applicable to the District (he acknowledged gas storage as being in this category), it was not unusual to have definitions describing an industry/use as well as an activity in a District Plan.<sup>245</sup>
184. While we do not see any value in referring to underground gas storage facilities when there is no evidence of that being a potential activity undertaken in the district we think that there is value in having a separate definition of mining as otherwise suggested. Among other things, that assists distinction being drawn between mining, exploration and prospecting.
185. In conclusion, we recommend to the Stream 10 Hearing Panel that the definitions pertaining to mining read as follows;

Mining

*Means to take, win or extract, by whatever means, -*

- a. *a mineral existing in its natural state in land, or*
- b. *a chemical substance from a mineral existing in its natural state in land*

*but does not include prospecting or exploration for a mineral or chemical substance.*

Mineral Exploration

*Means any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences of 1 or more minerals; and includes any drilling, dredging, or excavations (whether surface or subsurface) that are reasonably necessary to determine the nature and size of a mineral deposit or occurrence; and to explore has a corresponding meaning.*

Mineral Prospecting

*Means any activity undertaken for the purpose of identifying land likely to contain mineral deposits or occurrences; and includes the following activities:*

- a. *Geological, geochemical, and geophysical surveys*
- b. *The taking of samples by hand or hand held methods*
- c. *Aerial surveys*
- d. *Taking small samples by low impact mechanical methods.*

**4.13 Objective 21.2.5**

186. As notified Objective 21.2.5 read as follows:

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<sup>245</sup> C Vivian, Evidence, Page 10, Para 4.17

*“Recognise and provide for opportunities for mineral extraction providing location, scale and effects would not degrade amenity, water, landscape and indigenous biodiversity values.”*

187. Submissions on this objective variously sought the inclusion of “wetlands” as something not to be degraded<sup>246</sup>, replacement of the words “*providing location, scale and effects would not degrade*” with “*while avoiding, remedying, or mitigating*”<sup>247</sup>, narrowing the objective to refer to “*significant*” amenity, water, landscape and indigenous biodiversity values<sup>248</sup> or amendment so it should apply in circumstances where the degradation would be “*significant*”.<sup>249</sup>
188. The submission from the Forest & Bird<sup>250</sup> stated that wetlands should be included within the objective as it a national priority to protect them and Mr Barr agreed with that view.<sup>251</sup>
189. Apart from some minor amendments, Mr Barr was otherwise of the view the objective (and associated policies which we address below) were balanced so as to recognise the economic benefits of mining operations while ensuring the PDP provisions appropriately addressed the relevant s6 and s7 RMA matters.<sup>252</sup> Mr Barr’s recommended amendments in the Council’s memoranda on revising the objectives to be more outcome focused<sup>253</sup> also addressed the submission points. The suggested wording was:

*Mineral extraction opportunities are provided for on the basis the location, scale and effects would not degrade amenity, water, wetlands, landscape and indigenous biodiversity values.*

190. In evidence, Mr Vivian for NZTM considered that the objective as notified did not make sense and the wording sought by NZTM (seeking that it refer to significant values) was more effects based.<sup>254</sup>
191. We concur with Mr Barr that his reworded objective is both balanced and appropriate in achieving the purpose of the Act. Given that most mineral extraction opportunities are likely to occur within ONL’s, a high standard of environmental protection is an appropriate outcome to aspire to. We also find that inclusion of wetlands is appropriate<sup>255</sup> and the amended version addresses the ‘sense’ issues raised by Mr Vivian. We have already addressed the insertion of RMA language “avoid, remedy, mitigate” in Section 5.1 above.
192. In conclusion, we recommend that the objective be worded as follows;
- 21.2.5 *Mineral extraction opportunities are provided for on the basis the location, scale and effects would not degrade amenity, water, wetlands, landscape and indigenous biodiversity values.*

#### **4.14 Policies 21.2.5.1 – 21.2.5.4**

193. As notified Policies 21.2.5.1 – 21.2.5.4 read as follows:

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<sup>246</sup> Submissions 339, 706  
<sup>247</sup> Submissions 519, 806  
<sup>248</sup> Submission 519  
<sup>249</sup> Submission 598  
<sup>250</sup> Submission 706  
<sup>251</sup> C Barr, Section 42A Report, Page 108, Para 21.21  
<sup>252</sup> Section 42A Report, Page 105, Para 21.4  
<sup>253</sup> Council Memoranda dated 13 April 2016  
<sup>254</sup> C Vivian, Evidence, Page 13, Paras 4.42- 4.43  
<sup>255</sup> C Barr, Section 42A Report, Appendix 4, Page 1

- 21.2.5.1 *Recognise the importance and economic value of locally sourced high-quality gravel, rock and other minerals for road making and construction activities.*
- 21.2.5.2 *Recognise prospecting and small scale recreational gold mining as activities with limited environmental impact.*
- 21.2.5.3 *Ensure that during and following the conclusion of mineral extractive activities, sites are progressively rehabilitated in a planned and co-ordinated manner, to enable the establishment of a land use appropriate to the area.*
- 21.2.5.4 *Ensure potential adverse effects of large-scale extractive activities (including mineral exploration) are avoided or remedied, particularly where those activities have potential to degrade landscape quality, character and visual amenity, indigenous biodiversity, lakes and rivers, potable water quality and the life supporting capacity of water.*

194. The submissions to these policies variously sought:

Policies

- 21.2.5.1 replace the word “sourced” with mined, broaden the policy by recognising that the contribution of minerals is wider than just road making and construction, and insert additional wording to further emphasise the economic and export contribution of minerals.<sup>256</sup>
- 21.2.5.2 insert the word “*exploration*” after “*prospecting*”<sup>257</sup>
- 21.2.5.3 replace the word “*Ensure*” with the word “*Encourage*”<sup>258</sup>, and provide provisions so that rehabilitation does not cause ongoing adverse effects from discharges to air and water<sup>259</sup>
- 21.2.5.4 remove reference to “*large scale*” extractive activities<sup>260</sup>, amend the policy to relate to mineral exploration “*where applicable*”, and following “*avoided or remedied*” add “*mitigated*”.<sup>261</sup>

195. As noted above, Mr Barr considered the policies were balanced, recognising the economic benefits while ensuring the PDP provisions addressed the relevant section 6 and section 7 RMA matters.<sup>262</sup> Mr Barr considered that it was appropriate to broaden Policy 21.2.5.1 rather than restrict it to road making and construction activities.<sup>263</sup> Mr Vivian in evidence for NZTM agreed and suggested that the policy should also reflect minerals present in the district.<sup>264</sup> We concur with Mr Barr and Mr Vivian that these amendments better align the policy with the objective. Therefore we recommend Policy 21.2.5.1 read:

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<sup>256</sup> Submissions 519, 598

<sup>257</sup> Submission 598

<sup>258</sup> Submission 519

<sup>259</sup> Submission 798

<sup>260</sup> Submissions 339, 706

<sup>261</sup> Submissions 519, 598

<sup>262</sup> Section 42A Report, Page 105, Para 21.4

<sup>263</sup> Section 42A Report, Page 105, Para 21.5 and Pages 1-2, Appendix 4

<sup>264</sup> C Vivian, Evidence, Page 14, Para 4.48

*Have regard to the importance and economic value of locally mined high-quality gravel, rock and other minerals including gold and tungsten.*

196. Mr Barr agreed with the inclusion of “*exploration*” into Policy 21.2.5.2.<sup>265</sup> We were unable to find any specific reasons for this addition other than a comment that this was in response to the submission from Straterra.<sup>266</sup> Consideration of this issue needs to take into account our earlier discussion on the definition of “*mineral exploration*”. While the evidence we heard indicated that exploration would typically have a low environmental impact and therefore might appropriately be referred to in this policy, the defined term would permit much more invasive activities. Accordingly while we agree that exploration should be referred to in this context, it needs to be qualified to ensure that is indeed an activity with limited environmental impact.

197. Therefore, we recommend Policy 21.2.5.2 be worded as follows;

*Provide for prospecting and small scale mineral exploration and recreational gold mining as activities with limited environmental impact.*

198. Mr Barr did not recommend any amendments to Policy 21.2.5.3. Mr Vivian did not agree with NZTM’s submission seeking the replacement of the word “*Ensure*” with the word “*Encourage*”. Mr Vivian’s view was that “*encourage*” implied that rehabilitation was optional, whereas “*ensured*” implied it was not. We agree with Mr Vivian in this regard.

199. Mr Vivian also suggested that:

*‘...the word “progressively” is deleted and [sic] rehabilitation is already ensures [sic] in a “planned and coordinated manner”.’<sup>267</sup>*

200. On this point, we do not agree with Mr Vivian. A reference to planned and co-ordinated rehabilitation may mean that the rehabilitation is all planned to occur at the closure of a mine. That is not the same as progressive rehabilitation, and has potentially much greater and more long-lasting effects.

201. We did not receive any evidence on the ORC submission seeking the addition of provisions so that rehabilitation does not cause ongoing adverse effects from discharges to air and water. In any case, we think this is already addressed under Objective 21.2.3 and the associated policies as far the jurisdiction of a TLA extends to these matters under the Act.

202. Therefore, we recommend Policy 21.2.5.3 be adopted as notified.

203. In relation to Policy 21.2.5.4, Mr Barr took the view in the Section 42A Report that the widening of the policy (i.e. amending the policy so that it applied to all mining activities rather than just larger scale activities) would ensure that those activities would be appropriately managed, irrespective of the scale of the activity. In addition, Mr Barr considered that the inclusion of mitigation would provide an additional option to avoidance or remediation.<sup>268</sup> Mr Vivian agreed with Mr Barr as regards the inclusion of the word mitigation. However, Mr Vivian was also of the view that the policy as worded, without the qualification of “*where applicable*” for mineral

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<sup>265</sup> Section 42A Report, Appendix 1, Page 21-3, Policy 21.2.5.2

<sup>266</sup> Submission 5

<sup>267</sup> C Vivian, Evidence, Page 18, Para 4.75

<sup>268</sup> Section 42A Report, Page 2, Appendix 4

exploration would foreclose small scale mining activities and exploration activities that are permitted activities.<sup>269</sup>

204. On Mr Barr’s point regarding the widening of the policy to apply to all activities regardless of scale, we find that this would be in direct contradiction to Policy 21.2.5.2 which recognises that some small-scale mining operations will have a limited environmental impact, that is to say, an impact which is not avoided or (implicitly) remedied.
205. We consider that rather than focussing on the scale of the extractive activity, the better approach is to focus on the scale of effects. If the policy refers to potentially significant effects, that is consistent with Policy 21.2.5.2 and an avoidance or remediation policy response is appropriate in that instance. The alternative suggested by Mr Barr (adding reference to mitigation) removes the direction provided by the policy and leaves the end result unsatisfactorily vague and uncertain when applied to mining and exploration operations with significant effects. We also do not consider that adding the words “*where applicable*” has the beneficial effect Mr Vivian suggests. Read in context, it merely means that the policy only applies to exploration where exploration is proposed – something that we would have thought was obvious anyway.
206. Accordingly, we recommend that Policy 21.2.5.4 be worded as follows;

*Ensure potentially significant adverse effects of extractive activities (including mineral exploration) are avoided or remedied, particularly where those activities have potential to degrade landscape quality, character and visual amenity, indigenous biodiversity, lakes and rivers, potable water quality and the life supporting capacity of water.*

#### 4.15 New Mining Objectives and Policies

207. NZTM sought additional objectives and policies to recognise the importance of mining<sup>270</sup>. The wording of those requested additions was as follows;

##### Objective

*Recognise that the Queenstown Lakes District contains mineral deposits that may be of considerable social and economic importance to the district and the nation generally, and that mining activity and associated land restoration can provide an opportunity to enhance the land resource, landscape, heritage and vegetation values.*

##### Policies

- a. *Provide for Mining Buildings where the location, scale and colour of the buildings will not adversely affect landscape values*
- b. *Identify the location and extent of existing or pre-existing mineral resources in the region and encourage future mining activity to be carried out in these locations*
- c. *Enable mining activity, including prospecting and exploration, where they are carried out in a manner which avoids, remedies or mitigates adverse effects on the environment*
- d. *Encourage the use of off-setting or environmental compensation for mining activity by considering the extent to which adverse effects can be directly offset or otherwise compensated, and consequently reducing the significance of the adverse effects*

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<sup>269</sup> C Vivian, evidence, Pages 18-19, Paras 4.78-4.79

<sup>270</sup> Submission 519, opposed by FS1040 and FS1356



- e. *Manage any waste heaps or long term stockpiles to ensure that they are compatible with the forms in the landscape*
- f. *Encourage restoration to be finished to a contour sympathetic to the surrounding topography and revegetated with a cover appropriate for the site and setting*
- g. *Recognise that the ability to extract mineral resources can be adversely affected by other land use, including development of other resources above or in close proximity to mineral deposits*
- h. *Recognise that exploration, prospecting and small-scale recreational gold mining are activities with low environmental impact.*

208. Mr Barr, in the Section 42A Report, set out his reasons for recommending rejection of these amendments<sup>271</sup>. As noted in Section 5.14 above, Mr Barr was of the view that the existing objectives and policies were balanced, recognising the economic benefits while ensuring the PDP provisions addressed the relevant section 6 and section 7 RMA matters.<sup>272</sup>

209. Mr Vivian, for NZTM, noted that Objective 21.2.5 addressed the adverse effects of mining but considered there was no objective to recognise the importance of mineral deposits in the District. He was of the view that that result was inconsistent with the RPS.<sup>273</sup> Mr Vivian recommended the rewording of the new objective sought by NZTM as follows:

*Acknowledge the District contains mineral deposits that may be of considerable social and economic importance to the district and the nation generally.*

210. We also heard evidence from Mr G Gray, a director of NZTM, as to the social and economic benefits of mining<sup>274</sup>.

211. Having considered the evidence in regard to the suggested new objective, we find that the matters raised are already included in the first part of objective 21.2.5 (“*Mineral extraction opportunities are provided for ...*”) and that this gives effect to both the RPS and proposed RPS.<sup>275</sup> That said, Mr Barr and Mr Vivian considered that it was necessary to include a policy to recognise that the ability to extract mineral resources can be adversely affected by other land uses in order to achieve the objective, as well as to be consistent with the RPS.<sup>276</sup> We agree with Mr Barr and Mr Vivian for the reasons set out in their evidence that a new policy on this matter needs to be added. We consider that the proposed course of action might be addressed more simply and so we recommend a new policy numbered 21.2.5.5, to read as follows:

*Avoid or mitigate the potential for other land uses, including development of other resources above, or in close proximity to mineral deposits, to adversely affect the extraction of known mineral deposits.*

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<sup>271</sup> C Barr, Section 42A Report, Pages 105-106, Paras 21.6 – 21-10

<sup>272</sup> Section 42A Report, Page 105, Para 21.4

<sup>273</sup> C Vivian, Evidence Page 15, Para 4.53

<sup>274</sup> G Gary, Evidence, Page 6-9

<sup>275</sup> proposed RPS, Objective 5.3, Policy 5.3.5

<sup>276</sup> C Barr, Reply, Page 37, Para 13.3, Mr C Vivian, Evidence, Page 16, Para 4.58

212. Mr Barr and Mr Vivian agreed also that the policies sought by NZTM listed as (b) and (c) above were respectively inappropriate and unnecessary and already addressed under Objective 21.2.5. We agree. We also agree with Mr Vivian that policy (f) above (in relation to restoration) is already addressed under Policy 21.2.5.3 and is therefore unnecessary. Similarly, policy (h) above duplicates Policy 21.2.5.2 and is again unnecessary. We therefore recommend that those parts of the submission be rejected.

213. In the Section 42A Report, Mr Barr was of the view that a policy specifically on mining buildings (policy (a) above) was not appropriate and overstated the importance of mining buildings in the context of the resources that require management. Mr Barr went on to opine that the mining buildings should have the same controls as other non-farming buildings.<sup>277</sup> In addition to this policy, NZTM also sought the inclusion of a definition for mining building apparently to avoid the need to meet the height requirements applying to other buildings. Mr Barr also recommended that this submission be rejected. Mr Barr's explained his position as follows:

*It is my preference that this request is rejected because mining is a discretionary activity, therefore creating a disjunction between removing standards for all buildings and mining buildings. In addition, the locational constraints emphasised by NZTM are likely to mean that these buildings are located in within the ONL or ONF. Therefore, I recommend that mining buildings are not provided any exemptions.*<sup>278</sup>

214. Mr Vivian had a contrary view, that traditional rural activities including mining were expected elements of the rural landscape and did not offend landscape character. Mr Vivian went on;

*This proposition is supported by the inclusion of Rule 21.4.30(d) which permits the mining of aggregate for farming activities provide [sic] the total volume does not exceed 1000 m<sup>3</sup> in any one year. As such, mining buildings necessary for the undertaking of mining activities do not have the same issues associated with them as other buildings, such as residential, visitor accommodation or commercial activities.*<sup>279</sup>

215. We do not follow Mr Vivian's reasoning. Mr Vivian sought to leverage off the limited provision for aggregate extraction in the permitted activity rules, but provided no evidence as to the nature and extent of mining buildings that would accompany such an aggregate extraction operation (if any) compared to the range of buildings that might accompany a large scale mining operation. Nor is it apparent to us that the historic evidence of mining is necessarily representative of the structures that would be required for a new mine. Mr Gray gave evidence that an underground tungsten mining operation would have minimal above ground impact, but it was not clear to us that this would be the case for all mining operations, and if it were, that it would remove the need for special recognition of "mining buildings".

216. We share the concerns of Mr Barr that NZTM's proposal could lead to large mining related buildings being potentially located in ONLs/ONFs and that it is more effective to manage the effects of mining buildings within the framework for mining activities as discretionary activities. Hence, we recommend that the request for a definition and policy on mining buildings be rejected.

217. In relation to the proposed policy (e) above (*Manage any waste heaps or long term stockpiles to ensure that they are compatible with the forms in the landscape*), Mr Vivian considered this

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<sup>277</sup> C Barr, Section 42A Report, Page 105, Para 21.6

<sup>278</sup> C Barr, Section 42A Report, Page 108, Para 21.19

<sup>279</sup> C Vivian, Evidence, Page 11, Para 4.24

an important policy to be included under Objective 21.2.5.<sup>280</sup> We consider that this does not take the matter very far. Mr Barr did not directly address this proposed policy. We think that this policy is unnecessary, as the issue of waste heaps and stockpiles and their form in the landscape is only an aspect of more general issues raised by the effects of mining on natural forms and landscapes that have already been addressed by the Stream 1B Hearing Panel in the context of Chapter 6.<sup>281</sup>

218. On the final matter of a new policy regarding environmental compensation (policy (d) above), Mr Vivian in evidence<sup>282</sup> and Mr Barr in reply, agreed that such a policy was appropriate, with Mr Barr noting that it required separation from the “biodiversity offsetting” policy in Chapter 33 so as to avoid confusion.<sup>283</sup> Mr Barr recommending the following wording for the new policy to be numbered 21.2.5.6;

*Encourage environmental compensation where mineral extraction would have significant adverse effects.*

219. We agree with Mr Barr and Mr Vivian in part. However, we think that compensation for significant adverse effects goes too far (among other things, it implies that mineral extraction may have significant adverse effects, which would not be consistent with Objective 21.2.5) and that it should be residual effects which cannot be avoided that are addressed by compensation. We also consider that it would assist if greater direction were provided as to why environmental compensation is being encouraged.

220. Accordingly, we recommend that Policy 21.2.5.6 be worded as follows:

*Encourage use of environmental compensation as a means to address unavoidable residual adverse effects from mineral extraction.*

#### **4.16 Definitions Relevant to Ski Activity Objectives and Policies**

221. As with the objective and policies relating to mining addressed above; we consider it logical to address the definitions associated with ski activities in order that the meaning of the words within the objective and associated policies is clear.

222. As notified the definition of Ski Area Activities read as follows;

*Means the use of natural and physical resources for the purpose of providing for:*

- a. recreational activities either commercial or non-commercial*
- b. chairlifts, t-bars and rope tows to facilitate commercial recreational activities.*
- c. use of snow groomers, snowmobiles and 4WD vehicles for support or operational activities*
- d. activities ancillary to commercial recreational activities*
- e. in the Waiorau Snow Farm Ski Area Sub Zone vehicle and product testing activities, being activities designed to test the safety, efficiency and durability of vehicles, their parts and accessories.*

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<sup>280</sup> C Vivian, Evidence, Page 16, Para 4.67

<sup>281</sup> Recommendation Report 3, Section 8.6

<sup>282</sup> C Vivian, Evidence, Pages 16-17, Paras 4.62 – 4.66

<sup>283</sup> C Barr, Reply, Page 37, Para 13.4

223. The submissions from Soho Ski Area Ltd and Blackmans Creek No.1 LP<sup>284</sup>, and Treble Cone Investments Ltd<sup>285</sup> sought more clarity in the preamble, the expansion of the definition at “(b)” to include “*passenger lift or other systems*” and the addition of the following;
- a. Visitor and residential accommodation associated with ski area activities
  - b. Commercial activities associated with ski area activities or recreation activities
  - c. Guest facilities including ticketing, offices, restaurants, cafes, ski hire and retailing associated with any commercial recreation activity
  - d. Ski area operations, including avalanche control and ski patrol
  - e. Installation and operation of snow making infrastructure, including reservoirs, pumps, snow makers and associated elements
  - f. The formation of trails and other terrain modification necessary to operate the ski area.
  - g. The provision of vehicle and passenger lift or other system access and parking
  - h. The provisions of servicing infrastructure, including water supply, wastewater disposal, telecommunications and electricity.
224. Similarly, the submission from Mt Cardrona Station Ltd<sup>286</sup> sought that “(b)” be replaced with the term “*passenger lift systems*” and that buildings ancillary to ski activities be included within the definition. The Mt Cardrona Station Ltd submission also sought a new definition for “*passenger lift systems*” as follows;
- Means any mechanical system used to convey or transport passengers within or to a Ski Area Sub-Zone, including chairlifts, gondolas, T-bars and rope tows, and including all moving, fixed and ancillary components of such systems such as towers, pylons, cross arms, pulleys, cables, chairs, cabins, and structures to enable the embarking and disembarking of passengers.*
225. Also in relation to the Ski Area Activities definition, the submission from CARL<sup>287</sup> sought that “earthworks and vegetation clearance” be added to the ancillary activities under “(d)” in the definition as notified.
226. Mr Barr considered that amendment to the definition of Ski Area Activities for the inclusion of passenger lift systems and the new definition for passenger lift systems sought by Mt Cardrona Station Ltd were appropriate in that they captured a broad range of transport systems as well as enabling reference to the definition in the rules without having to repeat the specific type of transport system.<sup>288</sup> Mr Brown’s evidence for Mt Cardrona Station Ltd also supported the amendment noting that the provision of such systems would significantly reduce vehicle traffic to the ski area subzone facilities, as well as the land required for car parking.<sup>289</sup> We agree in part with Mr Barr and Mr Brown for the reasons set out in their evidence. However, we note that there are things other than passengers that are transported on lifts, such as goods and materials, that should also be encompassed with the definition. We recommend that the definition be worded to provide for “*other goods*” to avoid such a limitation.
227. In relation to the amendment to the preamble and the matters to be added to the definition sought by Soho Ski Area Ltd and Blackmans Creek No.1 LP, and Treble Cone Investments Ltd, in general Mr Barr was of the view that those matters were addressed in other parts of the PDP.

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<sup>284</sup> Submission 610

<sup>285</sup> Submission 613

<sup>286</sup> Submission 407

<sup>287</sup> Submission 615

<sup>288</sup> C Barr, Section 42A Report, Page 57, Para 14.18

<sup>289</sup> J Brown, Evidence, Page 22, Para 2.37

However, Mr Barr also accepted that some of the changes were valid.<sup>290</sup> Mr Ferguson<sup>291</sup>, held a different view, particularly in relation to the inclusion of residential and visitor accommodation within the definition. Relying on Mr McCrostie's evidence<sup>292</sup>, he stated that the *"Inclusion of visitor accommodation within this definition is one of the ways by which the finite capacity of the resource can be sustained while balancing the financial viability and the diversity of experience necessary to remain internationally competitive."*<sup>293</sup> We address the policy issues regarding provision for residential and visitor accommodation in Ski Area Sub Zones later in the report, but for the present, we find that the additions to the definition sought by Soho Ski Area Ltd and Blackmans Creek No.1 LP, and Treble Cone Investments Ltd, beyond those recommended by Mr Barr, would have implications for the range of effects encompassed within the term and hence we recommend that those further additions be rejected.

228. We record in particular that Mr Barr in reply, noted that the potential effects of inclusion of a range of buildings (e.g. ticketing offices, base or terminal buildings) were wider than the matters of discretion put forward by Mr Brown in his summary statement<sup>294</sup> and hence, in his view, the definition should not be expanded to include them. We agree. We also consider that to include such buildings would be inconsistent with the overall policy approach of the Rural Zone to buildings.
229. Mr Barr, also recommended rejection of the submission regarding the inclusion of earthworks and vegetation clearance sought by CARL as earthworks were not part of this District Plan Review and vegetation was addressed in Chapter 33: Indigenous Vegetation.<sup>295</sup> We heard no evidence in relation to this submission on the definition itself and hence do not recommend the change sought. However, we record that we address the policy issues regarding earthworks and vegetation clearance in relation to Ski Area Activities later in this report.
230. The submissions from Soho Ski Area Ltd and Blackmans Creek No.1 LP<sup>296</sup>, and Treble Cone Investments Ltd<sup>297</sup> also sought amendment to the definition of *"building"* to clarify that facilities, services and infrastructure associated with ski lifts systems were excluded from the definition. This matter is related to the submission sought by Mt Cardrona Station Ltd<sup>298</sup> that buildings ancillary to ski activities be included within the definition of Ski Area Activities.
231. In relation to the definition of building, Mr Barr in his Section 42A Report, was of the view that this matter was more appropriately dealt with under the definitions hearing as the submission related to gondolas generally and not specifically to Ski Area Activities or Ski Sub Zones.<sup>299</sup> Mr Ferguson's understanding was that section 9 of the Building Act specifically excluded ski tows and stand-alone machinery, so therefore specifically excluding that equipment would add clarity without substantively altering the position.<sup>300</sup>

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<sup>290</sup> C Barr, Section 42A Report, Pages 61-62, Para 14.40

<sup>291</sup> EIC for Soho Ski Area Ltd and Blackmans Creek No.1 LP, and Treble Cone Investments Ltd

<sup>292</sup> EIC for Soho Ski Area Ltd and Blackmans Creek No.1 LP, and Treble Cone Investments Ltd

<sup>293</sup> C Ferguson, Evidence, Page 26, Para 104

<sup>294</sup> C Barr, Reply, Page 39, Paras 14.6 – 14.7

<sup>295</sup> C Barr, Section 42A Report, Page 63, Paras 14.45 – 14.47

<sup>296</sup> Submission 610

<sup>297</sup> Submission 613

<sup>298</sup> Submission 407

<sup>299</sup> C Barr, Section 42A Report, Page 61, Paras 14.38

<sup>300</sup> C Ferguson, Evidence, Page 28, Para 109

232. In this case, we concur with Mr Barr and find that the definition of building is a wider matter that should appropriately be considered in the definitions hearing. Our findings above with respect to the effect of including buildings within the definition of “passenger lift systems” and “ski area activities” have addressed the potential issues around base and terminal buildings.
233. In conclusion, we recommend to the Stream 10 Hearing Panel that the definitions pertaining to Ski Area Activities and Passenger Lift Systems read as follows;

Passenger Lift Systems

*Means any mechanical system used to convey or transport passengers and other goods within or to a Ski Area Sub-Zone, including chairlifts, gondolas, T-bars and rope tows, and including all moving, fixed and ancillary components of such systems such as towers, pylons, cross arms, pulleys, cables, chairs, cabins, and structures to enable the embarking and disembarking of passengers. Excludes base and terminal buildings.*

Ski Area Activities

*Means the use of natural and physical resources for the purpose of establishing, operating and maintaining the following activities and structures:*

- a. recreational activities either commercial or non-commercial;*
- b. passenger lift systems;*
- c. use of snow groomers, snowmobiles and 4WD vehicles for support or operational activities;*
- d. activities ancillary to commercial recreational activities including, avalanche safety, ski patrol, formation of snow trails and terrain;*
- e. Installation and operation of snow making infrastructure including reservoirs, pumps and snow makers;*
- f. in the Waiorau Snow Farm Ski Area Sub-Zone vehicle and product testing activities, being activities designed to test the safety, efficiency and durability of vehicles, their parts and accessories.*

**4.17 Objective 21.2.6**

234. As notified, Objective 21.2.6 read as follows:

*“Encourage the future growth, development and consolidation of existing Ski Areas within identified Sub Zones, while avoiding, remedying or mitigating adverse effects on the environment.”*

235. The submissions on this objective variously sought that it be retained<sup>301</sup>, the objective be revised to reflect that Council should not be encouraging growth in ski areas and should control lighting effects<sup>302</sup>, that the objective be broadened to apply to not just existing ski areas and be amended to provide for integration with urban zones<sup>303</sup>, and that it provide for better

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<sup>301</sup> Submissions 610, 613

<sup>302</sup> Submission 243

<sup>303</sup> Submission 407

sustainable management for the Remarkables Ski Area, provide for summer and winter activities and provide for sustainable gondola access and growth.<sup>304</sup>

236. In the Council’s memorandum on revising the objectives to be more outcome focused<sup>305</sup>, Mr Barr’s recommended rewording was as follows:

*The future growth, development and consolidation of Ski Area Activities is encouraged within identified Ski Area Sub Zones, while avoiding remedying or mitigating adverse effects on the environment.*

237. Mr Barr did not support the submission from QPL in regard to the Remarkables Ski Area as the submission provided no justification.<sup>306</sup> In relation to the submission from Mt Cardrona Station Ltd seeking the inclusion of the connection to urban areas, Mr Barr did not support this, opining that it would create an, “*expectation that urban zones are expected to establish where they could easily integrate and connect to the Ski Area Sub Zones.*”<sup>307</sup> Mr Barr also considered that the submission on the objective appeared to advance the rezoning sought by Mt Cardrona Station Ltd rather than applying broadly to all Ski Area Sub-Zones.

238. In evidence for various submitters, Mr Brown supported the objective (and related policies) because of the contribution of the ski industry to the district<sup>308</sup>, but recommended that it be reworded as follows:

21.2.6 Objective

*The future growth, development and consolidation of Ski Area Activities is encouraged within identified Ski Area Sub Zones, and where appropriate Ski Area Sub Zones are connected with other areas, including urban zones, while adverse effects on the environment are avoided, remedied or mitigated.*

239. Mr Brown explained the reasons for his recommended changes as including,
- a. Replacement of “*Skiing*” with “*Ski Area*” so that the terminology is internally consistent and aligns with the definitions in PDP<sup>309</sup>
  - b. There are opportunities for better connection between ski areas and urban zones via passenger lift systems and to reduce reliance on vehicle access and effects of vehicle use, and road construction and maintenance<sup>310</sup>

240. In reply Mr Barr, reiterated his concerns regarding the reference to urban areas.<sup>311</sup>

241. We find that an objective encouraging growth in ski areas is appropriate and we agree with Mr Brown that consolidation in existing ski areas is an efficient way to minimise adverse effects.<sup>312</sup> However, we consider that some clarification is required as to what form that “*encouragement*” takes. In addition, and in general, we also find that connections to ski areas for access purposes is also appropriate, but agree with Mr Barr that the specific reference to urban areas goes too

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<sup>304</sup> Submission 806

<sup>305</sup> Council Memorandum dated 13 April 2016

<sup>306</sup> C Barr, Section 42A Report, Page 54, Para 14.6

<sup>307</sup> C Barr, Section 42A Report, Page 58, Para 14.22

<sup>308</sup> J Brown, Evidence, Page 19, Para 2.30

<sup>309</sup> J Brown, Evidence, Page 21, Para 2.31 (a)

<sup>310</sup> J Brown, Evidence, Page 21, Para 2.31 (c) – 2.33

<sup>311</sup> C Barr, Reply, Page 38, Para 14.2

<sup>312</sup> J Brown, Evidence, Page 22, Para 2.30

far. However, we also find that it more appropriate to address access as a policy rather than as part of the objective.

242. We therefore recommend that Objective 21.2.6 be reworded as follows;

*The future growth, development and consolidation of Ski Area Activities within identified Ski Area Sub-Zones, is provided for, while adverse effects on the environment are avoided, remedied or mitigated.*

#### 4.18 Policies 21.2.6.1 – 21.2.6.3

243. As notified, policies 21.2.6.1 – 21.2.6.3 read as follows:

21.2.6.1 *Identify Ski Field Sub Zones and encourage Ski Area Activities to locate and consolidate within the sub zones.*

21.2.6.2 *Control the visual impact of roads, buildings and infrastructure associated with Ski Area Activities.*

21.2.6.3 *Provide for the continuation of existing vehicle testing facilities within the Waiorau Snow Farm Ski Area Sub Zone on the basis the landscape and indigenous biodiversity values are not further degraded.*

244. The submissions to these policies variously sought:

##### Policies

21.2.6.1 Retain the policy<sup>313</sup> and widen the policy to encourage tourism activities<sup>314</sup>.

21.2.6.2 Retain the policy<sup>315</sup>, or amend to replace the word “Control” with “Enable and mitigate”<sup>316</sup> (We note that the submission from CARL<sup>317</sup> merely repeated the wording of the policy and provided no indication of support/opposition or relief sought).

21.2.6.3 amend the policy to “encourage” continuation and “future development” of existing vehicle testing “only” within the Waiorau Snow Farm<sup>318</sup>

245. Mr Barr did not directly refer to Policy 21.2.6.1 in his Section 42A Report. In general Mr Barr did not support the relief sought by CARL as it did not provide substantial benefit to the Cardrona Ski Area Sub-Zone, when compared to other zones.<sup>319</sup> Mr Farrell, the planner giving evidence for CARL, stated that the “the resort lends itself to the provision of four season tourism activities such as mountain biking, tramping, sightseeing, and mountain adventure activities”, and as such the policy should be amended to insert reference to “tourism”<sup>320</sup>.

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<sup>313</sup> Submissions 610, 613

<sup>314</sup> Submission 615

<sup>315</sup> Submission 610, 613

<sup>316</sup> Submission 621

<sup>317</sup> Submission 615

<sup>318</sup> Submission 376

<sup>319</sup> C Barr, Section 42A Report, Page 63, Para 14.44

<sup>320</sup> B Farrell, Evidence, Page 17, Para 56



246. This notion of Ski Areas being year-round destinations rather than just ski season destinations, was also raised by CARL and by other submitters seeking the addition of new policies to provide for such activities. We address the detail of those submissions later in this report. However, for present purposes, we find that recognising ski areas as year-round destinations and that activities outside ski seasons contribute to the viability and consolidation of activities in those areas is a valid policy position that implements Objective 21.2.6. We consider, however, that some amendment is required to the relief supported by Mr Farrell as there are many tourism activities that are not suited to location in Ski Areas and it is not realistic to seek consolidation of all tourism activities within those areas.
247. In relation to the amendments sought to Policy 21.2.6.2, Mr Brown in evidence, sought that the word control be replaced with the word manage, for the reason that manage is more consistent with “*avoid, remedy or mitigate*” as set out in the objective and is more effective.<sup>321</sup> On the same matter, Mr Farrell, in his evidence for CARL, did not support the replacement of the word “*Control*”, with “*Enable and mitigate*”, agreeing with the reasons of Mr Barr in the Section 42A Report.<sup>322</sup> We were unable to find any direct reference in the Section 42A Report to Mr Barr’s reasons for recommending that the wording of the policy remain as notified. We find that the policy as notified set out what was to be controlled, but did not indicate to what end or extent. We were not able to find any submissions that would provide scope for the inclusion of a greater degree of direction. The same situation would apply if the term manage (or for that matter, “*enable and mitigate*”) was used and we do not regard the change in terminology suggested by Mr Brown as a material change that might be considered to more appropriately achieve the objective than the notified wording. We therefore recommend that the policy remain as notified.
248. In the Section 42A Report, Mr Barr did not address the submission from Southern Hemisphere Proving Grounds Limited in regard to Policy 21.2.6.3. The submission itself stated the reason for the relief sought was to align the policy more precisely with the objective. We did not receive any evidence in support of the submission. We find that the encouragement of future growth and development in the policy goes beyond the intent of the policy which is balanced by reference to there being no further degradation of landscape and biodiversity values and that the other changes sought do not materially alter its effect. We therefore recommend that the submission be rejected.
249. Hence we recommend the wording of Policies 21.2.6.1 – 21.2.6.3 as follows:
- 21.2.6.1 *Identify Ski Area Sub-Zones and encourage Ski Area Activities and complementary tourism activities to locate and consolidate within the Sub-Zones.*
- 21.2.6.2 *Control the visual impact of roads, buildings and infrastructure associated with Ski Area Activities.*
- 21.2.6.3 *Provide for the continuation of existing vehicle testing facilities within the Waiorau Snow Farm Ski Area Sub-Zone on the basis that the landscape and indigenous biodiversity values are not further degraded.*

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<sup>321</sup> J Brown, Evidence, Page 19, Para 2.31(b), Page 21, Para 2.34

<sup>322</sup> B Farrell, Evidence, Page 17, Paras 57 - 58

#### 4.19 New Ski Area Objectives and Policies

250. QPL<sup>323</sup> sought additional objectives and policies specific to the Remarkables Ski Area to follow Objective 21.2.6 and Policies 21.2.6.1 – 21.2.6.3. The wording of those requested additions was as follows;

##### Objective

*Encourage the future growth and development of the Remarkables alpine recreation area and recognise the importance of providing sustainable gondola access to the alpine area while avoiding, remedying or mitigating adverse effects on the environment.*

##### Policies

- a. *Recognise the importance of the Remarkables alpine recreation area to the economic wellbeing of the District, and support its growth and development.*
- b. *Recognise the importance of providing efficient and sustainable gondola access to the Remarkables alpine recreation area while managing potential adverse effects on the landscape quality.*
- c. *Support the construction and operation of a gondola that provides access between the Remarkables Park zone and the Remarkables alpine recreation area, recognising the benefits to the local, regional and national community.*

251. Mr Barr considered that the new objective and policies applied to the extension of the Ski Area Sub-Zone at Remarkables Park and therefore should be deferred to the mapping hearings.<sup>324</sup> We heard no evidence or submissions to the contrary and hence have not reached a recommendation on those submissions. However, we do address the second new policy sought in a more general sense of ‘gondola access’ as it applies to Ski Area Sub-Zones below.

252. CARL<sup>325</sup> sought an additional policy as follows;

*Provide for expansion of four season tourism and accommodation activities at the Cardrona Alpine Resort.*

253. Mr Barr did not consider that requested policy provided any additional benefit to the Cardrona Ski Area Sub-Zone over that provided by the recommended amendments to the objectives and policies included in his Section 42A Report.<sup>326</sup> Having heard no evidence to the contrary (Mr Farrell did not address it in his evidence for CARL), we agree with Mr Barr and recommend that the submission be rejected.

254. Mt Cardrona Station Limited sought an additional policy to be worded as follows:

*Provide for appropriate alternative (non-road) means of transport to Ski Area Sub Zones from nearby urban resort zones and facilities including by way of gondolas and associated structures and facilities.*

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<sup>323</sup> Submission 608

<sup>324</sup> C Barr, Section 42A Report, Page 55, Para 14.9

<sup>325</sup> Submission 615

<sup>326</sup> C Barr, Section 42A Report, Page 63, Para 14.44

255. Related to the above request, Soho Ski Area Limited & Blackmans Creek No.1 LP<sup>327</sup> and Treble Cone Investments Limited<sup>328</sup> sought an additional policy as follows;

*To recognise and provide for the functional dependency of ski area activities to transportation infrastructure, such as vehicle access and passenger lift based or other systems, linking on-mountain facilities to the District's road and transportation network.*

256. Mr Barr, in the Section 42A Report, considered that there was merit in the policy generally, as sought in these submissions. We agree in part with the likely potential benefits set out in Mr Brown's evidence.<sup>329</sup> However, we agree also with the point made by Mr Barr when he clarified in reply that he did not support the link to urban zones sought by Mt Cardrona Station Limited<sup>330</sup>. We do not consider that the planning merit of recognising the value of non-road transport systems to ski areas depends on their inter-relationship with urban resort zones (or any other sort of urban zone for that matter).

257. Accordingly, we recommend the wording and numbering of an additional policy, as follows:

*21.2.6.4 Provide for appropriate alternative (non-road) means of transport to and within Ski Area Sub-Zones, by way of passenger lift systems and ancillary structures and facilities.*

258. Soho Ski Area Limited & Blackmans Creek No.1 LP<sup>331</sup> and Treble Cone Investments Limited<sup>332</sup> sought an additional policy as follows;

*Enable commercial, visitor and residential accommodation activities within Ski Area Sub Zones, which are complementary to outdoor recreation activities, can realise landscape and conservation benefits and that avoid, remedy or mitigate adverse effects on the environment.*

259. Mr Barr was generally supportive of visitor accommodation, but expressed concern as to impacts on amenity of residential activity and subdivision.<sup>333</sup> Mr McCrostie<sup>334</sup> set out details of the nature of visitor and worker accommodation sought, which included seasonal use of such accommodation.<sup>335</sup>

260. Mr Ferguson<sup>336</sup> opined that the short stay accommodation for Ski Areas did not sit well with the PDP definitions of residential activity or visitor accommodation due to the length of stay component,<sup>337</sup> but suggested that this could be corrected by amendment to the rules.<sup>338</sup> Mr Barr in reply concurred that a policy to guide visitor accommodation in Ski Area Sub-Zones would assist decision making as it is a distinct activity type from visitor accommodation in the

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<sup>327</sup> Submission 610

<sup>328</sup> Submission 613

<sup>329</sup> J Brown, Evidence, Page 20, Para 2.31 (c)

<sup>330</sup> C Barr, Reply, Page 38, Para 14.2

<sup>331</sup> Submission 610

<sup>332</sup> Submission 613

<sup>333</sup> C Barr, Section 42A Report, Page 59, Para 14.30

<sup>334</sup> EiC for Soho Ski Area Limited & Blackmans Creek No.1 LP and Treble Cone Investments Limited

<sup>335</sup> H McCrostie, Evidence Pages 5 – 7, Para 5.8 and Page 10, Para 6.7

<sup>336</sup> EiC for Soho Ski Area Limited & Blackmans Creek No.1 LP and Treble Cone Investments Limited

<sup>337</sup> C Ferguson, Evidence, Page 30 -33, Paras 117 - 125

<sup>338</sup> C Ferguson, Evidence, Page 29, Pars 114 - 115

Rural Zone. He preferred the wording “*provided for on the basis*”, with qualifiers, rather than “*enabled*” as the requested activity status was not permitted.<sup>339</sup>

261. We consider that an appropriate policy needs to be established first, and then for the rules to follow from that. We agree in part with Mr Ferguson and Mr Barr as to the need for the policy, but agree that an enabling approach goes too far given the potential for adverse environmental effects. We also consider that clarification by way of a definition for Ski Area accommodation for both visitors and workers, would assist development of a more effective and efficient policy. We put this question to Mr Ferguson, who in his written response provided the following suggested definition;

*Ski Area Sub Zone Accommodation*

*Means the use of land or buildings within a Ski Area Sub Zone and associated with the operation of a Ski Area Activity for short-term living accommodation, including the payment of fees, for guests, staff, worker and custodial management accommodation where the length of stay is less than 6 months and includes:*

- a. hotels, motels, apartments, backpackers accommodation, hostels, lodges and chalets; and*
- b. centralised services or facilities such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are associated with the visitor accommodation activity.<sup>340</sup>*

262. Mr Barr in reply, considered that the generic visitor accommodation definition was adequate as sub clause c of that definition provides for specific zones to alter the applicability of the definition, in this case for Ski Area Sub-Zones. We find that both suggestions do not fully address the issue. As noted above the policy needs to be determined first and we also find that there would be less confusion for plan users if a separate definition is provided. Having said that, we take on board Mr Barr’s point that care needs to be taken with the drafting of rules (and policies for that matter) to ensure that accommodation provided for longer than 6 month stays does not fall into a regulatory ‘hole’ or create internal contradictions through references to visitor accommodation that is for longer than 6 months.

263. We are broadly comfortable with Mr Ferguson’s suggested wording with the exception of two matters. First, we consider greater clarity is required around the extent of associated services or facilities. The second matter is that including the 6 month stay presents the issue of what would be ‘the activity’ if the length of stay was longer? To avoid this situation we think that the length of stay is more appropriately contained within the rule, rather than the definition.

264. We therefore recommend to the Stream 10 Hearing Panel that a new definition be included in Chapter 2 which reads as follows:

*Ski Area Sub Zone Accommodation*

*Means the use of land or buildings for short-term living accommodation for visitor, guest, worker, and*

- a. Includes such accommodation as hotels, motels, guest houses, bunkhouses, lodges and the commercial letting of a residential unit: and*

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<sup>339</sup> C Barr, Reply, Page 40 , Para 14.11

<sup>340</sup> C Ferguson, Written Response To Commissioners Questions, 27 May 2016, Page 10, Para 6

b. *May include some centralised services or facilities such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are ancillary to the accommodation facilities: and*

c. *Is limited to visitors, guests or workers, visiting and or working in the respective Ski Area Sub Zone.*

265. Taking all of the above into account, we recommend a new policy and numbering as follows;

21.2.6.5 *Provide for Ski Area Sub Zone Accommodation activities within Ski Area Sub Zones, which are complementary to outdoor recreation activities within the Ski Area Sub Zone, that can realise landscape and conservation benefits and that avoid, remedy or mitigate adverse effects on the environment.*

#### 4.20 Objective 21.2.7

266. As notified Objective 21.2.7 read as follows:

Objective

*Separate activities sensitive to aircraft noise from existing airports through:*

a. *The retention of an undeveloped open area; or*

b. *at Queenstown Airport an area for Airport related activities; or*

c. *where appropriate an area for activities not sensitive to aircraft noise*

d. *within an airport's Outer Control Boundary to act as a buffer between airports and other land use activities.*

267. Two submissions supported this objective<sup>341</sup> and one submission from QAC sought that the objective be deleted and replaced with the following:

*Retention of an area containing activities that are not sensitive to aircraft noise, within an airport's Outer Control Boundary, to act as a buffer between airports and Activities sensitive to Aircraft Noise.*<sup>342</sup>

268. In the Council's memorandum on revising the objectives to be more outcome focused<sup>343</sup>, Mr Barr's recommended rewording was as follows:

*An area to contain activities that are not sensitive to aircraft noise is retained within an airport's Outer Control Boundary, to act as a buffer between airports and Activities Sensitive to Aircraft Noise.*

269. Ms O'Sullivan in evidence for QAC, suggested "further refinement to remove repetition and ensure the objective is more in in keeping with PC26 and PC35"<sup>344</sup> and Mr Barr in reply agreed.<sup>345</sup> That wording being:

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<sup>341</sup> Submissions 271, 649

<sup>342</sup> Submission 433

<sup>343</sup> Council Memorandum dated 13 April 2016

<sup>344</sup> K O'Sullivan, Evidence, Page 8, Para 4.5

<sup>345</sup> C Barr, Reply, Page 24, Para 8.3

*An area that excludes activities which are sensitive to aircraft noise, is retained within an airport's Outer Control Boundary, to act as a buffer between airports and Activities Sensitive to Aircraft Noise.*

270. We accept the recommendation of Ms O'Sullivan and Mr Barr, and recommend that Objective 21.2.7 be worded as set out in the previous paragraph.

#### **4.21 Policies 21.2.7.1 – 21.2.7.4**

271. As notified Policy 21.2.7.1 read as follows:

*21.2.7.1 Prohibit all new activity sensitive to aircraft noise on any Rural Zoned land within the Outer Control Boundary at Wanaka Airport and Queenstown Airport to avoid adverse effects arising from aircraft operations on future activities sensitive to aircraft noise.*

272. Submissions on this policy sought that it be retained<sup>346</sup>, deleted<sup>347</sup>, or reworded<sup>348</sup> as follows:

*Prohibit any new [non-existing] activity sensitive to aircraft noise on any rural zoned land within the outer Control Boundaries of Queenstown airport and Wanaka airport, Glenorchy, Makarora area and all other existing informal airports including private airstrips with the QLDC, used for fixed wing aircraft.*

273. Mr Barr did not address this policy directly in the Section 42A Report apart from in Appendix 1, where Mr Barr recommended that the notified policy be retained. The only additional evidence we received was from Ms O'Sullivan, supporting Mr Barr's recommendation.<sup>349</sup>

274. In relation to the submission by Mr Wright (Submission 385) suggesting rewording, we note that this would require mapping of an outer control boundary for all airports/ informal airports identified. We do not have the evidence before us to undertake that task (Mr Wright did not include that information with his submission and did not appear at the hearing). As a result, we do not know what areas the Outer Control Boundaries of airports other than Wanaka and Queenstown could encompass or the existing and potential future uses of those areas. Nor do we have any evidence of the extent of aircraft use of those other airports. Consequently, we have no means to assess the costs and benefits (either qualitatively or quantitatively) if the relief sought were granted as required by section 32.

275. We do not consider that deletion of the policy would be the most appropriate means to achieve the relevant objective either – it would largely deprive the Council of the means to achieve that outcome. Accordingly, we recommend the policy be retained as notified subject to minor amendments to make "activity" plural.

276. As notified, Policy 21.2.7.2 read as follows:

*21.2.7.2 Identify and maintain areas containing activities that are not sensitive to aircraft noise, within an airport's outer control boundary, to act as a buffer between the airport and activities sensitive to aircraft noise.*

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<sup>346</sup> Submission 443

<sup>347</sup> Submission 806

<sup>348</sup> Submission 385

<sup>349</sup> K O'Sullivan, Evidence , Page 7, Para 4.3

277. The submission from QAC sought that this policy be deleted<sup>350</sup> as it was redundant in light of Policies 21.2.7.1 and 21.2.7.3.
278. Mr Barr did not address this policy directly in the Section 42A Report apart from in Appendix 1, where Mr Barr recommended that the policy be retained. The only additional evidence we received was from Ms O’Sullivan supporting Mr Barr’s recommendation.<sup>351</sup> We consider that Policy 21.2.7.2 serves a useful purpose, distinct from Policies 21.1.7.1 and 21.2.7.3, by providing for activities that are neither ASANs nor open space. Accordingly, we recommend the policy be retained as notified.
279. Policies 21.2.7.3 and 21.2.7.4 as notified read as follows:
- 21.2.7.3 *Retain open space within the outer control boundary of airports in order to provide a buffer, particularly for safety and noise purposes, between the airport and other activities.*
- 21.2.7.4 *Require as necessary mechanical ventilation for any alterations or additions to Critical Listening Environment within any existing buildings containing an Activity Sensitive to Aircraft Noise within the Queenstown Airport Outer Control Boundary and require sound insulation and mechanical ventilation for any alterations or additions to Critical Listening Environment within any existing buildings containing an Activity Sensitive to Aircraft Noise within the Queenstown Airport Air Noise Boundary.*
280. The submission from QAC sought that these policies be retained<sup>352</sup>. There were no submissions seeking amendments to these policies<sup>353</sup> Again Mr Barr and Ms O’Sullivan were in agreement that they should be retained as notified.
281. In conclusion, we recommend that Policies 21.2.7.1 – 21.2.7.4 be retained as notified.

#### **4.22 Objective 21.2.8**

282. As notified, Objective 21.2.8 read as follows:

*Avoid subdivision and development in areas that are identified as being unsuitable for development.*

283. Submissions on this objective ranged from support<sup>354</sup>, seeking its deletion<sup>355</sup>, to its amendment<sup>356</sup> as follows:

*Avoid, remedy or mitigate subdivision and development in areas specified on planning maps identified as being unsuitable for development.*

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<sup>350</sup> Submission 806

<sup>351</sup> K O’Sullivan, Evidence , Page 7, Para 4.3

<sup>352</sup> Submission 806

<sup>353</sup> Although there were further submissions opposing QAC’s submissions, those further submissions do not provide jurisdiction to amend the policies – refer discussion of this point in the context of the Strategic Chapters – Report 3 at Section 1.7.

<sup>354</sup> Submission 339, 380, 706

<sup>355</sup> Submissions 356, 806

<sup>356</sup> Submissions 636, 643, 688, 693, 702

284. In the Section 42A Report, Mr Barr described the intention of the objective as being to manage development (usually rural living or commercial developments) from constraints such as hazards, noxious land uses, or identified landscape or rural amenity reasons. He noted that the ODP contained a number of building line restrictions or similar constraints. Taking account of the submissions, he reached the view that the objective could be rephrased so as not to be so absolute and better framed<sup>357</sup>. Responding to the submission from X Ray Trust<sup>358</sup> that the purpose of the objective was unclear as to what was trying to be protected, Mr Barr's view was that the policies would better define the areas in question. Mr Barr recommended rewording as follows;

*Subdivision, use and development is avoided, remedied or mitigated in areas that are unsuitable due to identified constraints for development.*

285. In the Council's memorandum on revising the objectives to be more outcome focused<sup>359</sup>, Mr Barr recommended further rewording as follows;

*Subdivision, use and development in areas that are unsuitable due to identified constraints is avoided, remedied or mitigated.*

286. Ms Taylor's evidence for X Ray Trust agreed with this suggested rewording<sup>360</sup>. We agree that the absolute nature of the objective as notified could be problematic in regard to development proposals in the rural area. We also consider that the overlap between this objectives and the objectives in other parts of the plan dealing with constraints such as natural hazards and landscape needs to be addressed. We do not think that limiting the objective to areas identified on the planning maps is appropriate. That would still include notations such as ONL lines, the significance of which is addressed in Chapters 3 and 6. We regard the purpose of this objective as being to provide for constraints not addressed in other parts of the plan and we think the objective needs to say that. In effect it is operating as a catch all and in that context an avoid remedy or mitigate position is appropriate to preserve flexibility. However, we consider that a minor wording change is necessary to clarify that it is the effects of the constraints that are remedied or mitigated.

287. In summary, therefore, we recommend that Objective 21.2.8 be reworded to read;

*Subdivision, use and development in areas that are unsuitable due to identified constraints not addressed by other provisions of this Plan, is avoided, or the effects of those constraints are remedied or mitigated.*

#### **4.23 Policies 21.2.8.1 – 21.2.8.2**

288. As notified Policy 21.2.8.1 read as follows:

*Assess subdivision and development proposals against the applicable District Wide chapters, in particular, the objectives and policies of the Natural Hazards and Landscape chapters.*

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<sup>357</sup> C Barr, Section 42A Report, Page 102, Para 20.13

<sup>358</sup> Submission 356

<sup>359</sup> Council Memorandum dated 13 April 2016

<sup>360</sup> L Taylor, Evidence, Appendix A, Page 5



289. Submissions on this policy ranged from support<sup>361</sup>; its deletion as superfluous or repetitive<sup>362</sup>, amendment to include “indigenous vegetation, wilding and exotic trees”<sup>363</sup>, amendment to include the Historic Heritage Chapter<sup>364</sup> or amendment to remove the “in particular” references entirely<sup>365</sup>.

290. In the Section 42A Report, Mr Barr accepted that proposals were required to be assessed anyway against the District Wide chapters, but considered that a separate policy was needed to provide direction for proposals where the suitability of land had not been predetermined.<sup>366</sup> Mr Barr recommended further amendment to the policy such that it read as follows;

*To ensure that any subdivision, use and development is undertaken on land that is appropriate in terms of the anticipated use, having regard to potential constraints including hazards and landscape.*

291. Mr Farrell, in evidence for various submitters agreed with Mr Barr’s reasons and resulting amendment to the policy<sup>367</sup>.

292. We agree that as notified this policy is unnecessary. Mr Barr’s suggested amendment addresses that issue, but we are concerned that there is no submission we could identify that would provide jurisdiction to make the suggested amendment. In addition, the issue of overlap with more detailed provisions elsewhere in the plan would need to be addressed. We think that the best course is to delete this policy and leave the objective supported by the second much more detailed policy that we are about to discuss.

293. Accordingly, we recommend that Policy 21.2.8.1 be deleted.

294. As notified Policy 21.2.8.2 read as follows;

*Prevent subdivision and development within the building restriction areas identified on the District Plan maps, in particular:*

*a. In the Glenorchy area, protect the heritage value of the visually sensitive Bible Face landform from building and development and to maintain the rural backdrop that the Bible Face provides to the Glenorchy Township*

*b. In Ferry Hill, within the building line restriction identified on the planning maps.*

295. The only submission related to this policy was by QPL<sup>368</sup> which sought its deletion along with the relevant objective and associated policy. This matter was not addressed in the Section 42A Report or in evidence. It appears to us that QPL’s objection is linked to its opposition to particular building line restrictions affecting its property. Removal of the policy would leave no policy support for the identified building line restrictions. As such, we recommend that they be retained. If there are objections (like QPL’s) to particular restrictions, they should be addressed

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<sup>361</sup> Submission 335

<sup>362</sup> Submissions 433, 806

<sup>363</sup> Submissions 339, 706

<sup>364</sup> Submission 810

<sup>365</sup> Submissions 513, 515, 522, 531, 537

<sup>366</sup> C Barr, Section 42A Report, Page 102, Para 20.14

<sup>367</sup> B Farrell, Evidence, Page 17, Para 61

<sup>368</sup> Submission 806

in the Plan Map hearings. As it is, the Stream 13 Hearing Panel is recommending deletion of the building restriction area affecting QPL's property.

296. In summary, we recommend that Policy 21.2.8.2, be renumbered 21.2.8.1 but otherwise be retained as notified. We do note, however, that this policy has been amended by the Stage 2 Variations by the deletion of clause b. Our recommendation, therefore, only relates to the introductory words and clause a.

#### 4.24 Objective 21.2.9

297. As notified, Objective 21.2.9 read as follows;

*Ensure commercial activities do not degrade landscape values, rural amenity, or impinge on farming activities.*

298. Submissions on the objective ranged from support<sup>369</sup>, its deletion<sup>370</sup>, amendment to include nature conservation values<sup>371</sup> or Manawhenua values<sup>372</sup>, amendment to soften the policy by replacing "Ensure" with "Encourage" and inserting "significant" before the word landscape<sup>373</sup>, and also amendment to provide for a range of activities so as to make it effects based in accordance with the RMA and for consistency.<sup>374</sup>

299. In considering these submissions, first in the Section 42A Report, and then further in reply, Mr Barr's recommended wording for the objective was as follows:

*A range of activities are undertaken that rely on a rural location on the basis they do not degrade landscape values, rural amenity, or impinge on permitted and established activities.*

300. We have already addressed our reasoning for combining this Objective 21.2.9 into Objective 21.2.1 (see Section 3.2 above). However, one aspect not directly addressed in the Section 42A Report was the submission opposed to an objective and policy approach that seeks to avoid or limit commercial activities in the Rural Zone<sup>375</sup>. We received no evidence in support of the submission. The reason for opposition, as set out in the submission was that there was no section 32 evidence that quantified the costs and benefits of the policy approach. We refer back to the introductory report (Report 1) discussing the requirements of section 32. Consideration of costs and benefits is required at the second stage of the evaluation, as part of the examination under section 32(1)(b) as to whether the provisions are the most appropriate way to achieve the objectives. The test for objectives (under s32(1)(a)) is whether they are the most appropriate way to achieve the purpose of the Act. Accordingly, we consider the submission misdirected and we recommend that it be rejected. We note that the submission from Shotover Trust<sup>376</sup> also sought the deletion of Policies 21.2.9.1 and 21.2.9.2 for the same reasons. We return to that point below.

301. The combining of Objective 21.2.9 into Objective 21.2.1 is, we consider, the most appropriate way to achieve the purpose of Act. While it follows that the individual policies under Objective

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<sup>369</sup> Submissions 217, 600

<sup>370</sup> Submissions 248, 621, 624

<sup>371</sup> Submissions 339, 706

<sup>372</sup> Submission 810

<sup>373</sup> Submission 624

<sup>374</sup> Submission 608

<sup>375</sup> Submission 248

<sup>376</sup> Submission 248

21.2.9 as notified also move to be relocated under the new objective 21.2.1, we address those individual policies 21.2.9.1 – 21.2.9.6 below.

#### 4.25 Policy 21.2.9.1

302. Policy 21.2.9.1 as notified read as follows:

*21.2.9.1 Commercial activities in the Rural Zone should have a genuine link with the rural land resource, farming, horticulture or viticulture activities, or recreation activities associated with resources located within the Rural Zone.*

303. A submission on this policy sought specific reference to tourism activities.<sup>377</sup>

304. In Mr Barr's view, tourism activities were encompassed within the policy as it referred to commercial activities. Mr Barr was also of the view that for clarity that 'water' should be added to matters to be managed as activities on the surface of water are deemed to be a use of land.<sup>378</sup>

305. Mr Brown in evidence for QPL, noted the equivalent of this policy in its suggested reordered policies required a genuine link to the rural area, and stated that, "*This was important in that activities that could otherwise happen in an urban area, without a need for locating rurally, are discouraged.*"<sup>379</sup> Mr Brown did not recommend any amendment to the wording of the policy.

306. We agree with Mr Brown as to the importance of the policy and with Mr Barr in that the reference to commercial activities already encompasses tourism. The amendment suggested by Mr Barr as to the inclusion of the word water we find does provide clarity as to the applicability of the policy, and we think is within scope, even though there is no submission directly seeking that wording.

307. As regards Submission 248 (noted above) opposing this and the following policy on the basis that the Council has not quantified the costs and benefits, we note the discussion of the Hearing Panel on the Strategic Chapters<sup>380</sup> (Report 3 in relation to Chapters3-6). If the submitter seeks to convince us these policies should be amended or deleted, it was incumbent on it to produce its own assessment of costs and benefits to enable us to be satisfied that course was appropriate. As it is, we are left with Mr Barr's uncontradicted, but admittedly qualitative evaluation<sup>381</sup>, supported by Mr Brown's evidence, as above. We recommend the submission be rejected.

308. We therefore recommend that Policy 21.2.9.1 be relocated to be Policy 21.1.1.10 and worded as follows:

*Commercial activities in the Rural Zone should have a genuine link with the rural land or water resource, farming, horticulture or viticulture activities, or recreation activities associated with resources located within the Rural Zone.*

#### 4.26 Policy 21.2.9.2

309. Policy 21.2.9.2 as notified read as follows;

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<sup>377</sup> Submission 806

<sup>378</sup> C Barr, Section 42A Report, Page 46, Paras 13.24-13.25 and Appendix 4 – S32AA evaluation

<sup>379</sup> J Brown, Evidence, Page 9, Para 2.14(d)

<sup>380</sup> Report 3, Section 1.6

<sup>381</sup> C Barr, Section 42A Report, pages 79-83

21.2.9.2 *Avoid the establishment of commercial, retail and industrial activities where they would degrade rural quality or character, amenity values and landscape values.*

310. The submissions on this policy;
- Sought deletion of the policy<sup>382</sup>
  - Sought avoidance of forestry activities and addition of nature conservation values as a matter that could be degraded<sup>383</sup>
  - Sought rewording so as to remove the word avoid and replace with enabling a range of activities while avoiding, remedying or mitigating adverse effects in order to ensure the maintenance of rural quality or character, amenity values and landscape values<sup>384</sup>

311. Mr Barr's view was that the use of the term avoid was appropriate but he also considered that the policy could be more positively phased. Mr Barr was also of the view that "avoid, remedy or mitigate" was better replaced with "protect, maintain and enhance". The latter was derived from the overall goal of achieving sustainable management and in Mr Barr's opinion, reference to maintenance and enhancement can be used to take account of the positive merits of a proposal.<sup>385</sup> Mr Barr's revised wording of the policy was as follows;

*Provide for the establishment of commercial, retail and industrial activities only where these would protect, maintain or enhance rural character, amenity values and landscape values.*

312. Mr Farrell in evidence for RJI, considered the addition of the word "only" to be inappropriate, as it would mean that protection, maintenance or enhancement was required for the establishment of a commercial activity.<sup>386</sup> Mr Farrell also considered the policy could be improved by reference to the quality of the environment rather than "character" and "landscape values".

313. Mr Brown in evidence for QPL (in the context of his revised policy ordering of the notified Objectives and Policies for 21.2.9 and 21.2.10) considered that 'protect, maintain and enhance' would be too high a hurdle for even the simplest of applications, particularly if considered at the scale of a single site.<sup>387</sup> Mr Brown recommended revised wording of his equivalent policy (21.2.2.4 in his evidence) to 21.2.9.2, by addition of the words "wherever practical".

314. We note that Policy 21.2.9.2 is worded similarly to Policy 21.2.1.1, but in this case applies to commercial activities. In keeping with our findings on Policy 21.2.1.1 and taking account of our recommended shifting of Policies 21.2.9.1 – 21.2.9.6 to sit under Objective 21.2.1, the amendments suggested by Mr Farrell and Mr Brown do not align the policy in implementing the associated objective and are also inconsistent with the Stream 1B Hearing Panel's findings in relation to the Strategic Chapters.

315. Accordingly, we recommend that Policy 21.2.9.2 be relocated to be Policy 21.2.1.11 and worded as follows:

*Provide for the establishment of commercial, retail and industrial activities only where these would protect, maintain or enhance rural character, amenity values and landscape values.*

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<sup>382</sup> Submissions 621, 624

<sup>383</sup> Submission 706

<sup>384</sup> Submission 806

<sup>385</sup> C Barr, Section 42A Report, Page 46 - 47, Paras 13.27 – 13.28

<sup>386</sup> B Farrell, Evidence, Page 18, Para 68

<sup>387</sup> J Brown, Evidence, Page 8 Para 2.14 (b) – (c)

316. We address the submission of Mr Atly and the Forest & Bird as to nature conservation values in consideration of Policy 21.2.9.3 where similar amendments were sought.

#### 4.27 Policy 21.2.9.3

317. Policy 21.2.9.3 as notified read as follows;

*21.2.9.3 Encourage forestry to be consistent with topography and vegetation patterns, to locate outside of the Outstanding Natural Features and Landscapes, and ensure forestry does not degrade the landscape character or visual amenity values of the Rural Landscape.*

318. Submissions on this policy sought to make it more directive, exclude forestry from significant natural areas and add nature conservation values to matters not to be degraded.<sup>388</sup>

319. Mr Barr did not support making the policy more directive through replacing ‘Encourage’ with the term ‘Avoid’, as this would imply prohibited activity status. Mr Barr also considered that the inclusion of significant natural areas was a useful cross reference to the rules restricting the planting of exotic species in SNAs. Finally on this policy, Mr Barr did not support the inclusion of nature conservation values as elements of the definition of nature conservation values are set out in the policy.<sup>389</sup> We heard no other evidence on this matter.

320. The Stream 1B Hearing Panel has recommended that the policy referring to forestry refer to “production forestry” to make it clear that the policy focus 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)<sup>390</sup>. We recommend the same change to this policy for the same reasons, and for consistency.

321. We agree with and adopt the reasoning set out by Mr Barr and recommend that the policy be relocated to be Policy 21.2.1.12 and worded as follows:

*Encourage production forestry to be consistent with topography and vegetation patterns, to locate outside of the Outstanding Natural Features and Landscapes and outside of significant natural areas, and ensure production forestry does not degrade the landscape character or visual amenity values of the Rural Character Landscape.*

#### 4.28 Policy 21.2.9.4

322. There were no submissions on Policy 21.2.9.4 and thus we do not need to consider it further, other than relocate it to become Policy 21.1.1.13.

#### 4.29 Policy 21.2.9.5

323. Policy 21.2.9.5 as notified read as follows:

*21.2.9.5 Limit forestry to species that do not have potential to spread and naturalise.*

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<sup>388</sup> Submissions 339, 706

<sup>389</sup> C Barr, Section 42A Report, Page 47, Para 13.22

<sup>390</sup> See the discussion regarding recommended Policy 6.3.6 in Report 3, Section 8.5

324. Submissions on this policy sought that it be deleted<sup>391</sup> or be amended to apply only to exotic forestry.<sup>392</sup>
325. These submissions were not directly addressed in the Section 42A Report, although an amendment to the policy to limit it to exotic species only was incorporated in the recommended revised Chapter in Appendix 1. Mr Brown in evidence for QLP adopted Mr Barr's recommended amendment.<sup>393</sup>
326. We agree that the policy is appropriately clarified by its specific reference to exotic forestry and recommend that it be relocated to be Policy 21.2.1.14 and worded as follows:

*Limit exotic forestry to species that do not have potential to spread and naturalise.*

#### **4.30 Policy 21.2.9.6**

327. Policy 21.2.9.6 as notified read as follows;

*21.2.9.6 Ensure traffic from commercial activities does not diminish rural amenity or affect the safe and efficient operation of the roading and trail network, or access to public places.*

328. Submissions on this policy variously sought that it be retained<sup>394</sup>, that it be deleted<sup>395</sup>, or that it be amended to apply to only new commercial activities.<sup>396</sup>
329. Mr Barr did not recommend an amendment to this policy in the Section 42A Report.
330. Mr Farrell in evidence for RJL and D & M Columb, was of the view that this policy was not necessary as traffic effects were already addressed in the transport chapter of the ODP; that the policy should apply to all activities not just commercial activities and should be amended from "*does not diminish*" to "*maintain*".<sup>397</sup> Mr Brown, in evidence for QPL did not recommend any amendment to the policy.<sup>398</sup>
331. We disagree with Mr Farrell that the transport chapter of the ODP removes the necessity for the policy. The policy has wider applicability than just transport issues through its inclusion of reference to rural amenity. We also consider that the policy is efficient and effective in its specific reference to the traffic effect of commercial operations not diminishing amenity, as it is precisely this issue that makes the policy consistent with objective.
332. However, we agree with the suggestion in the RJL and Columb submissions that the focus of the policy should be on "*new*" commercial activities.
333. Accordingly, we recommend that the wording policy be amended to insert the word "*new*" before "*commercial*" but otherwise be retained as notified and relocated to become Policy 21.2.1.15.

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<sup>391</sup> Submission 806

<sup>392</sup> Submission 600

<sup>393</sup> J Brown, Evidence, Page8, Para 2.13

<sup>394</sup> Submission 719

<sup>395</sup> Submissions 621, 624

<sup>396</sup> Submission 806

<sup>397</sup> B Farrell, Evidence, Page 19, Para 72

<sup>398</sup> J Brown, Evidence, Page8, Para 2.13

#### 4.31 Objective 21.2.10

334. As notified, Objective 21.2.10 read as follows;

*Recognise the potential for diversification of farms that utilises the natural or physical resources of farms and supports the sustainability of farming activities.*

335. Submissions on this policy sought that it be retained<sup>399</sup>, or sought various wording amendments so that the objective applied to wider range of rural activities than just farms<sup>400</sup>.

336. In the Section 42A Report, Mr Barr set out his view that the objective and associated policies had been included for the purpose of providing for the ongoing viability of farming and maintaining rural character and not to apply to activities on rural land that were not farming.<sup>401</sup> Notwithstanding this, Mr Barr considered that there was merit in the submission of Trojan Helmet, seeking that the range of land uses to which the objective was applicable be broadened, so long as it supported sustainability for natural resources in a productive and efficiency use context, as well as protecting landscape and natural resource values. He also considered it to be more effects based.<sup>402</sup> Mr Barr recommended rewording of the objective as follows;

*Diversification of farming and other rural activities that supports the sustainability natural and physical resources.*

337. In the Council's memorandum on revising the objectives to be more outcome focused<sup>403</sup>, Mr Barr recommended further rewording as follows;

*The potential for diversification of farming and other rural activities that supports the sustainability of natural and physical resources.*

338. Mr Brown in evidence for Trojan Helmet *et al*; suggested deleting Objective 21.2.10 (along with Objective 21.2.9 and the associated policies for both objectives). We have addressed this batting order and aggregation suggestion in Section 3.2 above. We think that this objective is sufficiently different to 21.2.9 in the matters it addresses to be retained as a discrete outcome separate from the amalgamation of Objectives 21.2.9 and 21.2.1 (as discussed above). However, we consider that Mr Barr's revised wording needs further amendment so that it captures his reasoning as set out above and is consistent with recommended Policy 3.2.1.8. The suggested reference to sustainability in our view leaves the potential range of outcomes too open and fails to ensure the protection of the range of values referred to in Policy 3.2.1.8. It also needs amendment so that it is more correctly framed as an objective, and is then the most appropriate way to achieve the purpose of the Act.

339. As a consequence of amalgamating Objective 21.2.9 (and its policies) into Objective 21.2.1, this objective (and its policies) have been renumbered in Appendix 1.

340. We therefore recommend Objective 21.2.10, renumbered as 21.2.9, be worded as follows:

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<sup>399</sup> Submission 217,325, 335, 356, 598, 600, 660, 662, 791, 794

<sup>400</sup> Submissions 343,345, 375, 407, 430, 437, 456, 636, 643, 693, 702, 806

<sup>401</sup> C Barr, Section 42A Report, Page 49, Para 13.39

<sup>402</sup> C Barr, Section 42A Report, Page 50, Para 13.42 – 13.43

<sup>403</sup> Council Memorandum dated 13 April 2016

*Provision for the diversification of farming and other rural activities that protect landscape and natural resource values and maintains the character of rural landscapes.*

#### **4.32 Policy 21.2.10.1**

341. Policy 21.2.10.1 as notified read as follows;

*Encourage revenue producing activities that can support the long term sustainability of farms in the district.*

342. Submissions on this policy variously sought that it be retained<sup>404</sup>, be amended to apply to ‘rural areas’ rather than just ‘farms’<sup>405</sup>, or be amended to the following wording;

*Enable revenue producing activities, including complementary commercial recreation, residential, tourism, and visitor accommodation that diversifies and supports the long term sustainability of farms in the district, particularly where landowners take a comprehensive approach to maintaining and enhancing the natural and physical resources and amenity or other values of the rural area.*<sup>406</sup>

343. For similar reasons to those expressed in relation to Objective 21.2.10 (see Section 5.31 above), Mr Barr concurred with the submitters that the policy should be amended to apply to rural areas, and not just farms.

344. The Section 42A Report did not directly address the submission of Darby Planning<sup>407</sup> to widen the policy. In evidence for Darby Planning, Mr Ferguson considered that the amended policy suggested in the submission recognised the importance of the commercial recreation, residential and tourism activities that flows from the Strategic Directions Chapters. He was of the opinion that this more ‘comprehensive approach’ could lead to more sustainable outcomes.<sup>408</sup>

345. We agree with Mr Barr that Policy 21.2.10.1 should be amended to apply to rural areas, and not just farms, for similar reasons as we have discussed in relation to Objective 21.2.10. Again, for similar reasons as in relation to Objective 21.2.10, the consequence of broadening the policy to apply to rural areas is that some test of environmental performance is then required. Mr Ferguson suggested a test of maintaining and enhancing specified aspects of the rural environment. We consider that this is a good starting point. However, we do not think that the itemisation of commercial recreation, residential and tourism activities is necessary or desirable in this policy. Accordingly, we recommend that the submission of Darby Planning LP be only accepted in part.

346. In summary, we consider the following wording to be the most efficient and effective method to achieve the objective, namely:

*Encourage revenue producing activities that can support the long term sustainability of the rural areas of the district and that maintain or enhance landscape values and rural amenity.*

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<sup>404</sup> Submissions 598, 600

<sup>405</sup> Submissions 343, 345, 375, 430, 437, 456

<sup>406</sup> Submission 608

<sup>407</sup> Submission 608

<sup>408</sup> C Ferguson, Evidence, Page 73



#### 4.33 Policy 21.2.10.2

347. Policy 21.2.10.2 as notified read as follows;

*Ensure that revenue producing activities utilise natural and physical resources (including buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural values.*

348. Submissions on this policy ranged from support<sup>409</sup>, amendment to include “nature conservation values”<sup>410</sup> or “manawhenua values”<sup>411</sup> as matters to be maintained or enhanced, amendment to specifically identify “commercial recreation, residential, tourism, and visitor accommodation” as revenue producing activities<sup>412</sup>, amendment to “maintain and / or enhance landscape values” and “and / or natural values”<sup>413</sup>, and finally amend to apply “generally” only to “significant” landscape values.<sup>414</sup>

349. In considering the submissions, for the overall reasons set out in relation to Objective 21.2.10, Mr Barr recommended that Policy 21.2.10.2 be reworded as follows;

*Ensure that revenue producing activities utilise natural and physical resources (including buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural resources.*<sup>415</sup>

350. In evidence for RJL, Mr Farrell considered that the policy set a high bar for revenue producing activities that he considered other high order provisions in Plan were seeking to enable.<sup>416</sup> Mr Farrell recommended that the policy be reworded as follows;

*Promote revenue producing activities that utilise natural and physical resources (including buildings) in a way that maintains and enhances the landscape quality of the environment.*

351. In evidence for Darby Planning, Mr Ferguson considered that the amended policy sought by the submitter was, for similar reasons as for 21.2.10.2, a more effective and efficient means of achieving the objectives of the PDP.<sup>417</sup>

352. We have already addressed the submissions on the inclusion of reference to “nature conservation values” or “manawhenua values” as matters to be maintained or enhanced, and we reach a similar conclusion: that it is not necessary to include reference to these matters in every policy.

353. The recommended wording by Mr Farrell to “promote” rather than “ensure” we find goes beyond the scope of the original submission and we therefore recommend that that amendment be rejected. Consistent with our finding on Policy 21.2.10.1, we are not convinced by Mr Ferguson’s view that the suggested wording in the Darby Planning LP submission is a more effective and efficient means of achieving the objective.

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<sup>409</sup> Submissions 430, 598

<sup>410</sup> Submissions 339, 706

<sup>411</sup> Submission 810

<sup>412</sup> Submission 608

<sup>413</sup> Submission 356

<sup>414</sup> Submissions 621, 624

<sup>415</sup> C Barr, Section 42A Report, Page 51, Para 13.44

<sup>416</sup> B Farrell, Evidence, Page 19, Para 76

<sup>417</sup> C Ferguson, Evidence, Page 13, Para 58

354. We consider however, that Mr Barr’s suggestion fails to provide for consumptive activities (like mining) that by definition do not maintain or enhance natural resources.
355. Finally we accept the point made in Submission 356 that where the policy refers to “*natural and physical resources*”, and “*maintain and enhance*”, these need to be put as alternatives. We also consider the policy should be clear that it is existing buildings that it refers to.
356. Accordingly, we recommend that Policy 21.2.10.2 (renumbered 21.1.9.2) be worded as follows;
- Ensure that revenue producing activities utilise natural or physical resources (including existing buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural resources.*

#### **4.34 Policy 21.2.10.3**

357. Policy 21.2.10.3 as notified read as follows:

*Recognise that the establishment of complementary activities such as commercial recreation or visitor accommodation located within farms may enable landscape values to be sustained in the longer term. Such positive effects should be taken into account in the assessment of any resource consent applications.*

358. Submissions on this policy ranged from support<sup>418</sup>; amendment to include “*nature conservation values*” as matters to be sustained in the future<sup>419</sup>; amendment to specifically identify “*recreation*”, and/or “*tourism*” as complementary activities<sup>420</sup>; and amendment to substitute reference to people’s wellbeing and sustainable management of the rural resource (instead of landscape values) as matters provided for by complementary activities, and to require consideration of such positive benefits in the assessment of resource consent applications.<sup>421</sup>
359. In the Section 42A Report, Mr Barr addressed the submissions on this policy in the general discussion on Objective 21.2.10 and Policies 21.2.10.1 and 21.2.10.2 we have noted above. As a result of that consideration, Mr Barr recommended that Policy 21.2.10.3 be reworded as follows;
- Have regard to the establishment of activities such as tourism, commercial recreation or visitor accommodation located within farms where these enable landscape values and indigenous biodiversity to be sustained in the longer term.*<sup>422</sup>
360. Mr Ferguson considered that the suggested changes did not go far enough. He did, however, identify that the Section 42A Report included some of the specific activities sought in the Darby Planning LP submission in this policy, but not in the preceding Policies 21.2.10.1 and 21.2.10.2.<sup>423</sup> Mr Farrell, in evidence for RJL *et al* supported the amendments in the Section 42A Report<sup>424</sup>, but did not specify any reasons for reaching that conclusion.

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<sup>418</sup> Submissions 430, 600

<sup>419</sup> Submissions 339, 706

<sup>420</sup> Submission 608, 621, 624

<sup>421</sup> Submission 624

<sup>422</sup> C Barr, Section 42A Report, Page 51, Para 13.44

<sup>423</sup> C Ferguson, Evidence, Page 12, Paras 54 and 56

<sup>424</sup> B Farrell, Evidence, Page 20, Para 80

361. When considered alongside the other policies under Objective 21.2.10, we agree that identification of tourism, commercial recreation and visitor accommodation located within farms is appropriate. We also think that reference to indigenous biodiversity rather than “*nature conservation values*” is appropriate as it avoids any confusion with the use of the defined term for the latter.
362. We do not, however, accept Mr Ferguson’s rationale for seeking reference to residential activities. We do not regard expansion of permanent residential activities as being complementary to farming where it is not providing accommodation for on-site farm workers.
363. We do not consider the formula “have regard to” gives any direction as to how the policy will achieve the objective. Given that the objective is about how the provision of certain activities can have beneficial outcomes, we consider this policy would be better expressed as “providing for”.
364. Accordingly, we recommend that Policy 21.2.10.3 (renumbered 21.2.9.3) be reworded as follows:

*Provide for the establishment of activities such as tourism, commercial recreation or visitor accommodation located within farms where these enable landscape values and indigenous biodiversity to be sustained in the longer term.*

#### **4.35 Objective 21.2.11**

365. As notified, Objective 21.2.11 read as follows;

*Manage the location, scale and intensity of informal airports.*

366. Submissions on this objective provided conditional support subject to other relief sought to policies and rules, including location and frequency controls<sup>425</sup>, or sought amendments to provide for new informal airports and protect existing informal airports from incompatible land uses.<sup>426</sup> One submission also sought clarification in relation to its application to commercial ballooning in the district.<sup>427</sup>
367. In the Section 42A Report, Mr Barr expressed the view that the definition of aircraft included hot air balloons and therefore a site on which a balloon lands or launches from is an informal airport.<sup>428</sup>
368. Mr Barr did not recommend any amendments to the objective and associated policies for informal airports in the Section 42A Report. Rather, Mr Barr addressed details of the permitted activity standards governing setbacks, frequency of flights, standards for Department of Conservation operational activities and other matters.<sup>429</sup>
369. In the Council’s memorandum on revising the objectives to be more outcome focused<sup>430</sup>, Mr Barr recommended rewording of the objective as follows;

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<sup>425</sup> Submissions 571, 723, 730, 732, 734, 736, 738, 739, 760, 843

<sup>426</sup> Submission 607

<sup>427</sup> Submission 217

<sup>428</sup> C Barr, Section 42 Report, Page 76, Para 16.36

<sup>429</sup> C Barr, Section 42 Report, Pages 69 - 78

<sup>430</sup> Council Memoranda dated 13 April 2016

*The location, scale and intensity of informal airports is managed.*

370. Mr Dent, in evidence for Totally Tourism<sup>431</sup>, considered that the objective was poorly worded and should be amended to indicate that informal airports are desired within the Rural Zone, but should be subject to their effects on amenity being managed.<sup>432</sup> Mr Dent recommended the objective be reworded as follows;

*The operation of informal airports in the Rural Zone is enabled subject to the management of their location, scale and intensity.*

371. Mr Farrell in evidence for Te Anau Developments<sup>433</sup>, supported the submitter's request for new informal airports to be "provided for" in the objective protection of existing informal airports from incompatible land uses. Mr Farrell expressed the view that existing "... informal airports face operational risks from potential reverse sensitivity effects associated with noise sensitive activities, which is an operational risk, and could result in unnecessary costs, to tourism operators."<sup>434</sup>

372. In reply, Mr Barr, agreed and accepted the intent of Mr Dent's recommended amendment to the objective<sup>435</sup>. Mr Barr also agreed with Mr Farrell that a policy protecting existing informal airports from incompatible land uses was warranted, but not at expense of a policy that protects amenity from airports<sup>436</sup>. Mr Barr recommended alternative wording for the objective and set out a brief section 32AA analysis<sup>437</sup>.

373. An objective that sets out that something is to be managed, but does not specify to what purpose or end result, does not take one very far. We agree with Mr Dent that it is the effects of informal airports that should be managed, but consider that his suggestion of 'enabling' goes too far. We found Mr Farrell's reasoning as to operational risks a little difficult to follow and the amended wording of the objective he supported unsatisfactory because it failed to address amenity effects. In conclusion, we prefer Mr Barr's reply version, which did address our concerns as to purpose, as being the most appropriate in terms of the alternatives available to us and in achieving the purposes of the Act.

374. Accordingly, we recommend that the wording of Objective 21.2.11 should be as follows:

*The location, scale and intensity of informal airports is managed to maintain amenity values while protecting informal airports from incompatible land uses.*

#### **4.36 Policy 21.2.11.1**

375. Policy 21.2.11.1 as notified read as follows:

*Recognise that informal airports are an appropriate activity within the rural environment, provided the informal airport is located, operated and managed so as to minimise adverse effects on the surrounding rural amenity.*

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<sup>431</sup> Submission 571

<sup>432</sup> S Dent, Evidence, Page 4, Paras 17 - 18

<sup>433</sup> Submission 607

<sup>434</sup> C Barr, Evidence, Page 24, Para 110

<sup>435</sup> C Barr, Reply, Page 28, Para 9.19

<sup>436</sup> C Barr, Reply, Page 27, Para 9.14

<sup>437</sup> C Barr, Reply, Page 5, Appendix 2

376. Submissions on this policy ranged from conditional support subject to other relief sought to policies and rules including location and frequency controls<sup>438</sup>; or sought amendment to the words after 'managed' to insert 'in accordance with CAA regulations'<sup>439</sup>; amendment to replace 'minimise' with 'avoid, remedy mitigate' and limit to existing rural amenity values<sup>440</sup>; amendment to apply to existing informal airports and to protect them from surrounding rural amenity<sup>441</sup>; and finally amendment to include reference to flight path locations of fixed wing aircraft and their protection from surrounding rural amenity.<sup>442</sup>
377. As noted above, Mr Barr did not recommend any amendments to the policies for informal airports in the Section 42A Report.
378. Ms Macdonald, counsel for Skydive Queenstown Limited<sup>443</sup>, suggested an amendment to the relief sought by the submitter, recognising that a function of a territorial authority was management of the effects of land use and that objectives, policies and rules could be prepared to that end. The amended relief was as follows:
- Recognise that informal airports are an appropriate activity within the rural environment, provided the informal airport is located, operated and managed so as to minimise adverse effects on the surrounding rural amenity, and in accordance with Civil Aviation Act requirements.*<sup>444</sup>
379. Mr Farrell's evidence for Te Anau Developments supporting the submitter's requested change was based on the same reasoning as we set out in relation to Objective 21.2.11 above.
380. Mr Dent in evidence for Totally Tourism considered that the policies (21.2.11.1 and 21.2.11.2) did not provide a credible course of action to implement the objective and set out recommended rewording.<sup>445</sup>
381. Mr Barr, in reply concurred with Mr Dent, and recommended similar changes to those proposed by Mr Dent.<sup>446</sup>
382. As noted in the reasons for the submission from Skydive Queenstown Limited, a territorial authority has no particular expertise in CAA matters. We therefore find that it is not effective and efficient for the policy to include requirements of CAA regulations that are for the CAA to administer.
383. On Mr Farrell's evidence in support of the relief sought by Te Anau Developments we reach a similar finding as for Objective 21.2.11 above. We also find that the protection of informal airports from incompatible uses could potentially be a separate policy and we address that matter in detail below. For present purposes, we find that that that issue should not be

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<sup>438</sup> Submissions 723, 730, 732, 734, 736, 738, 739, 760, 843

<sup>439</sup> Submission 122

<sup>440</sup> Submission 607

<sup>441</sup> Submission 385

<sup>442</sup> Submissions 285, 288

<sup>443</sup> Submission 122

<sup>444</sup> J Macdonald, Legal Submissions, Page 3, Para 5

<sup>445</sup> S Dent, Evidence, Pages 4-5, Paras 19 - 20

<sup>446</sup> C Barr, Reply, Page 29, 9.20

referenced in this policy. Similarly we think that the wording recommend by Mr Barr is effective and efficient in its alignment with the objective.

384. Accordingly we recommend that Policy 21.2.11.1 be reworded as follows;

*Ensure informal airports are located, operated and managed so as to maintain the surrounding rural amenity.*

#### **4.37 Policy 21.2.11.2**

385. Policy 21.2.11.2 as notified read as follows:

*Protect rural amenity values, and amenity of other zones from the adverse effects that can arise from informal airports.*

386. Submissions on this policy ranged from conditional support subject to other relief sought to policies and rules including location and frequency controls<sup>447</sup> or sought amendment to protect informal airports and flight path locations of fixed wing aircraft from surrounding rural amenity<sup>448</sup>.

387. As we have already noted, Mr Barr did not recommend any amendments to the policies for informal airports in the Section 42A Report.

388. Similarly we addressed the evidence of Mr Farrell and Mr Dent, as well as Mr Barr's response in reply, under Policy 21.2.11.1 above. Again, we think that protection of informal airports should be addressed separately. Taking account of our recommended amendment to Policy 21.2.11.1, we find that a policy to address the adverse effects in non-rural zones from informal airports is required. Otherwise a policy gap would be remain.

389. Accordingly, we find that Policy 21.2.11.2 should remain as notified.

#### **4.38 Additional Policy – Informal Airports**

390. We observed above that there appeared to be a case to protect informal airports from incompatible activities. Considering the issues identified to us by a number of recreational pilots at the hearing and the evidence of Mr Dent, Mr Farrell and Mr Barr, we agree that a policy addressing that matter is appropriate in achieving the stated objective. Mr Barr, in reply, proposed the following wording of such an additional policy as follows;

*21.2.11.3 Protect legally established and permitted informal airports from the establishment of incompatible activities.<sup>449</sup>*

391. In reaching this view, Mr Barr did not recommend that the new policy flow through to a new rule to the same effect, given the administrative difficulties in identifying existing informal airport locations and noting that Objective 21.2.4 and associated policies already sought to protect permitted and legally established activities.<sup>450</sup> We tested the potential identification of informal airports with some of the recreational pilots at the hearings<sup>451</sup> and reached the conclusion that such a method would not be efficient. Mr Barr's proposed new policy refers to

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<sup>447</sup> Submissions 723, 730, 732, 734, 736, 738, 739, 760, 843

<sup>448</sup> Submission 285, 288, 385, 607

<sup>449</sup> C Barr, Reply, Appendix 1

<sup>450</sup> C Barr, Reply, Pages 27-28, Paras 9.14 – 9.15

<sup>451</sup> Mr Tapper and Mr Carlton

*"legally established"* informal airports. To our mind, consistent with the wording in the Act, we think that *"lawfully established"* is more correct.

392. We also consider that some qualification of reference to permitted informal airports is required. While Mr Barr is correct that Objective 21.2.4 and the related policies provide for permitted activities these are "anticipated" permitted activities. It would not be efficient to constrain land uses on the basis that they are incompatible with informal airports at all locations where the airports would meet the permitted activity standards. We also consider that it should only be the establishment incompatible activities in the immediate vicinity that the policy addresses.

393. We therefore recommend the inclusion of a new policy (21.2.11.3) worded as follows;

*Protect lawfully established and anticipated permitted informal airports from the establishment of incompatible activities in the immediate vicinity.*

#### **4.39 New Objective and Policies – Informal Airports**

394. Two submissions sought objectives and policies to *"enable the assessment of proposals that exceed the occasional /infrequent limitations"*<sup>452</sup>. The submission reasons identified that this relief was sought as the Plan is *"silent on how applications to exceed Standards 21.5.26.1 and 21.5.26.2 will be assessed and considered"*.

395. We did not receive specific evidence on this matter. No specific wording of the objectives or policies were put before us. In the absence of evidence providing and/or justifying such objectives and policies, we recommend that these submissions be rejected.

#### **4.40 Objective 21.2.12**

396. Before addressing this specific objective, we note that we have already addressed the submissions seeking that the surface of water and its margins be placed in a separate chapter, in Section 3.4 above, concluding that rather than a separate zone, re-ordering of the rules would enable a clearer understanding of the provisions affecting the surface of waterbodies subset of the rural provisions. This objective and the policies to give effect to it, assist in clarifying which provisions affect waterbodies. In this part of the report we address the other submissions on this suite of objectives and policies.

397. As notified, Objective 21.2.12 read as follows:

*Protect, maintain or enhance the surface of lakes and rivers and their margins.*

398. Submissions on this objective variously sought that it be retained<sup>453</sup>; be amended to change the word "Protect" to "Preserve"<sup>454</sup>; be amended to provide for appropriate recreational and commercial recreational activities<sup>455</sup>; be amended or deleted and replaced with an objective that provides for the benefits associated with a public transport system<sup>456</sup>; be amended to recognise the importance of water based transport<sup>457</sup>; be amended to delete *"protect, maintain and enhance"* and add after the word *"margins"* *"are safeguarded from inappropriate, use and*

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<sup>452</sup> Submissions 660, 662

<sup>453</sup> Submission 356, 600, 758

<sup>454</sup> Submission 339, 706

<sup>455</sup> Submission 307

<sup>456</sup> Submission 621

<sup>457</sup> Submission 766

*development*<sup>458</sup>; and finally be amended to delete "*protect, maintain and enhance*" and replace with "*avoid, remedy, mitigate*".<sup>459</sup>

399. In the Section 42A Report, Mr Barr considered that itemising the enabling opportunities within the objective would conflict with the "*protect, maintain and enhance*" wording.<sup>460</sup> However, Mr Barr also considered the use of the word "*preserve*" inappropriate and that the objectives and policies must contemplate change, which is the reason for managing the resource.<sup>461</sup> Mr Barr recommended that the submissions to the objective be rejected and no changes made.

400. In the Council's memorandum on revising the objectives to be more outcome focused<sup>462</sup>, Mr Barr recommended rewording of the objective as follows;

*The surface of lakes and rivers and their margins are protected, maintained or enhanced.*

401. In evidence for RJI and Te Anau Developments, Mr Farrell's view was that the objective did not satisfactorily recognise how the surface of lakes and the margins could be used or developed in order to achieve sustainable management and that the qualifier "*from inappropriate use and development*" was required so that the objective accorded with section 6 of the Act<sup>463</sup>.

402. Mr Brown in evidence for several submitters<sup>464</sup> recommended the objective be reworded as follows;

*The surface of lakes and rivers and their margins are protected, maintained or enhanced while appropriate recreational, commercial recreational, and public transport activities that utilise those resources are recognised and provided for, and their effects managed.*<sup>465</sup>

403. Mr Brown considered the change necessary to ensure this objective was appropriately balanced and provided a better context for the associated policies, as well as recognising lake and river-based public transport.<sup>466</sup>

404. In reply, Mr Barr agreed with Mr Brown that the objective should be broader and more specific as to the outcomes sought.<sup>467</sup> Mr Barr's recommended rewording of the objective was as follows;

*The surface of lakes and rivers and their margins are protected, maintained or enhanced while providing for appropriate activities including recreational, commercial recreational, and public transport.*

405. We agree with the witnesses that that it appropriate for the objective to be broadened. However, to our mind, the objective fails to capture the purpose for which the surface of lakes and rivers are being protected, maintained or enhanced. Turning to Mr Farrell's evidence in

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<sup>458</sup> Submission 621

<sup>459</sup> Submissions 766, 806

<sup>460</sup> C Barr, Section 42A Report, Page 80, Para 17.9

<sup>461</sup> C Barr, Section 42A Report, Page 80, Para 17.10

<sup>462</sup> Council Memoranda dated 13 April 2016

<sup>463</sup> B Farrell, Evidence, Page 20, Para 84

<sup>464</sup> Submissions 307, 766, 806,

<sup>465</sup> J Brown, Evidence, Page 14, Para 2.24

<sup>466</sup> J Brown, Evidence, Page 15, Para 2.26 (a) and (b)

<sup>467</sup> C Barr, Reply, Page 30, Para 10.1



relation to section 6 of the Act, that purpose relates to “*natural character*”. Similarly, we find that the location where the “*appropriate activities*” occur also needs to be specified, namely, the “*surface of the lakes and rivers*”. In addition, we are mindful of the Stream 1B Hearing Panel’s recommendation that a policy in Chapter 6 provide for appropriate activities on the surface of water bodies<sup>468</sup> and the need for alignment.

406. Accordingly, we recommend that the objective be reworded as follows:

*The natural character of lakes and rivers and their margins is protected, maintained or enhanced while providing for appropriate activities on the surface of the lakes and rivers, including recreation, commercial recreation, and public transport.*

407. In summary, we consider that the revised objective is the most appropriate way to achieve the purpose of the Act in this context and having regard to the Strategic Direction objectives and policies in Chapters 3 and 6, and the alternatives available to us.

#### **4.41 Policy 21.2.12.1**

408. Policy 21.2.12.1 as notified read as follows;

*Have regard to statutory obligations, the spiritual beliefs, cultural traditions and practices of Tangata Whenua where activities are undertaken on the surface of lakes and rivers and their margins.*

409. There was one submission<sup>469</sup> from Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively Manawhenua)<sup>470</sup> seeking the following amendments to the policy;

*Have regard to wahi tupuna, access requirements, statutory obligations, the spiritual beliefs, cultural traditions and practices of Manawhenua where activities are undertaken on the surface of lakes and rivers and their margins.*

410. We note that the representatives of Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively Manawhenua) advised that the part of their submission seeking the change from the words Tangata Whenua to Manawhenua was no longer pursued when they appeared at the Stream 1A Hearing.

411. The parts of this submission left in play were not addressed in the Section 42A Report, and Appendix 1 of the Section 42A Report showed no recommended changes to the policy. We heard no evidence in regard to the policy and it was not addressed in Reply.

412. We note that the Stream 1A and 1B Hearing Panels have recommended objectives and policies in both Chapter 3<sup>471</sup> and Chapter 5<sup>472</sup> related to protection of wahi tupuna. We therefore find that it is appropriate that reference be made in this policy to wahi tupuna as a relevant issue, which will then link back to those provisions.

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<sup>468</sup> Refer Recommended policy 6.3.33

<sup>469</sup> We note that Queenstown Wharves GP Ltd, (Submission 766), withdrew its relief sought as to the deletion of all provisions referring to Tangata whenua.

<sup>470</sup> Submission 810

<sup>471</sup> Refer Recommended objective 3.2.7.1 and the related policies

<sup>472</sup> Refer Recommended objective 5.4.5 and the related policies

413. The need or desirability of reference being made to ‘*access requirements*’ is less clear and we do not recommend that change in the absence of evidence to support it.

414. In summary therefore, we recommend that Policy 21.2.12.1 be amended to read:

*Have regard to statutory obligations, wahi tupuna, and the spiritual beliefs and cultural traditions of tangata whenua where activities are undertaken on the surface of lakes and rivers and their margins.*

#### **4.42 Policy 21.2.12.2**

415. Policy 21.2.12.2 as notified read as follows:

*Enable people to have access to a wide range of recreational experiences on the lakes and rivers, based on the identified characteristics and environmental limits of the various parts of each lake and river.*

416. One submission sought that policy be retained<sup>473</sup>. Another submission sought that the policy be amended to delete the word ‘identified’ and add to the end of the policy “*specifically in or referred to by this plan*”<sup>474</sup>. A third submission did not recommend any specific wording but sought that the policy be amended to identify the anticipated high level of activity on the Kawarau River and also to recognise the Kawarau River as a strategic link for water based public transport.<sup>475</sup>

417. These submissions were not directly addressed in the Section 42A Report, and Appendix 1 to that report included no recommended changes to the policy.

418. Mr Brown, in evidence for QPL and Queenstown Wharves GP Limited, did not recommend any changes to the policy<sup>476</sup>. Mr Farrell in evidence for RJL *et al*, observed that the environmental limits referred to in the policy were not identified in the policy or elsewhere in the Plan, nor was it explained how they might be applied. In Mr Farrell’s view, this would create uncertainty, and lead to unnecessary costs and frustration with plan administration.<sup>477</sup> Mr Farrell suggested this could be addressed by amending the policy so that it referred to the environmental limits identified in the plan.

419. This matter was not addressed in Council’s reply and no amendments to the policy were recommended.

420. We note that the policy is to enable access to recreational experience on rivers. Some form of limit on an enabling policy is, in this case, appropriate, but we do not consider that those limits need specification in the plan. The limits may vary from environmental effects to safety issues and, as the policy states, will apply to various parts of each lake or river. For similar reasons, we do not agree that specific reference to the Kawarau River is required.

421. Accordingly, we recommend that the policy be retained as notified.

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<sup>473</sup> Submission 766

<sup>474</sup> Submission 621

<sup>475</sup> Submission 806

<sup>476</sup> J Brown, Evidence, Page 14, Para 2.24

<sup>477</sup> B Farrell, Evidence, Page 21 Para 88

#### 4.43 Policy 21.2.12.3

422. Policy 21.2.12.3 as notified read as follows;

*Avoid or mitigate the adverse effects of frequent, large-scale or intrusive commercial activities such as those with high levels of noise, vibration, speed and wash, in particular motorised craft in areas of high passive recreational use, significant nature conservation values and wildlife habitat.*

423. Two submissions sought that policy be retained<sup>478</sup>. Two submissions sought that the policy be variously amended to clarify that it did not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm as those areas could provide for water based public transport<sup>479</sup>. One submission sought the amendment to the policy to provide for frequent use, large scale and potentially intrusive commercial activities along the Kawarau River and Frankton Arm.<sup>480</sup>
424. In the Section 42A Report, Mr Barr considered the inclusion of provision for large scale intrusive commercial activities would mean the policy would not meet section 5 of the Act. Rather, Mr Barr considered that the wider benefits of such proposals should be considered in the context of a specific proposal. Mr Barr noted that Queenstown Wharves GP Ltd<sup>481</sup> had sought similar amendments excluding the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm from other policies (Policies 21.2.12.4 – 21.2.12.7 (and we note policies 21.2.12.9 and 21.2.12.10)). Mr Barr considered that the policies were appropriately balanced and as worded, could be applied across the entire district. Again, Mr Barr considered that the specific transport link proposals should be considered on the merits of the specific proposal.<sup>482</sup>
425. Mr Brown, in evidence for QPL and Queenstown Wharves GP Limited, did not recommend any changes to this policy<sup>483</sup>, but he did recommend a specific new policy to be placed following 21.2.12.10 to recognise and provide for a water based public transport system on the Kawarau River and Frankton Arm<sup>484</sup>. Mr Farrell, in evidence for RJL *et al*<sup>485</sup>, opined that it was not appropriate for the plan to always avoid or mitigate the adverse effects of frequent, large scale or intrusive commercial activities. Mr Farrell considered that the policy should be amended to recognise existing commercial activities.
426. We agree that the policy needs to be considered in the context of its district-wide application and find that provision for frequent use, large scale or intrusive commercial activities at particular locations would not align with the objective to the extent that provision would allow for materially more mechanised boat traffic than at present.
427. Consideration of activities affecting the natural character of the Kawarau River below the Control Gates Bridge also needs to take account of the Water Conservation (Kawarau) Order 1997 (WCO) given that the PDP cannot be inconsistent with it<sup>486</sup>. The WCO states that identified characteristics (including wild and scenic, and natural characteristics) are protected. While the

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478 Submissions 243, 649

479 Submissions 766, 806

480 Submission 621

481 Submission 766

482 C Barr, Section 42A Report, Page 82, Para s17.13 – 17.15

483 J Brown, Evidence, Page 14, Para 2.24

484 J Brown, Evidence, Page 15, Para 2.24

485 B Farrell, Evidence, Page 22, Paras 92-96

486 Section 74(4) of the Act

WCO also recognises recreational jet-boating as an outstanding characteristic of the river, we find the breadth of the policy amendment sought would be inconsistent with the WCO.

428. It also needs to be recognised that the policy as notified focuses on areas of high passive recreational use, significant nature conservation values and wildlife habitat. It does not purport to apply to all waterways.
429. We agree generally with Mr Barr that the other policies under this objective are likewise appropriately balanced. We also find that the new policy suggested by Mr Brown would not align with the objective and to the extent that it would allow for significant new non-recreational mechanised use of the Kawarau River below the Control Gates, potentially inconsistent with the WCO.
430. We therefore recommend that the submissions that sought the exclusion of the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm from the policies and the specific recommendation (of Mr Brown) to provide for water based transport be rejected. We do not consider those submissions further, apart from recording the policies where they apply below. That said, we return to the issue of water based public transport later, as part of our consideration of Policy 21.2.12.8.
431. We do think that the policy would be improved with some minor punctuation changes.
432. Accordingly, we recommend that policy 21.2.12.3 be renumbered and worded as follows:

*Avoid or mitigate the adverse effects of frequent, large-scale or intrusive commercial activities such as those with high levels of noise, vibration, speed and wash, in particular motorised craft, in areas of high passive recreational use, significant nature conservation values and wildlife habitat.*

#### **4.44 Policy 21.2.12.4**

433. Policy 21.2.12.4 as notified read as follows;

*Recognise the whitewater values of the District's rivers and, in particular, the values of the Kawarau and Shotover Rivers as two of the few remaining major unmodified whitewater rivers in New Zealand, and to support measures to protect this characteristic of rivers.*

434. Two submissions sought that the policy be amended to clarify that it did not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm as those areas could provide for water based public transport<sup>487</sup>. Two submissions sought amendment to the policy to include 'wild and scenic' values and to add the Nevis to the identified rivers.<sup>488</sup>
435. Mr Barr, identified that this policy was included to recognise the WCO on the Kawarau River and part of the Shotover River. Mr Barr agreed with Forest & Bird that the amendment to the WCO in 2013 to include the Nevis River meant that it was appropriate to include reference to that river in the policy<sup>489</sup>. The Section 42A Report did not reference the relief sought regarding the inclusion of "wild and scenic" values.

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<sup>487</sup> Submissions 766, 806

<sup>488</sup> Submissions 339, 706

<sup>489</sup> C Barr, Section 42A Report, Page 82 – 83, Para 17.16

436. Mr Brown in evidence for QPL and Queenstown Wharves GP Limited recommended amending the policy to only refer to ‘parts’ of the Kawarau River as not all of the river was whitewater<sup>490</sup>. Mr Barr, in reply, agreed with that amendment and also recommended a grammatical change to the beginning of the policy.<sup>491</sup>
437. We note that the Frankton Arm is not part of the Kawarau River. Thus the policy would not apply to that part of the lake in any event.
438. We agree that the reference in the policy should be to ‘parts’ of the Kawarau and Shotover Rivers reflecting the fact that only sections of the rivers are ‘whitewater’. While the WCO identifies other outstanding characteristics (than whitewater) and it is clear that both rivers have large sections that could aptly be described as ‘scenic’, it is the whitewater sections that qualify as ‘wild’. Accordingly, we do not see addition of ‘wild **and** scenic’ as adding anything to the policy.
439. Accordingly, we recommend that the policy be reworded as follows:

*Have regard to the whitewater values of the District’s rivers and, in particular, the values of parts of the Kawarau, Nevis and Shotover Rivers as three of the few remaining major unmodified whitewater rivers in New Zealand, and to support measures to protect this characteristic of rivers.*

#### 4.45 Policy 21.2.12.5

440. Policy 21.2.12.5 as notified read as follows;

*Protect, maintain or enhance the natural character and nature conservation values of lakes, rivers and their margins, with particular regard to places with nesting and spawning areas, the intrinsic value of ecosystem services and areas of indigenous fauna habitat and recreational values.*

441. Two submissions sought that the policy be retained<sup>492</sup>. Two submissions sought that the policy be variously amended to clarify that it did not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm as those areas could provide for water based public transport<sup>493</sup>. One submission sought the policy be amended as follows;

*Protect, maintain or enhance the natural character and nature conservation values of lakes, rivers and their margins from inappropriate development, with particular regard to places with significant indigenous vegetation, nesting and spawning areas, the intrinsic values of ecosystems, and areas of significant indigenous fauna habitat and recreational values.<sup>494</sup>*

442. We addressed the submissions seeking that the policy not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm, above. Submissions on this policy were not directly addressed in the Section 42A Report and Appendix 1 of the Section 42A Report showed no recommended changes to the policy.

443. Mr Farrell in evidence for RJL *et al* supported retention of the policy as notified.

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<sup>490</sup> J Brown, Evidence, Page 16, Para 2.26 (d)

<sup>491</sup> C Barr, Reply, Appendix 1, Page 21-6, Policy 21.2.12.4, Para 10.1

<sup>492</sup> Submissions 339, 706

<sup>493</sup> Submissions 766, 806

<sup>494</sup> Submission 621

444. At the hearing, Ms Maturin representing Forest & Bird, noted that Forest & Bird should have sought the inclusion of wetlands into this policy, and indicated that Forest & Bird would be satisfied if that intention was added to the policy.<sup>495</sup>
445. Ms Lucas in evidence for UCES, considered that the policy only sought to protect, maintain or enhance natural character, whereas section 6(a) of the Act required that it be preserved.<sup>496</sup>
446. Mr Brown, in evidence for QPL and Queenstown Wharves GP Limited, recommended amending the policy to delete the words “... *natural character* ...”<sup>497</sup>. Mr Brown explained that that wording was more appropriate in Policy 21.2.12.7 as
- “... Policy 21.2.12.5 deals with nature conservation values and focusses on ecological values, and I consider that the intention to “protect, maintain and enhance” these is necessary and desirable. However, a jetty, for example, is likely to have some impact on natural character, and it is likely to be difficult to construct a jetty in a way that protects, maintains or enhances natural character. In this context, “natural character” is more aligned with “visual qualities” rather than with ecological values, and I therefore consider that “natural character” is better located in Policy 21.2.12.7 which deals with the effects of the location, design and use of structures and facilities, and for which the duty is to avoid, remedy or mitigate the effects.”*<sup>498</sup>
447. Mr Barr, in reply, recommended a change to replace “*Protect, maintain or enhance*” with “*Preserve*” at the beginning of the policy and to include the words “*from inappropriate activities*”, after the word “*margins*”. Mr Barr set out a brief section 32AA evaluation noting that in his view the amendments would better align with section 6 of the Act.<sup>499</sup>
448. The difficulty with this policy is that it is addressing two different considerations – natural character and nature conservation values. As Mr Brown notes, the principal focus is on the latter. Certainly, most of the examples noted relate to nature conservation values. Section 6(a) requires us to recognise and provide for preservation of the natural character of lakes and rivers (and protect them from inappropriate subdivision, use and development). On the face of the matter, ‘*preservation*’ would therefore be a more appropriate policy stance for natural character of lakes and rivers than protection, maintenance and enhancement<sup>500</sup>.
449. It does not necessarily follow that the same is true for nature conservation values. This is a similar, but arguably a broader concept than areas of significant indigenous fauna, the ‘*protection*’ of which is required by section 6(c), which would suggest that ‘*protection*’ rather than ‘*preservation*’ is required for nature conservation values.
450. Mr Brown’s suggested solution of shifting natural character into Policy 27.2.12.7 faces two hurdles. The first is that an “*avoid or mitigate*” instruction<sup>501</sup> is too weak a policy response for a matter whose preservation is required to be recognised and provided for, as well as being out

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<sup>495</sup> S Maturin, Evidence, Page 10, Para 62

<sup>496</sup> D Lucas, Evidence Page 9, Para 38

<sup>497</sup> J Brown, Evidence, Page 14, Para 2.24

<sup>498</sup> J Brown, Evidence, Page 18, Para 2.26 (c)

<sup>499</sup> C Barr, Reply, Appendix 2, Page 5

<sup>500</sup> Although the WCO speaks in terms of protection of the identified outstanding characteristics of the Kawarau River, which include natural character and, of course, section 6(a) uses both terms.

<sup>501</sup> Mr Brown incorrectly described it as imposing a duty to “*avoid, remedy or mitigate*”.

of line with the objective. Secondly, Policy 21.2.12.17 deals with structures and facilities. The PDP also needs to address activities on the surface of lakes and rivers.

451. As already noted, we asked in-house counsel at the Council to provide us with legal advice as to whether there is a meaningful difference between ‘*preservation*’ and ‘*protection*’ and her advice, in summary, is that there is not.
452. This suggests to us that the simplest solution is to retain the notified formulation.
453. We agree, however, with Mr Brown that some qualification is necessary for examples such as those he identified, in order for some development in these areas to occur.
454. Given Mr Farrell’s support for the policy as notified (giving evidence for RJJ) we do not need to give further consideration to the other aspects of the relief in RJJ’s submission.
455. Lastly, we do not consider that the failure by Forest & Bird to seek relief in the terms it now regards as desirable can be addressed in the manner Ms Maturin suggests.
456. Accordingly, we recommend that Policy 21.2.12.5 be reworded as follows:

*Protect, maintain and enhance the natural character and nature conservation values of lakes, rivers and their margins from inappropriate activities with particular regard to nesting and spawning areas, the intrinsic value of ecosystem services and areas of indigenous fauna habitat and recreational values.*

#### **4.46 Policy 21.2.12.6**

457. Policy 21.2.12.6 as notified read as follows;

*Recognise and provide for the maintenance and enhancement of public access to and enjoyment of the margins of the lakes and rivers.*

458. Two submissions sought that the policy be amended to clarify that it did not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm as those areas could provide for water based public transport<sup>502</sup>. One submission sought the policy be amended to include private investment/donation<sup>503</sup>. One submission sought that the policy be amended to include the words “*including jetty’s [sic] and launching facilities*”<sup>504</sup> ;
459. We addressed the submissions seeking that the policy not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm, above. Submissions on this policy were not directly addressed in the Section 42A Report and Appendix 1 of the Section 42A Report showed no recommended changes to the policy. We heard no evidence in support of Submissions 194 and 301. The reasons for the relief sought in the submissions related to funding of marina upgrades and the upgrades to specific jetties and boat ramps. We consider these issues are outside the jurisdiction of the Act and therefore recommend those submissions be rejected.
460. Accordingly, we recommend that Policy 21.2.12.6 remain as notified.

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<sup>502</sup> Submissions 766, 806

<sup>503</sup> Submission 194

<sup>504</sup> Submission 301

#### 4.47 Policy 21.2.12.7

461. Policy 21.2.12.7 as notified read as follows;

*Ensure that the location, design and use of structures and facilities are such that any adverse effects on visual qualities, safety and conflicts with recreational and other activities on the lakes and rivers are avoided or mitigated.*

462. Two submissions sought that the policy be amended to recognise the importance of the Frankton Arm and the Kawarau River as a public transport link<sup>505</sup>. Three submissions sought the policy be amended to insert the word “remedied” after the word “avoid”<sup>506</sup>.

463. We address the submissions seeking that the policy recognise the Frankton Arm and the Kawarau River as important transport link, under Policy 21.2.12.8 below. We could not find these submissions directly addressed in the Section 42A Report. However, Appendix 1 of that report has a comment recommending that the word “remedied” be inserted as sought by TML.

464. Mr Vivian’s evidence for TML<sup>507</sup> and Mr Brown’s evidence for QPL and Queenstown Wharves Ltd<sup>508</sup> agreed with the Section 42A Report.

465. We agree. Although opportunities to remedy adverse effects may in practice be limited, the addition of the word “remedied” is appropriate within the context of the policy in being a legitimate method to address potential effects. We addressed the amendment suggested by Mr Brown, of the insertion of reference to natural character into this policy above.

466. Accordingly, we recommend that Policy 21.2.12.7 be reworded as follows:

*Ensure that the location, design and use of structures and facilities are such that any adverse effects on visual qualities, safety and conflicts with recreational and other activities on the lakes and rivers are avoided, remedied or mitigated.*

#### 4.48 Policy 21.2.12.8

467. Policy 21.2.12.8 as notified read as follows;

*Encourage the development and use of marinas in a way that avoids or, where necessary, remedies and mitigates adverse effects on the environment.*

468. One submission sought that the words “jetty and other structures” be inserted following the word “marinas”<sup>509</sup>. Two submissions sought that the policy be amended to replace the words “marinas in a way that ” with “a water based public transport system including necessary infrastructure, in a way that as far as possible”<sup>510</sup>. One submission sought to amend the policy by replacing the word “Encourage” with “Provide for” and to delete the words “where necessary”.<sup>511</sup>

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<sup>505</sup> Submissions 766, 806

<sup>506</sup> Submission 519, 766, 806

<sup>507</sup> C Vivian, Evidence, Page 19, Para 4.84

<sup>508</sup> J Brown, Evidence, Page 4, Para 2.24 (by adopting the Section 42 A Report recommendation on the policy)

<sup>509</sup> Submission 194

<sup>510</sup> Submissions 766, 806

<sup>511</sup> Submission 621



469. In the Section 42A Report, Mr Barr agreed that clarification of the policy would be improved by also referring to jetties and moorings. Mr Barr also considered that the term “*Encourage*” was more in line with the Strategic Direction of the Plan which was not to provide for such facilities, but rather when they are being considered, to encourage their appropriate location, design and scale. Mr Barr also agreed that the words “*where necessary*” did not add value to the policy and recommended they be deleted.<sup>512</sup> Mr Barr addressed the provision of public transport within the Frankton Arm and Kawarau River in a separate part of the Section 42A Report. However, this discussion was on the rules rather than the policy<sup>513</sup>. That said, in discussing the rules, Mr Barr acknowledged the potential positive contribution to transport a public ferry system could provide. Mr Barr considered “*ferry*” a more appropriate term than “*commercial boating*” which in his view may include cruises and adventure tourism<sup>514</sup>. Mr Barr did not, however, recommend the term “*ferry*” be included in the policy in his Section 42A Report.
470. In evidence for RJL, Mr Farrell supported the recommendation in the Section 42A Report<sup>515</sup>.
471. Mr Brown, in evidence for QPL and Queenstown Wharves Ltd, supported the reference to lake and river public transport as an example of relieving road congestion and also facilitating access and enjoyment of rivers and their margins<sup>516</sup>. Mr Brown’s recommended wording of the policy did not include the relief sought by QPL and Queenstown Wharves Ltd, to qualify the policy by adding the words, “*in a way that as far as possible*”.
472. In reply, Mr Barr incorporated part of Mr Brown’s recommended wording into the Appendix 1 of the Section 42A Report.<sup>517</sup> Mr Barr included the word “*ferry*” at this point to address the difference between water based public transport and other commercial boating we identified above.
473. The starting point for consideration of these issues is renumbered Policy 6.3.31 (Notified Policy 6.3.6.1) which seeks to control the location, intensity, and scale of buildings, jetties, moorings and infrastructure on the surface and margins of water bodies by ensuring these structures maintain or enhance landscape quality and character, and amenity values. We therefore have difficulty with Mr Barr’s suggested addition of reference to jetties and moorings in this context without a requirement that landscape quality and character, and amenity values all be protected. Certainly we do not agree that that would be consistent with the Strategic Chapters. We do, however agree that provision for water-based public transport “*ferry systems*” and related infrastructure, is appropriate within the context of this policy and that it needs to be distinguished from other types of commercial boating.
474. We agree with Mr Barr’s suggestion that the words “*where necessary*” are unnecessary but we consider that greater emphasis is required to note the need to avoid, remedy or mitigate adverse effects as much as possible and, therefore, we accept the submissions of QPL and Queenstown Wharves Ltd in this regard.
475. Accordingly, we recommend that Policy 21.2.12.8 be reworded as follows:

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<sup>512</sup> C Barr, Section 42A Report, Page 83, Paras 17.18 – 17.19

<sup>513</sup> C Barr, Section 42A Report, Page 85 - 88, Paras 17.29 – 17.42

<sup>514</sup> C Barr, , Section 42A Report, Page 87 - 88, Paras 17.41 – 17.42

<sup>515</sup> B Farrell, Evidence, Page 23, Para 101

<sup>516</sup> J Brown, Evidence, Page 15, Para 2.26(b)

<sup>517</sup> C Barr, Reply, Page 21-6, Appendix 1

*Encourage development and use of water based public ferry systems including necessary infrastructure and marinas, in a way that avoids adverse effects on the environment as far as possible, or where avoidance is not practicable, remedies and mitigates such adverse effects.*

#### **4.49 Policy 21.2.12.9**

476. Policy 21.2.12.9 as notified read as follows;

*Take into account the potential adverse effects on nature conservation values from the boat wake of commercial boating activities, having specific regard to the intensity and nature of commercial jet boat activities and the potential for turbidity and erosion.*

477. One submission sought that the policy be amended to apply only to jet boats and the removal of the words “*intensity and nature of commercial jet boat activities*”<sup>518</sup> and similarly, another submission sought that the policy be amended to enable the continued use of commercial jet boats while recognising that management techniques could be used to manage effects<sup>519</sup>. One other submission sought the amendment of the policy to recognise the importance of the Kawarau River as a water based public transport link.<sup>520</sup>
478. Mr Barr, in his Section 42A Report, considered that jet boats were already specified in the policy and that there was a need to address the potential impacts from any propeller driven craft in relation to turbidity and wash<sup>521</sup>. Mr Barr recommended that policy remain as notified.
479. Mr Farrell, in evidence for RJL *et al*, agreed with Mr Barr’s recommendation<sup>522</sup> and Mr Brown, for QPL, did not recommend any amendments to the policy<sup>523</sup>.
480. There being no evidence in support of the changes sought by the submitters, we adopt the reasoning of the witnesses and find that the amendments sought would not be the most appropriate way of achieving the objective.
481. Accordingly, we recommend that the submissions be rejected and that policy 21.2.12.9 remain as notified.

#### **4.50 Policy 21.2.12.10**

482. Policy 21.2.12.10 as notified read as follows:

*Ensure that the nature, scale and number of commercial boating operators and/or commercial boats on waterbodies do not exceed levels where the safety of passengers and other users of the water body cannot be assured.*

483. One submission sought that the policy be amended as follows;

*Protect historical and well established commercial boating operations from incompatible activities and manage new commercial operations to ensure that the nature, scale and number of new commercial boating operators and/or commercial boats on waterbodies do not exceed levels where the safety of passengers and other users of the water body cannot be assured.*<sup>524</sup>

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<sup>518</sup> Submission 621

<sup>519</sup> Submissions 806

<sup>520</sup> Submission 806

<sup>521</sup> C Barr, Section 42A Report, Page 84, Para 17.21

<sup>522</sup> B Farrell, Evidence, Page 23, Para 103

<sup>523</sup> J Brown, Evidence, Page 15, Para 2.24

<sup>524</sup> Submission 621

484. One other submission sought that the policy be amended to enable the continued use of commercial jet boats while recognising that management techniques could be used to manage effect and that the policy be amended to recognise the importance of the Kawarau River as a water based public transport link.<sup>525</sup>
485. In the Section 42A Report, Mr Barr considered the relief sought by RJL to be neither necessary nor appropriate, because consideration of the effects of new activities on established activities was inherently required by the wording of the policy as notified. Mr Barr noted that all established activities would have consent anyway, so ‘*well established*’ did not add anything to the policy. In addition, Mr Barr considered that the qualifiers in the policy were a guide as to incompatibility, so the introduction of the word “*incompatible*” was not appropriate in this context<sup>526</sup>. Mr Barr recommended that the policy remain as notified.
486. Mr Brown, for QPL, did not recommend any amendments to the policy<sup>527</sup>. Mr Farrell, in evidence for RJL, considered the policy did not satisfactorily recognise the benefits of historical and well established commercial boating operations which were important to the district’s special qualities and overall sense of place<sup>528</sup>. Mr Farrell recommended we adopt the relief sought by RJL.
487. We disagree with Mr Farrell. This policy would come into play when resource consent applications were being considered. At that point, safety considerations need to be addressed both for entirely new proposals and for expansion of existing operations. It would not affect operations that were already consented (and established) unless the conditions on that consent were being reviewed. In those circumstances, it could well be appropriate to consider safety issues.
488. In summary, in relation to the amendments sought by RJL, we agree with and adopt the reasoning the reasoning of Mr Barr. We recommend that the submission by RLJ be rejected.
489. In reviewing this policy we have identified that it contains a double negative that could create ambiguities in interpreting it: the policy requires that *the nature, scale and number* (of activities) *do not exceed levels where ... safety ... cannot be assured*. We consider a minor, non-substantive amendment under Clause 16(2) of the First Schedule to replace “where” with “such that” will address this problem.
490. Accordingly, we recommend that Policy 21.2.12.10 be reworded as follows:
- Ensure that the nature, scale and number of commercial boating operators and/or commercial boats on waterbodies do not exceed levels such that the safety of passengers and other users of the water body cannot be assured.*

#### **4.51 Objective 21.2.13**

491. As notified, Objective 21.2.13 read as follows;

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<sup>525</sup> Submission 806

<sup>526</sup> C Barr, Section 42A Report, Page 84, Para 17.23

<sup>527</sup> J Brown, Evidence, Page 15, Para 2.24

<sup>528</sup> B Farrell, Evidence, Page 23, Para 106

*Enable rural industrial activities within the Rural Industrial Sub Zones, that support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.*

492. One submission supported the objective<sup>529</sup>. One submission sought clarification as to the location of the Rural Industrial Sub-Zones<sup>530</sup>. One submission sought that the objective be amended as follows:

*Enable rural industrial activities and infrastructure within the Rural Industrial Sub Zones, that support farming and rural productive activities, while avoiding remedying or mitigating effects on rural character, amenity and landscape values.*<sup>531</sup>

493. In the Section 42A Report, Mr Barr identified that the Rural Industrial Sub Zone was located in Luggate (Map 11a)<sup>532</sup>. In Appendix 2 to that report, Mr Barr recommended that the submission from Transpower be rejected, noting that the Rural Industrial Sub Zone was distinct from the Rural Zone and would lend itself to infrastructure due its character and visual amenity.

494. In the Council's memorandum on revising the objectives to be more outcome focused<sup>533</sup>, Mr Barr recommended rewording of the objective as follows;

*Rural industrial activities within the Rural Industrial Sub Zones will support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.*

495. Ms Craw, in evidence for Transpower, agreed with Mr Barr and noted that there were no Transpower assets with the Rural Industrial Sub Zone<sup>534</sup>.

496. We agree with Mr Barr's rewording of the objective as being more outcome orientated and find that it is the most appropriate way to achieve the purpose of the Act. We think that Mr Barr's reasoning supports the inclusion of the reference to infrastructure rather than the reverse. If the character and visual amenity (and the permitted activity rules) are consistent with infrastructure in this Sub Zone, the policy should provide for it.

497. Accordingly, we recommend that Objective 21.2.13 be reworded as follows;

*Rural industrial activities and infrastructure within the Rural Industrial Sub-Zones will support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.*

#### **4.52 Policies 21.2.13.1 – 21.2.13.2**

498. We observe that there were no submissions on Policies 21.2.13.1 and 21.2.13.2. We therefore recommend they be renumbered but otherwise be retained as notified.

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<sup>529</sup> Submission 217

<sup>530</sup> Submission 806

<sup>531</sup> Submission 805

<sup>532</sup> C Barr, Section 42A Report, Page 51, Para 13.48

<sup>533</sup> Council Memoranda dated 13 April 2016

<sup>534</sup> A Craw, Evidence, Page 5, Para 26

#### 4.53 New Policy – Commercial Operations Close to Trails

499. A submission from Queenstown Trails Trust<sup>535</sup> sought a new policy to enable commercial operations, associated with and close to trail networks.

500. In the Section 42A Report, Mr Barr considered that a policy recognising the potential benefits of the trail was generally appropriate, but that the policy should not extend to creating new rules or amending existing rules for the trails or related commercial activities, as it was important that the effects of such activities should be considered on a case by case basis.<sup>536</sup> Mr Barr undertook a section 32AA of the Act evaluation as to the effectiveness and efficiency of the policy and recommended wording for a policy that supported activities complementary to the trails as follows:

*Provide for a range of activities that support the vitality, use and enjoyment of the Queenstown Trail and Upper Clutha Tracks Trail network on the basis that landscape and rural amenity is protected, maintained or enhanced and established activities are not compromised.*

501. In reply, Mr Barr recommended the removal of the word “Trail” after the words “Upper Clutha Tracks”<sup>537</sup> which we understand was to correct an error.

502. We agree with and adopt Mr Barr’s reasoning as set out above. Noting our recommendation above to combine notified Objectives 21.2.1 and 21.2.9, we find the new policy is the most appropriate way in which to achieve our recommended revised Objective 21.2.1.

503. Accordingly, we recommend a new policy to be worded and numbered as follows;

*21.2.1.16 Provide for a range of activities that support the vitality, use and enjoyment of the Queenstown Trail and Upper Clutha Tracks networks on the basis that landscape and rural amenity is protected, maintained or enhanced and established activities are not compromised.*

#### 4.54 New Objective and Policies – Commercial Recreation Activities

504. A submission from Skydive Queenstown Ltd<sup>538</sup> sought insertion of the following new objective and policies;

Objective

*Recognise and provide opportunities for recreation, including commercial recreation and tourism activities.*

Policy

*Recognise the importance and economic value of recreation including commercial recreation and tourist activities.*

Policy

*Ensure that recreation including commercial recreation and tourist activities do not degrade rural quality or character or visual amenities and landscape values*

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<sup>535</sup> Submission 671

<sup>536</sup> C Barr, Section 42A Report, Pages 45-46, Paras 13.18 – 13.22

<sup>537</sup> C Barr, Reply, Appendix 1, Page 21-5

<sup>538</sup> Submission 122

505. In the Section 42A Report, Mr Barr addressed this request only in a general sense as part of an overall consideration of commercial activities in the Rural Zone<sup>539</sup>, expressing the view that recreation, commercial recreation and tourism were adequately contemplated and managed. Mr Barr recommended that the submission be rejected.
506. The evidence of Mr Brown for Skydive Queenstown Ltd did not, as far as we could identify, directly address this relief sought.
507. In evidence for Totally Tourism Ltd<sup>540</sup> and Skyline Enterprises Ltd<sup>541</sup>, Mr Dent noted the objectives and policies under 21.2.9 (as notified) did not refer to “commercial recreation activity” and he also noted that there was a separate definition for “commercial recreation activity” as compared to the definition of “commercial activity”.<sup>542</sup> Mr Dent went on to recommend the following objective and policies to fill the identified policy gap as follows;

Objective

*Commercial Recreation in the Rural Zone occurs at a scale that is commensurate to the amenity vales of the specified location.*

Policy

*The group size of commercial recreation activities will be managed so as to be consistent with the level of amenity anticipated in the surrounding environment.*

Policy

*To avoid, remedy or mitigate the adverse effects of commercial recreation activities on the natural character, peace and tranquillity of remote areas of the District.*

Policy

*To avoid, remedy or mitigate any adverse effects commercial recreation activities may have on the range of recreational activities available in the District and the quality of the experience of people partaking of these opportunities.*

Policy

*To ensure the scale and location of buildings, noise and lighting associated with commercial recreation activities are consistent with the level of amenity anticipated in the surrounding environment.*

508. In summary, Mr Dent considered that such a suite of provisions was appropriate given the contribution of commercial recreation activities to the district, but accepted that it was important that those activities did not adversely affect amenity values by way of noise, overcrowding and use of remote areas.<sup>543</sup> Mr Dent also noted that he had derived the policies from the ODP Section 4.4- Open Space and Recreation.
509. In reply, Mr Barr supported the intent of the Mr Dent’s recommendation, but noted legal submissions from Council on the Strategic Chapters that ODP Section 4.4- Open Space and Recreation was part of Stage 2 of the plan review and not part of this PDP under our consideration. Mr Barr recommended that the submitter resubmit under Stage 2, rather than

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<sup>539</sup> C Barr, Section 42A Report, Page 20, Para 8.32

<sup>540</sup> Submission 571

<sup>541</sup> Submission 574

<sup>542</sup> S Dent, Evidence, Page 11, Paras 65 -66

<sup>543</sup> S Dent, Evidence, Page 11-12, Paras 68 -73

have the provisions in two places. Mr Barr also noted the provisions sought by Mr Dent were not requested in the submission of Totally Tourism Ltd.<sup>544</sup>

510. We consider Mr Dent's suggested objective both narrows the relief sought in Skydive Queenstown's submission and tailors it to be specific to the Rural Zone, and is therefore properly the subject of this chapter (rather than necessarily needing to be dealt with in Stage 2 of the District Plan Review). As such, we consider it is within the scope provided by that submission, and generally appropriate, subject to some tightening to better meet the purpose of the Act.
511. The suggested policies likewise address relevant issues, but require amendment both to align with the objective and to fall within the scope provided by the Skydive Queenstown submission (i.e. ensure rural quality or character or visual amenities and landscape values are not degraded).
512. In addition, we find that the inclusion of these objectives and policies is consistent both with the Stream 1B Hearing Panel's findings on the Strategic Chapters, and with our findings on the inclusion of reference to activities that rely on rural resources. We also consider that given the importance of Commercial Recreation Activities to the district, that it is important that the matter be addressed now, rather than leaving it for consideration as part of a later stage of the District Plan review.
513. Accordingly, we recommend that a new objective and suite of policies to be worded and numbered as follows as follows;

#### 2.2.10 Objective

*Commercial Recreation in the Rural Zone is of a nature and scale that is commensurate to the amenity values of the location.*

#### Policies

- 21.2.10.1 *The group size of commercial recreation activities will be managed so as to be consistent with the level of amenity anticipated in the surrounding environment.*
- 21.2.10.2 *To manage the adverse effects of commercial recreation activities so as not to degrade rural quality or character or visual amenities and landscape values.*
- 21.2.10.3 *To avoid, remedy or mitigate any adverse effects commercial recreation activities may have on the range of recreational activities available in the District and the quality of the experience of people partaking of these opportunities.*
- 21.2.10.4 *To ensure the scale and location of buildings, noise and lighting associated with commercial recreation activities are consistent with the level of amenity existing and anticipated in the surrounding environment.*

#### **4.55 New Objective and Policies – Community Activities and Facilities**

514. One submission sought the inclusion of objectives, policies and rules for community activities and facilities in the Rural Zone<sup>545</sup>. Appendix 2 of the Section 42A Report recommended the submission be rejected on the basis that the existing provisions in the PDP were appropriate in this regard.

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<sup>544</sup> C Barr, Reply, Page 34, Para 12.1

<sup>545</sup> Submission 524

515. Ms McMinn, in tabled evidence for the Ministry of Education, noted that while the Ministry relies on designations under the Act for the establishment of schools, it also relies on policy support to enable ongoing education and community activities. Ms McMinn advised that the Ministry had similarly submitted on the proposed RPS and that for consistency with the proposed RPS, provisions such as sought in the Ministry's submission should be included<sup>546</sup>. Ms McMinn did not identify where in the Proposed RPS this matter was addressed.
516. We could not identify a response to this matter in the Council's reply.
517. On review of the decisions version of the proposed RPS we could not identify provisions providing for the enablement of education and community activities. The designation powers of a requiring authority are very wide and we are not convinced that additional policy support would make them any less effective.
518. Accordingly, we recommend that the submission of the Ministry of Education be rejected.

#### **4.56 New Objective and Policies - Lighting**

519. One submission sought a new objective and policies in relation to the maintenance of the ability to view the night sky, avoid light pollution and to promote the use of LED lighting in new subdivisions and developments<sup>547</sup>.
520. Specific wording of the objectives or policies were included in the submission. Mr Barr, in the Section 42A Report considered that Policy 21.2.1.5 and the landscape assessment matters 21.7.14(f) already addressed the matters raised<sup>548</sup>. We did not receive specific evidence in support of the requested objective and policies. We agree with Mr Barr and in the absence of evidence providing and/or justifying such objectives and policies, we recommend that this submission be rejected.

## **5 21.3 OTHER PROVISIONS AND RULES**

521. We understand the purpose of notified Section 21.3 is to provide clarification as to the relationship between Chapter 21 and the balance of the PDP. Section 21.3.1 as notified outlined a number of district wide chapters of relevance to the application of Chapter 21.
522. There was one submission on Section 21.3.1<sup>549</sup>, which sought that specific emphasis be given to Chapter 30 as it relates to any use, development or subdivision near the National Grid. Mr Barr recommended acceptance in part of submission but we could find no reasons set out in the report for reaching that recommendation<sup>550</sup>. Ms Craw, in evidence for Transpower, stated incorrectly that the officer's report had recommended declining the relief sought and she considered that the planning maps and existing provisions were sufficient to guide plan users to the rules under Chapter 30 regarding the National Grid<sup>551</sup>. We with agree with Ms Craw that sufficient guidance is already provided by way of the maps.
523. Accordingly, we recommend that the Transpower submission be rejected.

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<sup>546</sup> J McMinn, Tabled Evidence, Page 4, Paras 17 - 19

<sup>547</sup> Submissions 568

<sup>548</sup> C Barr, Sub

<sup>549</sup> Submission 805

<sup>550</sup> C Barr, Section 42A Report, Appendix 2, Page 80

<sup>551</sup> A Craw, Evidence, Page 6 -7, Paras 34 -36



524. Consistent with our approach in other chapters, we recommend the table in 21.3.1 only refer to PDP chapters, and that it distinguish between those notified in Stage 1 and those notified subsequently or yet to be notified (by showing the latter in italics). We recommend this change as a minor and non-substantive change under Clause 16(2) of the First Schedule.
525. Sections 21.3.2 and 21.3.3, as notified, contained a mixture of rules of interpretation and advice notes. We recommend these be re-arranged such that the rules be listed under Section 21.3.2 Interpreting and Applying the Rules, and the remainder under Section 21.3.3 Advice Notes.. The re-arrangement, incorporating the amendments discussed below, are included in Appendix 1.
526. There were no submissions on notified Section 21.3.2. We now address each of the submissions on notified section 21.3.3.
527. We questioned Mr Barr on the as notified Clarification 21.3.3.3 which used “site” to refer to the Certificate of Title, whereas the definition of site in the PDP is an area of land held in one Certificate of Title. Mr Barr agreed that this was an error. We recommend that this be corrected under Clause 16(2) of the First Schedule. Accordingly, we recommend 21.3.3.3. be renumbered 21.3.3.1 (we consider it an advice note) and be reworded as follows;
- Compliance with any of the following standards, in particular the permitted standards, does not absolve any commitment to the conditions of any relevant resource consent, consent notice or covenant registered on the computer freehold register of any property.*
528. As notified, 21.3.3.5 read as follows:
- Applications for building consent for permitted activities shall include information to demonstrate compliance with the following standards, and any conditions of the applicable resource consent conditions.*
529. One submission sought this be deleted. It argued that the requirement was ultra vires as the consents in question are under the Building Act<sup>552</sup>. Mr Barr recommended the submission be rejected, but we could find no reasons set out in the report for reaching that recommendation<sup>553</sup>. We received no other evidence in regard to this matter.
530. We consider this provision is no more than an advice note and of no regulatory effect. We have left the wording unaltered and renumbered it 21.3.3.3.. Accordingly, we recommend that the submission of QPL be rejected.
531. Clarification point 21.3.3.7 as notified read as follows;
- The existence of a farm building either permitted or approved by resource consent under Table 4 – Farm Buildings shall not be considered the permitted baseline for residential or other non-farming activity development within the Rural Zone.*
532. One submission sought this be retained<sup>554</sup>, one that it be deleted<sup>555</sup> as the Environment Court had called it into question, and one submission sought that the reference to “or other non-

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<sup>552</sup> Submission 806

<sup>553</sup> C Barr, Section 42A Report, Appendix 2, Page 80

<sup>554</sup> Submission 45

<sup>555</sup> Submission 806

*farming*” be removed<sup>556</sup>. Mr Barr recommended the submissions seeking deletion or amendment be rejected, but we could find no reasons set out in the report for reaching that recommendation<sup>557</sup>. We received no other evidence in regard to this matter.

533. Taking into account the specific policy provision made for farm buildings (Policy 21.2.1.2) as opposed to the regime applying to residential and other non-farming activities, we conclude there is justification in retaining this statement. We also conclude it is more in the nature of a rule explaining how the regulatory regime of the Chapter applies. Accordingly, we recommend that this clause retain the notified wording after altering the reference to “Table 4” to “Rule 21.4.2 and Table 5” and relocated so as to be provision 21.3.2.5.

534. As notified, clarification point 21.3.3.8 read as follows;

*The Ski Area and Rural Industrial Sub Zones, being Sub Zones of the Rural Zone, require that all rules applicable to the Rural Zone apply unless stated to the contrary.*

535. Two submissions sought that this clarification be amended to state that in the event of conflict between the Ski Area Sub Zone Rules in as notified Table 7 and the other rules in Chapter 21, the provisions in Table 7 would prevail<sup>558</sup>.

536. These submissions were not directly addressed in the Section 42A Report. Mr Fergusson in evidence for Soho Ski Area Ltd and Treble Cone Investments Ltd, addressed this clarification point as part of a wider consideration of the difference between Ski Area Sub Zone Accommodation and Visitor Accommodation in the Rural Area<sup>559</sup>. We addressed this difference between the types of accommodation in Section 5.19 above, and recommended a separate definition for Ski Area Sub Zone Accommodation. We think that this addresses the potential issue raised in the submission and accordingly recommend that the submission be rejected.

537. We find this to be an implementation rule and have relocated to be provision 21.3.2.6.

538. Clarification point 21.3.3.9 related to the calculation of “ground floor area” in the Rural Zone. One submission sought either that the clarification point be deleted, relying on the definition of “ground floor area”, or that the definition of “ground floor area” be amended so as to provide for the rural area<sup>560</sup>. Mr Barr recommended the submission be rejected<sup>561</sup> but we could find no reasons set out in the report for him reaching that recommendation. We received no direct evidence on this matter.

539. Although Submission 806 states that there is a definition of “Ground floor area” in Chapter 2, that definition, as notified, only applied to signs<sup>562</sup>, not buildings.. We note that the definition of ground floor area included in Section 21.3.3 is also included in Chapters 22 and 23. In our view, rather than repeating this as an implementation rule, it should be included in Chapter 2 as a definition. Therefore, we recommend that Submission 806 is accepted to the extent that

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<sup>556</sup> Submission 519

<sup>557</sup> C Barr, Section 42A Report, Appendix 2, Page 80

<sup>558</sup> Submissions 610, 613

<sup>559</sup> C Fergusson, Evidence, Pages 34-35, Para 129 - 133

<sup>560</sup> Submission 806

<sup>561</sup> C Barr, Section 42A Report, Appendix 2, Page 81

<sup>562</sup> We note that the notified definition does not appear to define a ground area in any event and is the subject of the Stage 2 Variations.

21.3.3.9 is deleted and the definition is included in Chapter 2<sup>563</sup>. We also recommend that the equivalent amendments are made in Chapters 22 and 23.

540. Clarification Point 21.3.3.11 set out the meaning of the abbreviations used in the Rule Tables in 21.4 of the PDP. It also notes that any activity that is not permitted or prohibited requires a resource consent.
541. One submission from QPL sought that the clarification point be amended to ensure that the rules are applied on an effects basis<sup>564</sup>. Mr Barr recommended the submission be rejected<sup>565</sup>, but we could find no reasons set out in the report for him reaching that recommendation. We received no direct evidence on this matter.
542. On review of the submission itself, it sets out as the reason for the submission that “*the Council should not attempt to list all activities that may occur and should instead rely on the proposed standard to ensure that effects are appropriately managed.*”
543. To our mind, this has more to do with the content of rules than clarification of the meaning of the abbreviations, or the effect of activities being permitted or prohibited for that matter. We recommend that the submission as it relates to 21.3.3.11 be rejected. As a result of our re-arrangement of the clauses in 21.3.2 and 21.3.3, this is renumbered 21.3.2.9.
544. In his Reply Statement, Mr Barr recommended inclusion of the following three matters for clarification purposes:

*21.3.3.11 The surface of lakes and rivers are zoned Rural, unless otherwise stated.*

*21.3.3.12 In this chapter the meaning of bed shall be the same as in section 2 of the RMA.*

*21.1.1.13 Internal alterations to buildings including the replacement of joinery is permitted.*

545. We consider the first of these is a useful inclusion to avoid any ambiguity. We do not see the second as helpful as it may imply that when considering provisions in other chapters, the meaning of bed given in section 2 of the Act does not apply. We would have thought the defined term from the Act would apply unless the context required otherwise. Although we are not sure the third is necessary, there is no reason not to include it. We recommend these be included as 21.3.2.8 and 21.3.2.9.

## 6 SECTION 21.4 – RULES – ACTIVITIES

### 6.1 Structure of Rules and Tables

546. In considering the rules and their layout in the tables, we found these difficult to follow. For example, in some cases activities and standards were combined under ‘activities’. In these situations, we recommend that the activities and standards be separated and the tables be renumbered. We note that we have already addressed the table for the surface of lakes and rivers, activities and standards in Section 3.4 above. Another example is where the rules specify that activities are prohibited with exceptions detailing what is permitted, rather than setting out firstly what is permitted and secondly, if the activity is not permitted, what the appropriate activity status is.

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<sup>563</sup> As a recommendation to the Stream 10 Hearing Panel.

<sup>564</sup> Submission 806

<sup>565</sup> C Barr, Section 42A Report, Appendix 2, Page 81

547. Taking those matters into account, we recommend re-ordering the tables into the following sequence, which we consider more logical and easier for plan users to follow:

Table 1	Activities Generally
Table 2	Standards applying generally in zone
Table 3	Standards applying to Farm Activities (additional to those in Table 2)
Table 4	Standards for Structures and Buildings (other than Farm Buildings) (additional to those in Table 2)
Table 5	Standards for Farm Buildings (additional to those in Table 2)
Table 6	Standards for Commercial Activities (additional to those in Table 2)
Table 7	Standards for Informal Airports (additional to those in Table 2)
Table 8	Standards for Mining and Extraction Activities (additional to those in Table 2)
Table 9	Activities in the Ski Area Sub Zone additional to those listed in Table 1
Table 10	Activities in Rural Industrial Subzone additional to those listed in Table 1
Table 11	Standards for Rural Industrial Subzone
Table 12	Activities on the Surface of Lakes and Rivers
Table 13	Standards for Activities on the Surface of Lakes and Rivers
Table 14	Closeburn Station: Activities
Table 15	Closeburn Station: Standards for Buildings and Structures

548. We consider these to be minor correction matters that can be addressed under Clause 16(2) and we make recommendations accordingly.

549. In addition, the terminology of the rules themselves needs amendment; using the term “shall” could be read as providing a degree of discretion that is not appropriate in a rule context. We recommend that the term “must” replace the term “shall” except where the context requires the use of “shall” or another term. Again, we consider these to be minor correction matters that can be addressed under Clause 16(2) and we make recommendations accordingly.

## 6.2 Table 1 (As Notified) - Rule 21.4.1 - Activity Default Status

550. Rule 21.4.1 as notified identified that activities not listed in the rule tables were “*Non-complying*” Activities. A number of submissions<sup>566</sup> sought that activities not listed in the tables should be made permitted.

551. We did not receive any direct evidence in regard to this matter, although Mr Barr addressed it in his Section 42A Report<sup>567</sup>. We agree with Mr Barr that it is not apparent that the effects of all non-listed activities can be appropriately avoided, remedied or mitigated in the Rural Zone across the District, such that a permitted activity status is the most appropriate way in which to achieve the objectives of Chapter 21. We therefore recommend that the default activity status for activities not listed in the rule table remain non-complying. Consistent with our approach

<sup>566</sup> Submissions 624, 636, 643, 688, 693

<sup>567</sup> C Barr, Section 42A Report, Paras 8.9 – 8.10

of listing activities from the least restricted to the most restricted, we recommend this rule be located at the end of Table 1. We also recommend that it only refer to those tables that list activities (as opposed to standards applying to activities). To remove any possible ambiguity we recommend it read:

*Any activity not otherwise provided for in Tables 1, 9, 10, 12 or 14.*

### **6.3 Rule 21.4.2 – Farming Activity**

552. The only submissions on this rule supported it<sup>568</sup>. With the re-arrangement of the tables of standards discussed above, a consequential change is required to this rule to refer to Table 3 as well as Table 2. Other than that change and renumbering to 21.4.1, we recommend the rule be adopted as notified.

### **6.4 Rule 21.4.3 – Farm Buildings**

553. As notified, Rule 21.4.3 provided for the “Construction or addition to farm buildings that comply with the standards in Table 4” as permitted activities.

554. Three submissions sought that the rule be retained<sup>569</sup>. One submission sought to roll-over provisions of the ODP so that farming buildings not be permitted activities.<sup>570</sup> One submission supported permitted activity status for farm buildings, but sought that Council be firm where a landholder establishes farm buildings and then makes retrospective application for consent so that the buildings can be used for a non-farming purposes<sup>571</sup>.

555. Mr Barr, in the Section 42A Report, recommended that the submission from UCES be rejected for the reasons set out in the Section 32 Report.<sup>572</sup> The Section 32 Report concluded that administrative efficiencies can be achieved while maintaining landscape protection, by requiring compliance with standards in conjunction with a permitted activity status for farm buildings.<sup>573</sup>

556. We have already addressed the permitted activity status for farming activities in Section 7.3 above. Similarly, we have also addressed farm buildings in Policy 21.2.1.2, as notified, above (Section 5.3) and recommended allowing farm buildings on landholdings over 100 ha subject to managing effects on landscape values.

557. Accordingly, we recommend that Rule 21.4.3 be renumbered 21.4.2 and refer to Table 5, but otherwise be retained as notified.

558. We think that the submission of M Holor<sup>574</sup> raises a genuine issue regarding the conversion of farm buildings to a non-farming use, such as a dwelling. We are aware of situations in the district where applicants seeking consent for such conversions rely on existing environment arguments in order to obtain consent. This is sometimes referred to as ‘environmental creep’.

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<sup>568</sup> Submissions 325, 384, 600 (supported by FS1209, opposed by FS1034), 608

<sup>569</sup> Submissions 325, 348, 608

<sup>570</sup> Submission 145

<sup>571</sup> Submission 45

<sup>572</sup> C Barr, Section 42A Report, Page 29, Para 10.4

<sup>573</sup> C Barr, Section 42A Report, Appendix 3, Section 32 Evaluation Report, Landscape, Rural Zone and Gibbston Character Zone, Pages 18 - 19

<sup>574</sup> Submission 45

559. As notified, Rule 21.3.3.7 stated that farm building were not to be considered the permitted baseline for residential or other non-farming activities. We have recommended retaining this as implementation provision 21.3.2.5. We do not consider Submission 45 provides scope for any additional provision.

#### 6.5 Rule 21.4.4 – Factory Farming

560. There were no submission on this rule. However, this is an instance where a “standard” in Table 2 (as notified) classified certain types of factory farming non-complying (notified Rule 21.5.11). In addition, notified Rules 21.5.9 and 21.5.10 set standards for pig and poultry factory farming respectively. There were no submissions to Rules 21.5.9, 21.5.10 or 21.5.11.

561. We recommend, as a minor amendment under Clause 16(2), that Rule 21.4.4 be renumbered 21.4.3, amended to be restricted to pigs and poultry, and to refer to Table 2 and 3. In addition, we recommend in the same way that notified Rule 21.5.11 be relocated to 21.4.4. The two rules would read:

21.4.3	Factory Farming limited to factory farming of pigs or poultry that complies with the standards in Table 2 and Table 3.	P
21.4.4	Factory Farming animals other than pigs or poultry.	NC

#### 6.6 Rule 21.4.5 – Use of Land or Building for Residential Activity

562. As notified, Rule 21.4.5 provided for the “the use of land or buildings for residential activity except as provided for in any other rule” as a discretionary activity.

563. One submission sought that this rule be retained<sup>575</sup> and one sought that it be deleted<sup>576</sup>.

564. The Section 42A Report did not address these submissions directly. Rather, Mr Barr addressed residential activity and residential/non-farming buildings in a general sense<sup>577</sup>, concluding that Rule 21.4.5 was appropriate as non-farming activities could have an impact on landscape<sup>578</sup>. Although not directed to the submissions on this rule, Mr Barr considered that discretionary activity status was more appropriate to that of non-complying.

565. Mr Barr’s discussion addressed submissions made by UCES. The UCES position was based on the potential for proposed legislative amendments to make the residential activity application non-notified if they are discretionary activities. This matter was also canvassed extensively in the Stream 4 Hearing (Subdivision). We adopt the reasoning of the Stream 4 Hearing Panel<sup>579</sup> in recommending this submission be rejected.

566. We heard no evidence from QPL in support of its submission seeking deletion of the rule. In tabled evidence for Matukitiki Trust, Ms Taylor agreed with the recommendation in the Section 42A Report.<sup>580</sup>

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<sup>575</sup> Submission 355

<sup>576</sup> Submission 806

<sup>577</sup> C Barr, Section 42A Report, Pages 32-37, Paras 11.1 – 11.28

<sup>578</sup> C Barr, Section 42A Report, Pages 36 – 37, Para 11.25

<sup>579</sup> Report 7, Section 1.7

<sup>580</sup> L Taylor, Evidence, Appendix A, Page 6

567. We accept Mr Barr’s recommendation, given the submissions before us and the evidence we heard. Thus, we recommend the rule be retained as notified but be relocated to be Rule 21.4.10.

#### **6.7 Rule 21.4.6 – One Residential Unit per Building Platform**

568. As notified, Rule 21.4.6 provided for “One residential unit within any building platform approved by resource consent” as a permitted activity.

569. Three submissions sought that this rule be retained<sup>581</sup>, four submissions sought that it be deleted<sup>582</sup>, one submission sought that the rule be replaced with the equivalent provisions of the ODP<sup>583</sup> which would have had the effect of deleting the rule, and one submission sought that the rule be amended to clarify that it only applies to the activity itself, as there are other rules (21.4.7 and 21.4.8) that relate to the actual buildings<sup>584</sup>.

570. In the Section 42A Report, Mr Barr addressed some of these points directly, noting that it is generally contemplated that there is one residential unit per fee simple lot and that Rule 21.4.12 provides for one residential flat per residential unit. He was of the opinion that the proposed change to a permitted activity status from controlled in the ODP would significantly reduce the number of consents without compromising environmental outcomes.<sup>585</sup>

571. At this point we record that that a similar provision to notified Rule 21.4.6, is also contained in Chapter 22, Rural Residential & Rural Lifestyle (Rule 22.5.12.1) which also has a limit within the Rural Lifestyle Zone of one residential unit within each building platform. Therefore, we address the number of residential units and residential flats within a building platform for the Rural, and Rural Lifestyle zones at the same time.

572. As notified, Rule 22.5.12.1, (a standard) provided for “One residential unit located within each building platform”. Non-compliance with the standard results in classification as a non-complying activity.

573. Four submissions sought that this rule be deleted<sup>586</sup> and seven submissions sought that it be amended to provide for two residential units per building platform<sup>587</sup>.

574. In the Section 42A Report for Chapter 22, Mr Barr considered that two dwellings within one building platform would alter the density of the Rural Lifestyle zone in such a way as to affect the rural character of the zone and also create an ill-conceived perception “that subdivision is contemplated based on the argument that the effect of the residential unit is already established”<sup>588</sup>.

575. Responding to the reasons provided in the submissions, Mr Barr also considered that the rule was not contrary to Objective 3.2.6.1 as notified, which sought to ensure a mix of housing opportunities. In Mr Barr’s view, that objective has a district wide focus and does not require

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581 Submissions 355, 384, 806

582 Submissions 331, 348, 411, 414

583 Submission 145

584 Submission 608

585 C Barr, Section 42A Report, Page 34, Paras 11.11 - 11.14

586 Submissions 331, 348, 411, 414

587 Submissions 497, 513, 515, 530, 532, 534, 535

588 C Barr, Section 42A Report – Chapter 22, Pages 11 – 12, Paras 8.8 – 9.9

provision for intensification in all zones. Rather, the intention is that intensification be promoted within urban boundaries, but not in other zones.<sup>589</sup>

576. Mr N Geddes, in evidence for NT McDonald Family Trust *et al*<sup>590</sup>, was of the view that to require discretionary activity status for an additional residential unit under 21.4.6 while a residential flat was a permitted activity, was unnecessary and unbalanced, and not justified by a s32 analysis. In relation to Rule 22.5.1.2.1, Mr Geddes observed that there was no section 32 analysis supporting the rule and he disagreed with Mr Barr as to the perception that subdivision was contemplated. He noted that subdivision is managed as a discretionary activity under Chapter 27, and two units in one approved building platform would provide a wider range of opportunities<sup>591</sup>.
577. Mr Goldsmith, in evidence for Arcadian Triangle, suggested that within the Rural Lifestyle Zone, amending the residential flat provision to a separate residential unit was a fairly minor variation but needed caveats, e.g. further subdivision prevented, to avoid abuse. Mr Goldsmith considered two residential units within a single 1000m<sup>2</sup> building platform would not create a perceptible difference to one residential unit and one residential flat, where the residential flat could be greater than 70m<sup>2</sup>. Addressing the subdivision issue raised by Mr Barr, Mr Goldsmith suggested that to make it clear that subdivision was not allowed, the rule could make subdivision a prohibited activity.<sup>592</sup>
578. Mr Farrell, in evidence for Wakatipu Equities Ltd<sup>593</sup> and G W Stalker Family Trust<sup>594</sup> raised similar issues to that of Mr Geddes and Mr Goldsmith. He also expressed the view that the rule contradicted higher level provisions (Objective 3.2.6.1) and noted that two residential units within a building platform would be a more efficient and effective use of resources<sup>595</sup>. However, in his summary presentation to us, Mr Farrell advised that his evidence was particularly directed to issues in the Wakatipu Basin, rather than to the wider District.
579. In reply, Mr Barr noted that residential flat *"...sits within the definition of Residential Unit, therefore, if two Residential Units are allowed, there would be an expectation that a Residential Flat would be established with each Residential Unit. In addition, within a single building platform with two Residential Units there could be four separate living arrangements. From an effects based perspective this could be well beyond what was contemplated when the existing building platforms in the Rural General Zone were authorised."*<sup>596</sup>
580. Mr Barr also considered that in the Rural and Rural Lifestyle Zones, the size of a residential flat could be increased from 70m<sup>2</sup> to 150m<sup>2</sup> to address the concern raised by Mr Goldsmith that the 70m<sup>2</sup> size for a residential flat was arbitrary and related to an urban context. Mr Barr also considered that this solution would mean, among other things, that subdivision of residential flat from a residential unit should be a non-complying activity, and that the only amendment required is to the definition of residential flat which would therefore reduce the complexity

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<sup>589</sup> C Barr, Section 42A Report – Chapter 22, Page 12, Para 8.10

<sup>590</sup> Submissions 411, 414

<sup>591</sup> N Geddes, Evidence, Page 6, Paras 34 - 35

<sup>592</sup> W Goldsmith, Evidence, Page 14, Paras 4.3 – 4.6 and Summary, Page 1, Para 2

<sup>593</sup> Submission 515

<sup>594</sup> Submission 535

<sup>595</sup> B Farrell, Evidence, Page 36 Para 155

<sup>596</sup> C Barr, Reply, Chapter 21, Page 18, Para 6.3



associated with controlling multiple residential units within a single building platform.<sup>597</sup> We note that Mr Barr provided a similar response in reply regarding Chapter 22.

581. Mr Barr's recommended amendment to the definition of residential flat was as follows;

*"Means a residential activity that comprises a self-contained flat that is ancillary to a residential unit and meets all of the following criteria:*

- a. *Has a total floor area not exceeding 70m<sup>2</sup>, and 150m<sup>2</sup> in the Rural Zone and Rural Lifestyle Zone, not including the floor area of any garage or carport;*
- b. *contains no more than one kitchen facility;*
- c. *is limited to one residential flat per residential unit; and*
- d. *is situated on the same site and held in the same ownership as the residential unit, but may be leased to another party.*

*Notes:*

- a. A proposal that fails to meet any of the above criteria will be considered as a residential unit.
- b. Development contributions and additional rates apply."

582. Mr Barr recommended that Rule 21.4.6 and 22.5.12 remain as notified.

583. Firstly, we note that as regards the application of this rule in the Wakatipu Basin, the notification of the Stage 2 Variations has overtaken this process. It has also involved, through the operation of Clause 16B of the First Schedule to the Act, transferring many of these submissions to be heard on the Stage 2 Variations.

584. While we agree with Mr Barr that the simplicity of the solution he recommended is desirable, we do note our unease about using a definition to set a standard for an activity<sup>598</sup>. In this instance, however, to remove the standard from the definition would require amendment to all zones in the PDP. We doubt there is scope in the submissions to allow the Council to make such a change. Subject to these concerns, Mr Barr's solution effectively addresses the issues around potential consequential subdivision effects from creating a density of dwellings within a building platform that would not be consistent with the objectives in the strategic chapters and in this chapter.

585. Accordingly, we recommend that aside from renumbering, Rules 21.4.6 and 22.5.12.1 remain as notified and that the definition of Residential Flat be worded as follows:

*"Means a residential activity that comprises a self-contained flat that is ancillary to a residential unit and meets all of the following criteria:*

- a. *the total floor area does not exceed:*
  - i. *150m<sup>2</sup> in the Rural Zone and Rural Lifestyle Zone;*

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<sup>597</sup> C Barr, Reply, Chapter 21, Pages 18 - 19, Para 6.5

<sup>598</sup> We note that the Stream 6 Hearing Panel raised the same concerns.

ii. 70m<sup>2</sup> in any other zone;

not including in either case the floor area of any garage or carport;

b. it contains no more than one kitchen facility;

c. is limited to one residential flat per residential unit; and

d. is situated on the same site and held in the same ownership as the residential unit, but may be leased to another party.

Notes:

a. A proposal that fails to meet any of the above criteria will be considered as a residential unit.

b. Development contributions and additional rates apply.”

586. We return to the issue of density as it applies to other rules and the objectives in Chapter 22 later in this report.

#### **6.8 Rules 21.4.7 & 21.4.8– Construction or Alteration of Buildings Within and Outside a Building Platform**

587. As notified, Rule 21.4.7, provided for “The construction and exterior alteration of buildings located within a building platform approved by resource consent, or registered on the applicable computer freehold register, subject to compliance with the standards in Table 3.” as a permitted activity.

588. As notified, Rule 21.4.8, provided for “The exterior alteration of any lawfully established building located outside of a building platform, subject to compliance with the standards in Table 3.” as a permitted activity.

589. Two submissions sought that Rule 21.4.7 be retained<sup>599</sup> and one submission sought that the rule be replaced with the equivalent provisions of the ODP<sup>600</sup> which relate to Construction and Alteration of Residential Buildings located within an approved residential building platform or outside a residential building platform.

590. One submission sought that Rule 21.4.8 be retained<sup>601</sup>, one submission sought that the activity status be changed to discretionary and one submission sought that the rule be replaced with the equivalent provisions of the ODP<sup>602</sup> which relate to Construction and Alteration of Residential Buildings located within an approved residential building platform or outside a residential building platform.

591. In the Section 42A Report, Mr Barr addressed these matters, noting that there was general support for the provisions, and that, as we noted above, he considered that permitted activity status would significantly reduce the number of consents without compromising environmental

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<sup>599</sup> Submissions 238, 608

<sup>600</sup> Submission 145

<sup>601</sup> Submission 608

<sup>602</sup> Submission 145

outcomes.<sup>603</sup> Mr Barr also considered that Rule 21.4.8 was necessary to provide for minor alterations of buildings that were lawfully established prior to the ODP regime which established the requirement for a building platform.<sup>604</sup>

592. Mr Haworth, in evidence for UCES on these rules, expressed the view that permitted activity status would engender an “anything goes” attitude and there would be less scrutiny given to proposals, which often results in greater adverse effects<sup>605</sup>. Mr Haworth considered that the controlled activity status in the same form as in the ODP should be retained so that adverse effects on landscape were adequately controlled.<sup>606</sup>

593. There was no evidence from UCES as to why, after 15 years of experience of the ODP regime, that a controlled activity was a more appropriate approach than a permitted activity with appropriate standards. In particular, no section 32 evaluation was presented to us which would have supported an alternative and more regulated approach. UCES sought this relief for a number of rules in Chapter 21 and in each case, the same position applies. We do not consider it necessary to address the UCES submission further.

594. In response to our questions, Mr Barr, in reply, recommended an amendment to Rule 21.4.8 as notified, to clarify that the rule applied to situations where there was no building platform in place. Mr Barr’s recommended wording was as follows;

*“The exterior alteration of any lawfully established building located outside of a building platform where there is not an approved building platform in place, subject to compliance with the standards in Table 3.”*

595. We consider that Mr Barr’s suggested rewording confuses rather than clarifies the position, because it refers both to a building outside a building platform and to there being no building platform; a situation which cannot in fact exist. The answer is to delete the words, “*located outside of a building platform*”. However, we also envisage a situation where there is a building platform in place and an extension is proposed that would extend the existing dwelling beyond the building platform. The NZIA<sup>607</sup> submission sought to address that circumstance by seeking discretionary activity status. From our reading this is already addressed in Rule 21.4.10 (as notified) that applies to construction not provided for by the any other rule as a discretionary activity and therefore no additional amendment is required to address it.

596. We concur with Mr Barr as to the activity status, and accordingly recommend that Rules 21.4.7 be renumbered 21.4.6 and the wording and activity status remain unchanged other than referring to Tables 2 and 4 rather than Table 3. We further recommend that Rule 21.4.8 be renumbered 21.4.7, the activity status remain permitted and be worded as follows;

*“The exterior alteration of any lawfully established building where there is no approved building platform on the site, subject to compliance with the standards in Table 2 and Table 4.”*

## **6.9 Rule 21.4.9 – Identification of Building Platform.**

597. As notified, Rule 21.4.9, provided for “The identification of a building platform not less than 70m<sup>2</sup> and not greater than 1000m<sup>2</sup>.” as a discretionary activity.

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<sup>603</sup> C Barr, Section 42A Report, Page 34, Para 11.13

<sup>604</sup> C Barr, Section 42A Report, Page 34, Para 11.14

<sup>605</sup> J Haworth, Evidence, Page 21, Para 152

<sup>606</sup> J Haworth, Evidence, Page 21, Para 156

<sup>607</sup> Submission 328

598. Three submissions sought that the rule be deleted<sup>608</sup>.
599. Mr Barr, in the Section 42A Report, recorded the reasons for the requested deletion from two of the submitters as being that *“defaulting to a non-complying activity if outside these parameters is arbitrary because ‘if the effects of a rural building platform sized outside of this range can be shown to be appropriate, there is no reason it should not be considered on a discretionary basis.’”*<sup>609</sup>
600. Mr Barr, did not disagree with that reason but noted *“that it could create a potential for proposals to identify building platforms that are very large (while taking the risk of having the application declined) and this in itself would be arbitrary. Similarly, if the effects of a rural building platform are appropriate irrespective of the size it would more than likely accord with s104D of the RMA.”*<sup>610</sup> In tabled evidence<sup>611</sup> for X-Ray Trust Limited, Ms Taylor agreed with Mr Barr’s recommendation<sup>612</sup>.
601. We agree with Mr Barr’s reasoning. We recommend that these submissions are rejected and that Rule 21.4.9 be remain as worded, but be renumbered 21.4.10.

#### **6.10 Rule 21.4.10 – Construction not provided for by any other rule.**

602. As notified, Rule 21.4.10, provided for “The construction of any building including the physical activity associated with buildings including roading, access, lighting, landscaping and earthworks, not provided for by any other rule.” as a discretionary activity.
603. Five submissions sought the provision be amended<sup>613</sup> as follows;
- “The construction of any building including the physical activity associated with buildings not provided for by any other rule.”*
604. Mr Barr considered the need to separate farming activities from non-farming activities in the Section 42A Report and noted that roading, access, lighting, landscaping and earthworks associated with non-farming activities can all impact on landscape.<sup>614</sup>
605. While arguably, specific reference to the matters listed is unnecessary since all are ‘associated’ with construction (and ongoing use) of a building, we think it is helpful to provide clarification of the sort of activities covered, for the reason Mr Barr identifies. Accordingly, we recommend that 21.4.10 be renumbered 21.4.11 and that the wording and activity status remain as notified.

#### **6.11 Rule 21.4.11 – Domestic Livestock**

606. There were no submissions on this rule. We recommend it be adopted as notified but renumbered as 21.4.8.

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<sup>608</sup> Submissions 693, 702, 806

<sup>609</sup> C Barr, Section 42A Report, Page 37, Para 11.26

<sup>610</sup> C Barr, Section 42A Report, Page 37, Para 11.27

<sup>611</sup> FS1349

<sup>612</sup> L Taylor, Evidence, Appendix A, Page 8

<sup>613</sup> Submissions 636, 643, 688, 693, 702

<sup>614</sup> C Barr, Section 42A Report, Pages 36-37, Para 11.25

## **6.12 Rule 21.4.12 – Residential Flat; Rule 21.4.13 - Home Occupations**

607. As notified, Rule 21.4.12, provided for “Residential Flat (activity only, the specific rules for the construction of any buildings apply).” as a permitted activity.
608. As notified, Rule 21.4.13, provided for “Home Occupation that complies with the standards in Table 5.” as a permitted activity.
609. One submission sought that Rule 21.4.12 be retained<sup>615</sup>. One submission sought that Rules 21.4.12 and 21.4.13 be deleted<sup>616</sup>. The reason stated for this relief was that the submitter considered these consequential deletions were needed for clarity that any permitted activity not listed but meeting the associated standards is a permitted activity and as such negates the need for such rules.
610. Mr Barr did not address these submissions directly in the Section 42A Report and nor did we receive any direct evidence in support of the deletion of these particular rules.
611. We have already addressed this matter in Section 7.2 above, noting that it is not apparent that the effects of all non-listed activities can be appropriately avoided, remedied or mitigated in the Rural Zone across the District, such that a permitted activity status is the most appropriate way in which to achieve the objectives of Chapter 21. We note that in Stream 6, the council officers recommended that reference to “residential flat” be removed as it was part of a residential unit as defined. That Panel (differently constituted) concluded that, as the definition of “residential unit” included a residential flat, there was no need for a separate activity rule for residential flat, but it would assist plan users if the listing of residential unit identified that such activity included a residential flat and accessory buildings. For consistency, “residential flat” should be deleted from this chapter and recommended Rule 21.4.5 read:

*One residential unit, including a single residential flat and any accessory buildings, within any building platform approved by resource consent.*

612. We so recommend.
613. We recommend that Rule 21.4.13 be retained as notified and renumbered 21.4.12..

## **6.13 Rule 21.4.14 – Retail sales from farms**

614. As notified, Rule 21.4.14, provided for, as a controlled activity:

*“Retail sales of farm and garden produce and wine grown, reared or produced on-site or handicrafts produced on the site and that comply with the standards in Table 5.*

*Except roadside stalls that meet the following shall be a permitted activity:*

- a. *the ground floor area is less than 5m<sup>2</sup>*
- b. *are not higher than 2.0m from ground level*
- c. *the minimum sight distance from the stall/access shall be 200m*
- d. *the minimum distance of the stall/access from an intersection shall be 100m and, the stall shall not be located on the legal road reserve.*

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<sup>615</sup> Submission 608

<sup>616</sup> Submission 806

*Control is reserved to all of the following:*

- *The location of the activity and buildings*
- *Vehicle crossing location, car parking*
- *Rural amenity and landscape character..”*

as a controlled activity.

615. One submission sought that the rule be amended so as to provide for unrestricted retail<sup>617</sup> and one submission sought that it be amended to a permitted activity for the reason to encourage locally grown and made goods for a more sustainable future<sup>618</sup>.
616. These submissions were not directly addressed in the Section 42A Report and nor did we receive any evidence directly in support of these submissions.
617. Given that lack of evidence we recommend that the submissions be rejected.
618. This rule, however, is an example of a situation as we identified in Section 7.5 above, where a permitted activity has been incorporated as an exception within a controlled activity rule. We recommend that the permitted activity be separated out as its own rule, and that the remainder of the rule be retained as notified.
619. Accordingly, we recommend that Rule 21.4.14 be renumbered as 21.4.16 and worded as follows;

*Retail sales of farm and garden produce and wine grown, reared or produced on-site or handicrafts produced on the site and that comply with the standards in Table 6, not undertaken through a roadside stall under 21.4.14.*

*Control is reserved to:*

- a. the location of the activity and buildings*
- b. vehicle crossing location, car parking*
- c. rural amenity and landscape character..”*

as a controlled activity.

620. In addition, we recommend a new permitted activity rule numbered 21.4.14 be inserted and worded as follows:

*Roadside stalls that meet the standards in Table 6.*

621. We further recommend that standards for roadside stalls be inserted into Table 6 worded as follows:

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<sup>617</sup> Submission 806

<sup>618</sup> Submission 238

- 21.9.3.1        *The ground floor area of the roadside stall must not exceed 5m<sup>2</sup>*
- 21.9.3.2        *The height must not exceed 2m<sup>2</sup>*
- 21.9.3.3        *The minimum sight distance from the roadside stall access must be at least 200m*
- 21.9.3.4        *The roadside stall must not be located on legal road reserve.*

**6.14 Rule 21.4.15 – Commercial Activities ancillary to recreational activities**

622. As notified, Rule 21.4.15 provided for:

*“Commercial activities ancillary to and located on the same site as recreational activities.”*  
as discretionary activities.

623. One submission sought that the rule be deleted so as to provide for commercial and recreational activities on the same site<sup>619</sup>.

624. This submission was not directly addressed in the Section 42A Report, other than implicitly, through a recommendation that it should be rejected as set out in Appendix 2<sup>620</sup>.

625. Mr Brown in evidence for QPL, considered that the rule should be expanded to provide for *“commercial recreational activities”* as well as *“recreational activities”* so as to provide clarification between these two activities which have separate definitions.<sup>621</sup>

626. Mr Barr, in reply considered that the amendment recommended by Mr Brown went some way to meeting the request of the submitter<sup>622</sup> and recommended that the Rule 21.4.15 be amended as follows;

*“Commercial activities ancillary to and located on the same site as commercial recreational or recreational activities.”*

627. We agree with Mr Brown that for the purposes of clarity, commercial recreational activities need to be incorporated into the rule. We heard no evidence in support of the rule being deleted.

628. Accordingly, we recommend that the activity status remain as discretionary, and that Rule 21.4.15 be renumbered as 21.4.17 and worded as follows;

*“Commercial activities ancillary to and located on the same site as commercial recreational or recreational activities.”*

**6.15 Rule 21.4.16 – Commercial Activities that comply with standards and Rule 21.5.21 Standards for Commercial Activities**

629. As notified, Rule 21.4.16, provided for:

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<sup>619</sup> Submission 806  
<sup>620</sup> C Barr, Section 42A Report, Appendix 2, Page 93  
<sup>621</sup> J Brown, Evidence, Page 14, Para 2.20 – 2.21  
<sup>622</sup> C Barr, Reply, Page 10. Para 4.8

*“Commercial recreation activities that comply with the standards in Table 5.”*  
as a permitted activity.

630. One submission sought that the rule be retained<sup>623</sup> and one submission sought that the rule be amended to include Heli-Skiing as a permitted activity<sup>624</sup>.

631. Rule 21.5.21 (Table 5 Standards for Commercial Activities) needs to be read in conjunction with Rule 21.4.16. As notified it read as follows:

*“Commercial recreation activity undertaken on land, outdoors and involving not more than 10 persons in any one group.”*

632. Non-compliance with this standard required consent as a discretionary activity.

633. Two submissions sought that Rule 21.5.21 be retained<sup>625</sup>, three submissions sought the number of persons be increased to anywhere from 15 – 28<sup>626</sup> and one submission sought that number of persons in the group be reduced to 5<sup>627</sup>.

634. The Section 42A Report did not address the issue of heli-skiing within the definition of commercial recreational activity.

635. Mr Dent in evidence for Totally Tourism, identified that heli-skiing fell with the definition of “commercial recreational activity”. We agree. Mr Dent described a typical heli-skiing activity and referenced the informal airport rules that applied and that heli-skiing activities undertaken on crown pastoral and public conservation land already required Recreation Permits and concessions. To avoid the additional regulation involved in requiring resource consents which would be costly and inefficient Mr Dent recommended that Rule 21.4.6 be reworded as follows;

*“Commercial recreation activities that comply with the standards in Table 5, and commercially guided heli-skiing.”*<sup>628</sup>

636. This would mean that commercially guided heli-skiing would be a permitted activity, but not be subject to the standards in Table 5. Having agreed with Mr Dent that heli-skiing activities fall within the definition of commercial recreational activity, we do not see how an exemption exempting commercially guided heli-skiing from the standard applied to any other commercial recreation activity for commercially guided heli-skiing can be justified. We address the issue of the numbers of person in a group below. We therefore recommend that the submission of Totally Tourism be rejected.

637. In relation to the permitted activity standard 21.5.21, Mr Barr expressed the opinion in the Section 42A Report that

*“... that the limit of 10 people is balanced in that it provides for a group that is commensurate to the size of groups that could be contemplated for informal recreation activities. Ten persons*

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<sup>623</sup> Submission 806

<sup>624</sup> Submission 571

<sup>625</sup> Submission 315

<sup>626</sup> Submissions 122, 621, 624

<sup>627</sup> Submission 489

<sup>628</sup> S Dent, Evidence, Page 13, Para 83



*is also efficient in that it would fit a min-van or a single helicopter, which I would consider as one group.*<sup>629</sup>

638. Mr Brown in evidence for QPL supported the group size of 10 person, as it recognised the small scale, low impact outdoor commercial recreation activities that can be accommodated without the resulting adverse effects on the environment and hence no need to obtain resource consent, compared to large scale activities that do require scrutiny.<sup>630</sup>

639. Mr Vivian, in evidence for Bungy NZ Limited and Paul Henry Van Asch, was of the opinion that the threshold of 5 people in a group (in the ODP) worked well and changing it to 10 people “... would significantly change how those commercial guided groups are perceived and interact with other users in public recreation areas”<sup>631</sup>. Mr Vivian, also noted potential safety issues as from his experience of applying for resource consents for such activities, safety was a key issue in consideration of any such application.

640. Ms Black, in evidence for RJL, was of the view that the number of persons should align with that of other legislation such as the Land Transport Act 2005, which provides for small passenger vehicles that carry 12 or less people and Park Management plans that provide concession parties of up to 15.<sup>632</sup> Mr Farrell, in evidence for RJL, concurred with Ms Black as to the benefit of alignment between the documents and recommended that the rule be reworded as follows:

*“Commercial recreation activity undertaken on land, outdoors and involving not more than ~~10~~ 15 persons in any one group (inclusive of guides).”*<sup>633</sup>

641. In reply Mr Barr, recommended increasing the number of persons from 10 to 12 to align with the minivan size, for the reasons set out in Ms Black’s evidence.<sup>634</sup>

642. Safety in regard to group size may be a factor, but we think that there is separate legislation to address such matters. The alignment between minivan size and other legislation as to the size of any group may be a practical consideration. However, we consider that the more important point is that there are no implications in terms of effects. We also recommend that in both Rules 21.4.16 and Rule 21.5.21, the defined term by used (i.e. commercial recreational activity) for clarity.

643. Accordingly we recommend that apart from that minor clarification and renumbering, Rule 21.4.16 be renumbered 21.4.13 with the Table reference amended, but otherwise remain as notified, and that Rule 21.5.21 be renumbered and worded as follows:

*Commercial recreational activities must be undertaken on land, outdoors and must not involve more than 12 persons in any one group.*

#### **6.16 Rule 21.4.17 – Cafes and Restaurants**

644. There were no submissions on this rule. We recommend it be retained as notified and renumbered as 21.4.18.

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<sup>629</sup> C Barr, Section 42A Report, Page 48, Para 13.35

<sup>630</sup> J Brown, Evidence, Page 14, Para 2.19

<sup>631</sup> C Vivian, Evidence, Pages 26 – 27, Para 5.7

<sup>632</sup> F Black, Evidence, Pages 7 – 8, Para 3.24 – 3.25

<sup>633</sup> B Farrell, Evidence, Page 27, Para 124

<sup>634</sup> C Barr, Reply, Page 10, Para 4.8

#### **6.17 Rule 21.4.18 – Ski Area Activities within a Ski Area Sub Zone**

645. As notified, Rule 21.4.18, provided for:

*“Ski Area Activities within the Ski Area Sub Zone.”*

as a permitted activity.

646. One submission sought that the rule be amended to add *“subject to compliance with the standards in Table 7”*<sup>635</sup>, as Table 1 does not specify what standards apply for an activity to be permitted (Table 7 as notified being the standards for Ski Area Activities within the Ski Area Sub Zones). Two submissions sought that the rule be moved completely into Table 7<sup>636</sup>. One submission sought that the Rule be amended as follows;

*“Ski Area Activities within the Ski Area Sub Zone and Tourism Activities within the Cardrona Alpine Resort (including Ski Area Activities).”*<sup>637</sup>.

647. Mr Barr, in the part of the Section 42A Report addressing the submission of Soho Ski Area Ltd, noted that Table 1 generally set out activities and the individual tables set out the standards for those activities.<sup>638</sup> Mr Barr identified issues with Table 7. However, we address those matters later in this report. In addressing submissions and evidence on Objective 21.2.6 and the associated policies above, we have already addressed the requested insertion of reference to tourism activities and the specific identification of the Cardrona Alpine Resort, concluding that recognition of tourism activities was appropriate but that the specific identification of the Cardrona Alpine Resort was not; so we do not repeat that here.

648. In Section 7.1 above, we set out our reasoning regarding the overall structural changes to the tables and activities. However, we did not address Ski Activities within Ski Area Sub-Zones in that section. We found the rules on this subject matter to be complicated and the matters listed as standards in Table 7 to actually be activities. In order to provide clarity, we recommend that a separate table be created and numbered to provide for *“Activities within the Ski Area Sub Zones”*.

649. None of the submissions on Rule 21.4.18 sought a change to the activity status for the ski area activities and accordingly, we do not recommend any substantive change to the rule. The end result is therefore that we recommend that the submissions seeking that Rule 21.4.18 be amended to refer to the Table 7 standards, and that it be shifted into a new Table 9, both be accepted in part.

#### **6.18 Rule 21.4.19 – Ski Area Activities not located within a Ski Area Sub Zone**

650. As notified, Rule 21.4.19, provided for:

*“Ski Area Activities not located within a Ski Area Sub Zone, with the exception of heli-skiing and non-commercial skiing.”*

as a non-complying activity.

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<sup>635</sup> Submission 407

<sup>636</sup> Submissions 610, 613

<sup>637</sup> Submission 615

<sup>638</sup> C Barr, Section 42A Report, Page 57, Para 14.19

651. One submission sought that the rule be deleted<sup>639</sup> and one submission sought that the rule be amended or replaced to change the activity status from non-complying to discretionary<sup>640</sup>.
652. In the Section 42A Report, Mr Barr considered that purpose of the rule was to encourage Ski Area Activities to locate within the Ski Area Sub Zones, in part to reduce the adverse effects of such activities on ONLs.<sup>641</sup> We agree. The objectives and policies we addressed above reinforce that position.
653. Mr Barr also noted that his recommended introduction of a policy to provide for non-road transportation systems such as a passenger lift system, which would cross land that is not within a Ski Area Sub Zone, would be in potential conflict with the rule. Accordingly, Mr Barr recommended an exception for passenger lift systems.<sup>642</sup>
654. Mr Brown, in evidence for Mt Cardrona Station Ltd, agreed with Mr Barr's recommended amendment, but noted that there was no rule identifying the status of passenger lift systems. Mr Brown considered that the status should be controlled or restricted discretionary, subject to appropriate assessment matters.<sup>643</sup> In his summary presentation to us at the hearing, Mr Brown advised that having reflected on this matter further, he considered restricted discretionary activity status to be appropriate. He recommended a new rule as follows:

*Passenger lift systems not located within a Ski Area Sub Zone.*

*Discretion is reserved to all of the following:*

- a. The route of the passenger lift system and the extent to which the passenger lift system breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes*
- b. Whether the materials and colours to be used are consistent with the rural landscape of which the passenger lift system will form a part*
- c. Whether the geotechnical conditions are suitable for the passenger lift system and the extent to which they are relevant to the route.*
- d. Lighting*
- e. The ecological values of the land affected by structures and activities*
- f. Balancing environmental considerations with operational requirements*
- g. The positive effects arising from directly linking settlements with ski area sub zones and providing alternative non-vehicular access.<sup>644</sup>*

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<sup>639</sup> Submission 806

<sup>640</sup> Submission 615

<sup>641</sup> C Barr, Section 42A Report, Page 64, Para 14.53

<sup>642</sup> C Barr, Section 42A Report, Pages 64 - 65, Para 14.55

<sup>643</sup> J Brown, Evidence, Page 25, Par 2.41

<sup>644</sup> J Brown, Summary of Evidence, Pages 4-5, Para 17

655. In reply Mr Barr, noted that Mr Brown's recommended amendment would also be subject to the District Wide rules regarding earthworks and indigenous vegetation clearance and as such, Mr Barr considered the activity status and matters of discretion to be appropriate.<sup>645</sup>
656. Also in reply Mr Barr, while in accepting some of the changes suggested by Mr Brown, recommended that activity status for Ski Area Activities not located within a Ski Area Sub Zone remain as non-complying activities, with exceptions as follows;

*Ski Area Activities not located within a Ski Area Sub Zone, with the exception of the following:*

- a. Commercial heli skiing not located within a Ski Area Sub Zone is a commercial recreation activity Rule 21.4.16 applies*
- b. Passenger Lift Systems not located within a Ski Area Sub Zone shall be a restricted discretionary activity.*

*Discretion is reserved to all of the following:*

- a. The route of the passenger lift system and the extent to which the passenger lift system breaks the line and form of the landscapes with special regard to skylines, ridges, hills and prominent slopes*
- b. Whether the materials and colours to be used are consistent with the rural landscape of which the passenger lift system will form a part*
- c. Whether the geotechnical conditions are suitable for the passenger lift system and the extent to which they are relevant to the route*
- d. Lighting*
- e. The ecological values of the land affected by structures and activities*
- f. Balancing environmental considerations with operational requirements*
- g. The positive effects arising from directly linking settlements with ski area sub zones and providing alternative non-vehicular access.<sup>646</sup>*

657. Mr Barr provided justification for these changes by way of a brief section 32AA evaluation, noting the effectiveness of the provision with respect to cross zoning regulatory differences.
658. As we have addressed above, we consider that the Ski Area Activities not located within a Ski Area Sub Zone should be non-complying activities as this aligns with the objectives and policies. We think a description of the exceptions is appropriate, but that should not effectively include another rule with different activity status. Rather, if an exception is to have a different activity status, that should be set out as a separate rule.
659. We now turn to the activity status of a passenger lift system outside a Ski Area Sub Zone. As well as the evidence we heard, the Hearing Panel for Stream 11 (Ski Area Sub Zones) heard further evidence on this issue, with specific reference to particular ski areas. That Panel has

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<sup>645</sup> C Barr, Reply, Page 38 – 39, Para 14.3 – 14.5

<sup>646</sup> C Barr, Reply, Appendix 1, Page 21-11

recommended to us, for the reasons set out in Report 15, that passenger lift systems outside of a Ski Area Sub Zone should be a restricted discretionary activity.

660. We accept and adopt the recommendations of the Stream 11 Panel for the reasons given in Report 15.

661. We recommend that Rule 21.4.19 therefore be reworded, and that a new rule numbered and worded as follows be inserted to address passenger lift systems located outside of Ski Area Sub-Zones. We also recommend that these rules be relocated to under the heading “Other Activities” in Table 1.

Table 1	Activities Rural Zone	Activity Status
21.4.25	Ski Area Activities not located within a Ski Area Sub-Zone, with the exception of the following: <ul style="list-style-type: none"> <li>a. non-commercial skiing which is permitted as recreation activity under Rule 21.4.22;</li> <li>b. commercial heli-skiing not located within a Ski Area Sub-Zone, which is a commercial recreational activity to which Rule 21.4.13 applies;</li> <li>b. Passenger Lift Systems to which Rule 21.4.24 applies.</li> </ul>	NC
21.4.24	Passenger Lift Systems not located within a Ski Area Sub-Zone Discretion is restricted to: <ul style="list-style-type: none"> <li>a. The Impact on landscape values from any alignment, design and surface treatment, including measures to mitigate landscape effects including visual quality and amenity values.</li> <li>b. The route alignment and the whether any system or access breaks the line and form of skylines, ridges, hills and prominent slopes.</li> <li>c. Earthworks associated with construction of the Passenger Lift System.</li> <li>d. The materials used, colours, lighting and light reflectance.</li> <li>e. Geotechnical matters.</li> <li>f. Ecological values and any proposed ecological mitigation works.</li> <li>g. Balancing environmental considerations with operational requirements of Ski Area Activities.</li> <li>h. The positive effects arising from providing alternative non-vehicular access and linking Ski Area Sub-Zones to the roading network.</li> </ul>	RD

**6.19 Table 1 - Rule 21.4.20 – Visitor Accommodation**

662. As notified, Rule 21.4.20, provided for:

*“Visitor Accommodation.”*

as a discretionary activity.

663. One submission sought a less restrictive activity status<sup>647</sup> and one submission sought that visitor accommodation in rural areas be treated differently to that in urban areas due to their placing less demand on services<sup>648</sup>.
664. In the Section 42A Report, Mr Barr considered that comparison of urban area provisions with rural area provision should be treated with caution as those urban provisions were not part of the Stage 1 review of the District Plan. Mr Barr also considered that nature and scale of the visitor accommodation activity and the potential selectivity of the location would be the main factors considered in relation to any proposal. He therefore recommended that the activity status remain discretionary.<sup>649</sup>
665. We heard no evidence in support of the submissions.
666. For the reasons set out in Mr Barr’s Section 42A Report, we recommend that other than renumbering it, the rule remain as notified, subject to a consequential amendment arising from our consideration of visitor accommodation in Ski Area Sub Zones discussed below.

**6.20 Table 1 - Rule 21.4.21 – Forestry Activities in Rural Landscapes**

667. As notified, Rule 21.4.21, provided for:

*“Forestry Activities in Rural Landscapes.”*

as a discretionary activity.

668. Two submissions sought that the activity status be amended to discretionary<sup>650</sup>. Mr Barr, in the Section 42A Report, identified that forestry activities were discretionary in the Rural Landscape areas (Rule 21.4.21) and non-complying in ONLs/ONFs (Rule 21.4.1).<sup>651</sup> We heard no evidence in support of the submissions. In reply, Mr Barr included some revised wording to clarify that it is the Rural Landscape Classification areas that the provision applies to.<sup>652</sup>
669. In the report on Chapter 6 (Report 3), the Hearing Panel recommended that the term used to describe non-outstanding rural landscapes be Rural Character Landscapes. That term should as a consequence be used in this context.
670. The submissions appear to be seeking to retain what was in the Plan as notified. We agree with Mr Barr and recommend that forestry activities remain discretionary in “Rural Character Landscapes”.

**6.21 Rule 21.4.22 – Retail Activities and Rule 21.4.23 – Administrative Offices**

671. Both of these rules provide for activities within the Rural Industrial Sub-Zone. No submissions were received on these rules. We recommend they be retained as notified, but relocated into Table 10 which lists the activities specifically provided for in this Sub-Zone.

**6.22 Rule 21.4.24 – Activities on the surface of lakes and rivers**

672. As notified, Rule 21.4.24, provided for:

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<sup>647</sup> Submission 806  
<sup>648</sup> Submission 320  
<sup>649</sup> C Barr, Section 42A Report, Page 103, Para 201.19  
<sup>650</sup> Submissions 339, 706  
<sup>651</sup> C Barr, Section 42 A Report, Page 43, Para 13.5  
<sup>652</sup> C Barr, Reply, Appendix 1, Page 21-11

*“Activities on the surface of lakes and rivers that comply with Table 9.”*

as a permitted activity.

673. One submission generally supported this provision<sup>653</sup>. Other submissions that were assigned to this provision in Appendix 2 of the section 42A Report, actually sought specific amendments to Table 9 and we therefore deal with those requests later in this report.

674. We have already addressed requests for repositioning the provisions regarding the surface of water in Section 3.4 above, and concluding that reordering and clarification of the activities and standards in the surface of lakes and river table to better identify the activity status and standards was appropriate. Accordingly, we recommend that provision 21.2.24 be moved to Table 12 and renumbered, but that the activity status remain permitted, subject to the provisions within renumbered Table 13.

**6.23 Rule 21.4.25 – Informal Airports**

675. As notified, Rule 21.4.25, provided for:

*“Informal airports that comply with Table 6.”*

as a permitted activity.

676. The submissions on this rule are linked to the Rules 21.5.25 and 21.5.26, being the standards applying to informal airports. It is appropriate to deal with those two rules at the same time as considering Rule 21.4.25.

677. As notified, the standards for informal airport Rules 21.5.25 and 21.5.26 (Table 6) read as follows;

	<b>Table 6 - Standards for Informal Airports</b>	<b>Non-Compliance</b>
21.5.25	<p><b>Informal Airports Located on Public Conservation and Crown Pastoral Land</b></p> <p>Informal airports that comply with the following standards shall be permitted activities:</p> <p>21.5.25.1 Informal airports located on Public Conservation Land where the operator of the aircraft is operating in accordance with a Concession issued pursuant to Section 17 of the Conservation Act 1987;</p> <p>21.5.25.2 Informal airports located on Crown Pastoral Land where the operator of the aircraft is operating in accordance with a Recreation Permit issued pursuant to Section 66A of the Land Act 1948;</p> <p>21.5.25.3 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities;</p> <p>21.5.25.4 In relation to points (21.5.25.1) and (21.5.25.2), the informal airport shall be located a minimum</p>	D

<sup>653</sup> Submission 307

	<b>Table 6 - Standards for Informal Airports</b>	<b>Non-Compliance</b>
	distance of 500 metres from any formed legal road or the notional boundary of any residential unit or approved building platform not located on the same site.	
21.5.26	<p><b>Informal Airports Located on other Rural Zoned Land</b></p> <p>Informal Airports that comply with the following standards shall be permitted activities:</p> <p>21.5.26.1 Informal airports on any site that do not exceed a frequency of use of 3 flights* per week;</p> <p>21.5.26.2 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities;</p> <p>21.5.26.3 In relation to point (21.5.26.1), the informal airport shall be located a minimum distance of 500 metres from any formed legal road or the notional boundary of any residential unit of building platform not located on the same site.</p> <p>* note for the purposes of this Rule a flight includes two aircraft movements i.e. an arrival and departure.</p>	D

678. There were eleven submissions that sought that Rule 21.4.25 be retained<sup>654</sup>, and six submissions that sought it be deleted<sup>655</sup> for various reasons including seeking the retention of ODP rules.

679. For Rule 21.5.25, submissions variously ranged from:

- Retain as notified<sup>656</sup>
- Delete provision<sup>657</sup>
- Delete or amend (reduce) set back distances in 21.5.25.4
- Amend permitted activities list 21.5.25.3 to include operational requirements of Department of Conservation<sup>658</sup>

680. For Rule 21.5.26, submissions variously ranged from:

- Retain as notified<sup>659</sup>
- Delete provision<sup>660</sup>
- Delete or amend (increase) number of flights in 21.5.26.1<sup>661</sup>
- Delete or amend (reduce) set back distances in 21.5.26.3<sup>662</sup>
- Amend permitted activities list 21.5.26.2 to only to emergency and farming<sup>663</sup>, or amend to include private fixed wing operations and flight currency requirements<sup>664</sup>

<sup>654</sup> Submissions 563, 573, 608, 723, 730, 732, 734, 736, 738, 739, 760, 843

<sup>655</sup> Submission 109, 143, 209, 213, 500, 833

<sup>656</sup> Submissions 315, 571, 713

<sup>657</sup> Submissions 105, 135, 162, 211, 500, 385

<sup>658</sup> Submission 373

<sup>659</sup> Submissions 571, 600

<sup>660</sup> Submissions 93, 105, 162, 209, 211, 385, 883

<sup>661</sup> Submissions 122, 138, 221, 224, 265, 405, 423, 660, 662

<sup>662</sup> Submissions 106, 137, 138, 174, 221, 265, 382, 405, 423, 660, 723, 730, 732, 734, 736, 738, 739, 760, 784, 843

<sup>663</sup> Submission 9

<sup>664</sup> Submission 373



- f. Amend 21.5.26.1 to read as follows “Informal Airports where sound levels do not exceed limits prescribed in Rule 36.5.14”.
681. In the Section 42A Report, Mr Barr recorded that the change from the system under the ODP where all informal airports required resource consents, to permitted activity status under the PDP was motivated in part by a desire to reduce the duplication of authorisations that were already required from the Department of Conservation or Commissioner of Lands and that details were set out in the Section 32 Report.<sup>665</sup> Mr Barr also recorded that noise standards were not part of this Chapter, but were rather considered under the Hearing Stream 5 (District Wide Provisions).<sup>666</sup>
682. Our understanding of the combined rules was assisted by the evidence of Dr Chiles. He explained the difficulty in comprehensively quantifying the noise effects from infrequently used airports. We understood that the two New Zealand Standards for airport noise (NZ6805 and NZS6807) required averaging of aircraft sound levels over periods of time that would not adequately represent noise effects from sporadic aircraft movements that are usually associated with informal airports.
683. Dr Chiles explained that the separation distance of 500m required by Rules 21.5.25.4 and 21.5.26.3 should result in compliance with a 50 DB L<sub>dn</sub> criterion for common helicopter flights unless there were more than approximately 10 flights per day.<sup>667</sup> Dr Chiles was also satisfied that for fixed wing aircraft, at 500m to the side of the runway there would be compliance with 55 dB L<sub>dn</sub> and 95 dB L<sub>AE</sub> for up to 10 flights per day. However, he noted, compliance off the end of the runway may not be achieved until approximately 1 kilometre away.<sup>668</sup>
684. For those occasions where compliance with the noise criteria referred to above could not be achieved, Dr Chiles concluded that the relevant rules in Chapter 36 (recommended Rules 36.5.10 and 36.5.11) would apply. As we understood his evidence, the purpose of the informal airport rules in this zone are to provide a level of usage as a permitted activity that could be expected to comply with the rules in Chapter 36, but compliance would be expected nonetheless.
685. Mr Barr reviewed all the evidence provided in his Reply Statement and recommended amendments to the rules:
- a. providing for Department of Conservation operations on Conservation or Crown Pastoral Land;
  - b. requiring 500m separation from zone boundaries, but not road boundaries; and
  - c. providing for informal airports on land other than Conservation or Crown Pastoral Land to have up to 2 flights per day (instead of 3 per week).
686. We agree that the provision of some level of permitted informal activity in the Rural Zone is appropriate, as opposed to the ODP regime where all informal airports require consent. While we heard from submitters who considered more activity should be allowed as of right, and others who considered no activity should be allowed, we consider Mr Barr and Dr Chiles have proposed a regime that will facilitate the use of rural land by aircraft while protecting rural amenity values. Consequently, we recommend that Rule 21.4.25 be renumbered and amended

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<sup>665</sup> C Barr, Section 42A Report, Page 71, Paras 16.6 – 16.7

<sup>666</sup> C Barr, Section 42A Report, Pages 70 – 71, Paras 16.3 – 16.4

<sup>667</sup> Dr S Chiles, EIC, paragraph 5.1

<sup>668</sup> *ibid*, paragraph 5.2

to refer to the standards in Table 7, and that Rules 21.5.25 and 21.5.26 be renumbered and revised to read:

	<b>Table 7 - Standards for Informal Airports</b>	<b>Non-Compliance</b>
21.10.1	<p><b>Informal Airports Located on Public Conservation and Crown Pastoral Land</b></p> <p>Informal airports that comply with the following standards shall be permitted activities:</p> <p>21.10.1.1 Informal airports located on Public Conservation Land where the operator of the aircraft is operating in accordance with a Concession issued pursuant to Section 17 of the Conservation Act 1987;</p> <p>21.10.1.2 Informal airports located on Crown Pastoral Land where the operator of the aircraft is operating in accordance with a Recreation Permit issued pursuant to Section 66A of the Land Act 1948;</p> <p>21.10.1.3 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities, or the Department of Conservation or its agents;</p> <p>21.10.1.4 In relation to Rules 21.10.1.1 and 21.10.1.2, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit or approved building platform not located on the same site.</p>	D
21.10.2	<p><b>Informal Airports Located on other Rural Zoned Land</b></p> <p>Informal Airports that comply with the following standards shall be permitted activities:</p> <p>21.10.2.1 Informal airports on any site that do not exceed a frequency of use of 2 flights* per day;</p> <p>21.10.2.2 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities;</p> <p>21.10.2.3 In relation to rule 21.10.2.1, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit of building platform not located on the same site.</p> <p><small>* note for the purposes of this Rule a flight includes two aircraft movements i.e. an arrival and departure.</small></p>	D

#### 6.24 Rule 21.4.26 – Building Line Restrictions

687. As notified, Rule 21.4.26, provided for:

*“Any building within a Building Restriction Area identified on the Planning Maps.”*  
as a noncomplying activity.

688. The only submission on this rule<sup>669</sup> related to a specific building restriction area adjoining and over the Shotover River delta. That submission was deferred to be heard in Hearing Stream 13. We recommend the rule be retained as notified.

#### **6.25 Rule 21.4.27 – Recreational Activities**

689. This rule provided for recreation and/or recreational activities to be permitted. There were no submissions on this rule. We recommend it be retained as notified but relocated and renumbered to be the first activity listed under the heading “Other Activities”.

#### **6.26 Rules 21.4.28 & 21.4.29 - Activities within the Outer Control Boundary at Queenstown and Wanaka Airports**

690. As notified, Rule 21.4.28, provided for:

*“New Building Platforms and Activities within the Outer Control Boundary - Wanaka Airport  
On any site located within the Outer Control Boundary, any new activity sensitive to aircraft noise or new building platform to be used for an activity sensitive to aircraft noise (except an activity sensitive to aircraft noise located on a building platform approved before 20 October 2010).”*

as a prohibited activity.

691. Two submissions sought that the provision be retained<sup>670</sup>. One submission sought that the provision be deleted or be amended so that the approach applied to ASANs located within the Outer Control Boundary, whether in the Airport Mixed Use Zone or the Rural Zone<sup>671</sup>, was consistent.

692. The Section 42A Report did not directly address the relief sought by QPL as it applied to this provision. As with his approach to Objective 21.2.7 and the associated policies, Mr Barr did not address this provision directly in the Section 42A Report apart from in Appendix 1, where Mr Barr recommended that the provision be retained<sup>672</sup>. The only additional evidence we received was from Ms O’Sullivan. She explained that Plan Changes 26 and 35 to the ODP had set up regimes in the rural area surrounding Wanaka and Queenstown Airports respectively prohibiting the establishment of any new Activities Sensitive to Aircraft Noise (ASANs) within the OCB of either airport<sup>673</sup>. She supported Mr Barr’s recommendation to continue this regime in the PDP.

693. We agree with Mr Barr and Ms O’Sullivan. These rules continue the existing resource management regime. We recommend that apart from renumbering, the provision remain worded as notified.

694. As notified, Rule 21.4.29, provided for:

*“Activities within the Outer Control Boundary - Queenstown Airport  
On any site located within the Outer Control Boundary, which includes the Air Noise Boundary, as indicated on the District Plan Maps, any new Activity Sensitive to Aircraft Noise.”*  
as a prohibited activity.

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<sup>669</sup> Submission 806, opposed by FS1340

<sup>670</sup> Submissions 433, 649

<sup>671</sup> Submission 806

<sup>672</sup> C Barr, Section 42A Report, Appendix 1

<sup>673</sup> K O’Sullivan, EiC, Section 2

695. Three submissions sought that the provision be retained<sup>674</sup>. Two submissions sought that the provision be deleted<sup>675</sup>. One submission sought the provision be amended to excluded tourism activities from being subject to the provision<sup>676</sup>.
696. The Section 42A Report did not directly address the relief sought by Te Anau Developments Limited (607) as it applied to this provision. Mr Barr, as we noted above, did not address this provision directly in the Section 42A Report apart from in Appendix 1, where he recommended that the provision be retained<sup>677</sup>. Ms O’Sullivan, as discussed above, supported Mr Barr’s recommendation.<sup>678</sup>
697. Mr Farrell, in evidence for Te Anau Developments Limited, considered that the provision prohibited visitor accommodation and community activities that could contribute to the benefits of tourism activities. He was of the view that there was a lack of policy and evidence to justify a prohibited classification of visitor accommodation and community activities.<sup>679</sup>
698. Mr Farrell went on to recommend that the rule or the definition of Activities Sensitive to Aircraft Noise be amended to:
- “a. Exclude tourism activities (as sought by Real Journeys<sup>680</sup>); or*
- b. Exclude visitor accommodation and community activities; or*
- c. Alter the activity status could be amended [sic] so that tourism, visitor accommodation, and community activities are classified as discretionary activities.”<sup>681</sup>*
699. From a review of the Te Anau Developments Limited submission, there does not appear to be a reference to an amendment to the definition of ‘Activities Sensitive to Aircraft Noise’. Rather, it seeks to exclude “tourism activities” from the rule. As such, we think that Mr Farrell’s recommended amendments to the definition are beyond scope, because the submission is specific to this rule and the exclusion he recommended would apply also to Wanaka Airport. In addition, it is not axiomatic that “tourism activities” includes visitor accommodation.
700. As to Mr Farrell’s assertion that there is a lack of policy and evidence to justify the prohibited activity classification, we are aware that this provision was part of the PC 35 process which went through to thorough assessment in the Environment Court. While we are not bound to reach the same conclusion as the Environment Court, Mr Farrell did not in our view present any evidence other than claimed benefits from tourism to support his position. In particular, he did not address the extent to which those benefits would be reduced if the rule remained as notified, or the countervailing reverse sensitivity effects on the airport’s operations if it were to

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<sup>674</sup> Submission 271, 433, 649

<sup>675</sup> Submissions 621, 658

<sup>676</sup> Submission 607

<sup>677</sup> C Barr, Section 42A Report, Appendix 1

<sup>678</sup> K O’Sullivan, Evidence , Page 7, Para 4.3

<sup>679</sup> B Farrell, Evidence, Page 25, Paras 112 - 115

<sup>680</sup> On review of Submission 621 (submission point 81) RJL only sought that Rule 21.4.29 be deleted. The submission by Te Anau Developments Limited (607) sought the inclusion of “excluding tourism activities” within the rule.

<sup>681</sup> B Farrell, Evidence, Page 26, Para 116

be amended as suggested so as to call into question the appropriateness of the Environment Court's conclusion.

701. Accordingly, we recommend that apart from renumbering, that provision 21.4.29 remain worded as notified, but renumbered.

#### **6.27 Mining Activities - Rule 21.4.30 and 21.4.31**

702. As notified, Rule 21.4.30 stated:

*The following mining and extraction activities are permitted:*

- a. *Mineral prospecting*
- b. *Mining by means of hand-held, non-motorised equipment and suction dredging, where the total motive power of any dredge does not exceed 10 horsepower (7.5 kilowatt); and*
- c. *The mining of aggregate for farming activities provided the total volume does not exceed 1000m<sup>3</sup> in any one year*
- d. *The activity will not be undertaken on an Outstanding Natural Feature.*

703. The submissions on Rule 21.4.30 variously sought:

- a. to add 'exploration' to the list of activities and include motorised mining devices<sup>682</sup>
- b. to add reference to landscape and significant natural areas as areas where the activity cannot be undertaken<sup>683</sup>
- c. to delete the restriction under (d) requiring the activity not to be undertaken on Outstanding Natural Features.<sup>684</sup>
- d. to delete the requirement under (c) restricting the mining of aggregate of 1000m<sup>3</sup> in any one year to "farming activities"<sup>685</sup>
- e. amendments to ensure sensitive aquifers are not intercepted, and to address rehabilitation.<sup>686</sup>

704. It is also appropriate to consider Rule 21.4.31 at this time, as that rule as notified provided for 'exploration' as a controlled activity. As notified, 21.4.31 stated:

*Mineral exploration that does not involve more than 20m<sup>3</sup> in volume in any one hectare.*

*Control is reserved to all of the following:*

- *The adverse effects on landscape, nature conservation values and water quality.*

*Rehabilitation of the site is completed that ensures:*

- *the long term stability of the site.*

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<sup>682</sup> Submission 519

<sup>683</sup> Submission 339, 706

<sup>684</sup> Submission 519

<sup>685</sup> Submission 806

<sup>686</sup> Submission 798

- *that the landforms or vegetation on finished areas are visually integrated into the landscape.*
  - *water quality is maintained.*
  - *that the land is returned to its original productive capacity.*
705. Two submissions<sup>687</sup> to this rule sought the addition of indigenous vegetation as an alternative state that a site should be rehabilitated to.
706. In the Section 42A Report<sup>688</sup>, Mr Barr noted that the NZTM submission seeking to add mineral exploration to Rule 21.4.30, was silent on the deletion of “*mineral exploration*” as a controlled activity in Rule 21.4.31. Mr Barr went on to explain that in his view, that while he accepted the submitter’s request to add a definition of mineral exploration, that activity should remain a controlled activity. Mr Vivian agreed with Mr Barr that while NZTM sought permitted activity for mineral exploration, it did not seek the deletion of Rule 21.4.31 and as such Mr Vivian saw no point in adding mineral exploration to Rule 21.4.30<sup>689</sup>. We agree and recommend that the request for mineral exploration as a permitted activity be rejected and that it remain a controlled activity.
707. We did not receive any evidence on the submission from Queenstown Park Ltd, seeking the expansion of the permitted activity status for mining aggregate (1000m<sup>3</sup> in any one year), for activities not restricted to farming. The Section 32 Report records that the activities in Rules 21.4.30 and 21.4.31 were retained from the ODP with minor modifications to give effect to Objectives and Policies 6.3.5, 21.3.5, 21.2.7 and 21.2.8 (as notified).<sup>690</sup> We do not find the analysis very helpful. On the face of the matter, if the activity is acceptable as a permitted activity for one purpose, it is difficult to understand why it should not be permitted if undertaken for a different purpose. However, in this case, the purpose of the aggregate extraction is linked to the scale of effects.
708. Extraction of 1000m<sup>3</sup> of aggregate on a relatively small rural property in order that it might be utilised off-site has an obvious potential for adverse effects. Limiting use of aggregate to farming purposes serves a useful purpose in this regard as well as being consistent with policies seeking to enable farming activities.
709. We therefore recommend that the submission from Queenstown Park Limited be rejected.
710. Mr Barr, in the Section 42A Report, did not consider it necessary to add reference to landscape and significant natural areas as areas where the activity cannot be undertaken, given that standards regarding land disturbance and vegetation clearance are already provided for in in Chapter 33.<sup>691</sup> We heard no evidence in support of the submission. Relying on the evidence of Mr Barr, we recommend that the submission of Mr Atly and Forest & Bird New Zealand be rejected.
711. Mr Barr, in the Section 42A Report, agreed with the submission of Forest & Bird and Mr Atly that rehabilitation to ‘indigenous vegetation’ may be preferable to rehabilitating disturbed land

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<sup>687</sup> Submissions 339, 706

<sup>688</sup> C Barr, Section 42A Report, Page 108, Para 21.21

<sup>689</sup> C Vivian, Evidence, Page 25, Para 4.122

<sup>690</sup> C Barr, Section 42A Report, Page 87

<sup>691</sup> C Barr, Section 42A Report, Page 108-109, Para 21.23

to its original capacity in some circumstances<sup>692</sup>. We agree with Mr Barr that parameters should be included, so that where the land cover comprised indigenous vegetation coverage prior to exploration indigenous vegetation planted as part of rehabilitation must attain a certain standard. We also agree with Mr Barr that it would not be fair on persons responsible for rehabilitation to require indigenous vegetation rehabilitation if the indigenous vegetation didn't comprise a minimum coverage or the indigenous vegetation had been cleared previously for other land uses.

712. Accordingly, we recommend that that an additional bullet point to be added to the matters of control, under Rule 21.4.31, as follows;

*Ensuring that the land is rehabilitated to indigenous vegetation where the pre-existing land cover immediately prior to the exploration, comprised indigenous vegetation as determined utilising Section 33.3.3 of Chapter 33.*

713. We also consider the matter commencing “Rehabilitation of the site” should be amended by the inclusion of “ensuring” at the commencement to make it a matter of control.

714. Mr Vivian supported the deletion of Rule 21.4.30(d) on the basis that the scale of the activities set out in 21.4.30 (a) and (b) were small and usually confined to river valleys.<sup>693</sup> In addition, Mr Vivian noted that the activities in 21.4.30(c) were potentially of a larger scale and as they were permitted on an annual basis, there was the potential for adverse effects on landscape integrity over time. Mr Vivian concluded that 21.4.30(d) should be combined into Rule 21.4.30(c).

715. Having considered Mr Vivian’s evidence in combination with the submissions lodged, we consider it appropriate to create a table containing standards which mining and exploration activities have to meet. In coming to this conclusion we note that notified rule 21.4.30(d) is expressed as a standard, rather than an activity.

716. Consequently, we recommend the insertion of Table 8 which reads:

	<b>Table 8 – Standards for Mining and Extraction Activities</b>	<b>Non-Compliance</b>
<b>21.11.1</b>	21.11.1.1 The activity will not be undertaken on an Outstanding Natural Feature.	NC
	21.22.1.2 The activity will not be undertaken in the bed of a lake or river.	

717. With that change, we agree with Mr Vivian’s suggestion and recommend that Rules 21.4.30 and 21.4.31 read as follows:

Rule 21.4.29 - Permitted:

*The following mining and extraction activities, that comply with the standards in Table 8 are permitted:*

- a. *Mineral prospecting.*

<sup>692</sup> C Barr, Section 42A Report, Page 109, Para 21.24

<sup>693</sup> C Vivian, Evidence, Page 25, Para 4.125

- b. *Mining by means of hand-held, non-motorised equipment and suction dredging, where the total motive power of any dredge does not exceed 10 horsepower (7.5 kilowatt); and*
- c. *The mining of aggregate for farming activities provided the total volume does not exceed 1000m<sup>3</sup> in any one year.*

Rule 21.4.30 - Controlled

*Mineral exploration that does not involve more than 20m<sup>3</sup> in volume in any one hectare*

*Control is reserved to:*

- a. *The adverse effects on landscape, nature conservation values and water quality.*
- b. *Ensuring rehabilitation of the site is completed that ensures:*
  - i. *the long-term stability of the site.*
  - ii. *that the landforms or vegetation on finished areas are visually integrated into the landscape.*
  - iii. *water quality is maintained.*
  - iv. *that the land is returned to its original productive capacity.*
- c. *That the land is rehabilitated to indigenous vegetation where the pre-existing land cover immediately prior to the exploration, comprised indigenous vegetation as determined utilising Section 33.3.3 of Chapter 33.*

**6.28 Rule 21.4.32 – Other Mining Activity**

718. As notified, this rule provided that any mining activity not provided for in the previous two rules was a discretionary activity. There were no submissions on this rule. We recommend it be renumbered, but otherwise be retained as notified.

**6.29 Rule 21.4.33 – Rural Industrial Activities**

719. As notified, this rule listed the following as a permitted activity:

*Rural Industrial Activities within a Rural Industrial Sub-Zone that comply with Table 8.*

720. The only submission received on this rule was in support<sup>694</sup>. We recommend that this rule be moved to Table 10 – Activities in Rural Industrial Sub Zone, and with our recommended re-arrangement of the tables, we recommend that the rule refer to the standards in Table 11. Otherwise we recommend the rule be retained as notified.

**6.30 Rule 21.4.34 – Buildings for Rural Industrial Activities**

721. As notified, this rule provided that buildings for rural industrial activities, complying with Table 8, as a permitted activity. No submissions were received on this rule.

722. As with the previous rule, we recommend it be relocated to Table 10 and that it refer to Table 11. However, we also note an ambiguity in the wording of the rule. While, by its reference to Table 8, it is implicit that it only apply to buildings in the Rural Industrial Sub-Zone, we consider the rule would better implement the objectives and policies of the zone if it were explicitly limited to buildings in the Rural Industrial Sub Zone. We consider such a change to be non-substantive and can be made under Cl 16(2) of the First Schedule. On that basis we recommend the rule read:

*Buildings for Rural Industrial Activities within the Rural Industrial Sub-Zone that comply with Table 11.*

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<sup>694</sup> Submission 315



### **6.31 Rule 21.4.35 – Industrial Activities at a Vineyard**

723. This rule, as notified, provided for industrial activities directly associated with wineries and underground cellars within a vineyard as a discretionary activity.
724. No submissions were received to this rule and we recommend it be renumbered and retained as notified. We also recommend that the heading in Table 1 directly above this rule be changed to read: “Industrial Activities outside the Rural Industrial Sub-Zone”.

### **6.32 Rule 21.4.36 – Other Industrial activities**

725. As notified this rule provided that other industrial activities in the Rural Zone were non-complying. Again, no submissions were received on this rule.
726. We consider there is an element of ambiguity in the rule, particularly with the removal of the Rural Industrial Sub-Zone activities and buildings to a separate table. We recommend this be corrected by rewording the rule to read:

*Industrial Activities outside the Rural Industrial Sub-Zone other than those provided for in Rule 21.4.32.*

727. We consider this to be a minor, non-substantive amendment that can be made under Clause 16(2).

## **7 TABLE 2 – GENERAL STANDARDS**

### **7.1 Rule 21.5.1 – Setback from Internal Boundaries**

728. As notified, this rule set a minimum setback of 15m of buildings from internal boundaries, with non-compliance requiring consent as a restricted discretionary activity.
729. No submissions were received on this rule and we recommend it be retained as notified with the matters of discretion listed alphanumerically rather than with bullet points.

### **7.2 Rule 21.5.2 – Setback from Roads**

730. As notified Rule 21.5.2 stated:

*Setback from Roads*

*The minimum setback of any building from a road boundary shall be 20m, except, the minimum of any building setback from State Highway 6 between Lake Hayes and Frankton shall be 50m. The minimum setback of any building for other sections of State Highway 6 where the speed limit is 70 km/hr or greater shall be 40m.*

*Discretion is restricted to all of the following:*

- a. Rural Amenity and landscape character*
- b. Open space*
- c. The adverse effects on the proposed activity from noise, glare and vibration from the established road.*

*Non-compliance Status – RD*

731. One submission sought that the standard be adopted as proposed<sup>695</sup> and one submission sought that the standard be retained, but that additional wording be added (providing greater setbacks from State Highways for new dwellings) to address the potential reverse sensitivity effects from State Highway traffic noise on new residential dwellings.<sup>696</sup>
732. Mr Barr, in the Section 42A Report, considered that as the majority of resource consents in the Rural Zone were notified or would require consultation with NZTA if on a Limited Access Road, then in his view, the performance standards suggested by NZTA would be better implemented as conditions of consent, particularly if the specific parameters of noise attenuation standard were to change. Mr Barr therefore recommended that the relief sought be rejected.<sup>697</sup>
733. In evidence for NZTA, Mr MacColl, disagreed with Mr Barr’s reasoning, noting that NZTA were often not deemed an affected party and without the proposed rule, District Plan users may assume, incorrectly, that any building outside the setback areas as notified, would be outside the noise effect area, when that may not be the case.<sup>698</sup> Mr MacColl further suggested that the rule amendments he supported were required in order that the rule be consistent with the objectives and policies of Chapter 3. In response to questions from the Chair, Mr MacColl advised that the NZTA guidelines for setbacks were the same, regardless of the volume of traffic. We sought a copy of the guideline from Mr MacColl, but did not receive it.
734. Mr Barr, in reply, recommended some minor wording amendment to clarify that the rule applied to the setback of buildings from the road, but not in relation to the 80m setback sought by NZTA.
735. Without evidence as to the traffic noise effects and noise levels depending on the volume of traffic and its speed, we are not convinced as to the appropriateness of a blanket 80 metre setback for new dwellings from State Highway 6 where the speed limit is 70 – 100 km/hr. The only change we recommend is that, for clarity the term “Frankton” be replaced with “Shotover River”. We were concerned that using the term “Frankton” could lead to disputes as to where the restriction commenced/ended at that end. It was our understanding from questioning of Mr Barr and Mr MacColl, that it was intended to apply as far as the river.
736. Accordingly, we recommend that it be reworded as follows:

**Setback from Roads**

*The minimum setback of any building from a road boundary shall be 20m, except, the minimum setback of any building from State Highway 6 between Lake Hayes and the Shotover River shall be 50m. The minimum setback of any building for other sections of State Highway 6 where the speed limit is 70 km/hr or greater shall be 40m.*

**Non-compliance Status – RD**

*Discretion is restricted to:*

- a. rural amenity and landscape character*
- b. open space*

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<sup>695</sup> Submission 600

<sup>696</sup> Submission 719

<sup>697</sup> C Barr, Section 42A Report, Page 22, Para 9.6

<sup>698</sup> A MacColl, EIC, Pages 5-6, Paras 20-21.

c. *the adverse effects on the proposed activity from noise, glare and vibration from the established road.*

### **7.3 Rule 21.5.3 – Setback from Neighbours of Buildings Housing Animals**

737. As notified, this rule required a 30m setback of any building housing animals from internal boundaries, with a restricted discretionary activity consent required for non-compliance.

738. There were no submissions, and other than listing the matters of discretion alphanumerically, we recommend the rule be adopted as notified.

### **7.4 Rule 21.5.4 – Setback of buildings from Water bodies**

739. As notified Rule 21.5.4 stated:

*Setback of buildings from Water bodies*

*The minimum setback of any building from the bed of a wetland, river or lake shall be 20m.*

*Discretion is restricted to all of the following:*

*a. Indigenous biodiversity values*

*b. Visual amenity values*

*c. Landscape and natural character*

*d. Open space*

*e. Whether the waterbody is subject to flooding or natural hazards and any mitigation to manage the adverse effects of the location of the building*

740. Four submissions sought that the standard be adopted as proposed<sup>699</sup>. One submission sought that the standard be amended so that the setback be 5m for streams less than 3m in width<sup>700</sup>. Another submission<sup>701</sup> sought to exclude buildings located on jetties where the purpose of the building is for public transport.

741. In the Section 42A Report, while Mr Barr recognised that the amenity values of a 3m wide stream may not be high, he considered that a 5m setback was too small.<sup>702</sup> We heard no evidence to the contrary. We agree in part with Mr Barr and note that there would be several other factors, such as natural hazards, that would support a 20m buffer. Accordingly, we recommend that the submission by D & M Columb be rejected.

742. As to the exclusion of buildings located on jetties where the purpose of the building is for public transport, Mr Barr noted that Rules 21.5.40 - 21.5.43 would trigger the need for consent anyway, and Mr Barr did not consider that Rule 21.5.4 generated unnecessary consents. Mr Barr was also of the view that it was the effects of any building that should trigger consent, not whether it was publicly or privately owned.<sup>703</sup>

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<sup>699</sup> Submissions 339, 384, 600, 706

<sup>700</sup> Submission 624

<sup>701</sup> Submission 806

<sup>702</sup> C Barr, Section 42A Report, Page 23, Para 9.9

<sup>703</sup> C Barr, Section 42A Report, Page 23, Para 9.10

743. We heard no evidence in support of that submission and concur with Mr Barr that the wording of rule should be retained as notified. Accordingly, we recommend that Rule 21.5.4 be retained as notified.

#### 7.5 Rule 21.5.5 – Dairy Farming

744. As notified, Rule 21.5.5 required that effluent holding tanks, and effluent treatment and storage ponds be located 300m from any formed road or adjoining property with non-compliance a restricted discretionary activity.

745. Submissions on this provision variously sought:

- a. Its retention<sup>704</sup>
- b. Its deletion<sup>705</sup> (No reasons provided)
- c. The addition of “lake, river” to the list of “formed roads or adjoining property”<sup>706</sup>
- d. The addition of “sheep and beef farms” and “silage pits” to the list of “effluent holding tanks, effluent treatment and storage ponds”<sup>707</sup>
- e. Amendment to reduce the specified distance of 300m to a lesser distance<sup>708</sup>
- f. Amendment of the activity status for non-compliance to discretionary.<sup>709</sup>

746. In the Section 42A Report, Mr Barr considered that the addition of “sheep and beef farms” and “silage pits” would capture too wide a range of activities that are not as intensive as dairying and do not have the same degree adverse effects. As such, Mr Barr recommended that that submission be rejected.<sup>710</sup> As regards the inclusion “lake or river” to the list of “formed roads, rivers and property boundaries”, Mr Barr considered lakes and rivers are not likely to be on the same site as a dairy farm. Hence in his view, the suggested qualifier to the boundary set back is appropriate.<sup>711</sup>

747. Mr Edgar, in his evidence for Longview Environmental Trust<sup>712</sup>, provided examples where the failure to include lake or river, could result in effluent holding tanks, effluent treatment and storage ponds being within 15 metres of the margin of a lake or unformed road. Mr Edgar was also of the view that amendments were required for consistency with Policies 21.2.1.1 and 21.2.1.4. We note that Mr Edgar’s evidence did not go as far as recommending reference to unformed as well as formed roads, presumably as this relief was not sought by Longview Environmental Trust. In reply, Mr Barr agreed with Mr Edgar as to the identification of public areas whose amenity values needed to be managed through the mechanism of setbacks<sup>713</sup>. We agree with Mr Edgar and Mr Barr that the setback should include lakes or rivers and that it is appropriate in achieving the objectives.

748. We heard no evidence in support of the submissions seeking to reduce the 300m separation distance. The submission itself identified that 300m would create infrastructural problems for

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<sup>704</sup> Submissions 335, 384, 600

<sup>705</sup> Submission 400

<sup>706</sup> Submission 659

<sup>707</sup> Submission 642

<sup>708</sup> Submissions 701, 784

<sup>709</sup> Submission 659

<sup>710</sup> C Barr, Section 42A Report, Page 24, Para 9.16

<sup>711</sup> C Barr, Section 42A Report, Page 24, Para 9.17

<sup>712</sup> S Edgar, EIC, Pages 3-4, Paras 7 - 13

<sup>713</sup> C Barr, Reply, Page 14, Para 5.1 – 5.2

farmers.<sup>714</sup> We note that compliance with the 300m distance is for permitted activity status and that any non-compliance, for infrastructural reasons, are provided for as a restricted discretionary activity. Given the potential effects of the activity, and the lack of evidence as to an appropriate lesser distance, we consider the distance to be appropriate in terms of achieving the objectives. Accordingly, we recommend that the submission be rejected.

749. We were unable to identify evidence from Mr Barr or Mr Edgar relating to the submission by Longview Environmental Trust<sup>715</sup> seeking the amendment of the activity status for non-compliance from restricted discretionary to discretionary. The reason set out in the submission for the request is for consistency between Rules 21.5.5 and 21.5.6.<sup>716</sup> We consider that there is a difference between Rules 21.5.5 and 21.5.6 in that 21.5.5 applies to an activity and 21.5.6 applies to buildings. This difference is further reflected in there being separate tables for activities and buildings (including farm buildings). This separation does not imply that they should have the same activity status. Accordingly, we recommend that the Longview Environmental Trust submission be rejected.

750. In summary, we recommend that Rule 21.5.5 be relocated into Table 3 Standards for Farm Activities, renumbered as Rule 21.6.1, and worded as follows:

*Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing)*

*All effluent holding tanks, effluent treatment and effluent storage ponds, must be located at least 300 metres from any formed road, lake, river or adjoining property.*

*Non-compliance RD*

*Discretion is restricted to:*

- a. Odour*
- b. Visual prominence*
- c. Landscape character*
- d. Effects on surrounding properties.*

## **7.6 Rule 21.5.6 – Dairy Farming**

751. Rule 21.5.6, as notified, required milking sheds or buildings used to house or feed milking stock be located 300m from any formed road or adjoining property, with non-compliance as a discretionary activity.

752. Submissions on this provision variously sought:

- a. Its retention<sup>717</sup>
- b. The addition of “lake, river” to the list of “formed roads or adjoining property”<sup>718</sup>
- c. Amendment to reduce the specified distance of 300m to a lesser distance.<sup>719</sup>

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<sup>714</sup> Submission 701, Page 2, Para 16

<sup>715</sup> S Edgar, EIC, Pages 3-4, Paras 7 - 13

<sup>716</sup> Submission 659, Page 2

<sup>717</sup> Submissions 335, 384, 600

<sup>718</sup> Submission 659

<sup>719</sup> Submissions 701, 784

753. We have addressed the matter of the reduction of the 300m distance in Section 8.5 above and do not repeat that analysis here. We simply note our recommendation is that, for the same reasons, those submissions be rejected.
754. Mr Barr considered that the rule is appropriate in a context where farm buildings can be established as a permitted activity on land holdings greater than 100ha.<sup>720</sup>
755. As regards the addition of lakes and rivers, Mr Barr, again in the Section 42A Report, noted that farm buildings were already addressed under Rule 21.5.4 (as notified) which required a 20m setback from water bodies and therefore, in his view, the submission should be rejected.
756. Mr Edgar, in evidence, raised similar issues with this rule as with 21.5.5 discussed above. In reply, Mr Barr agreed as to the appropriateness of the inclusion of rivers and lakes. Following the same reasoning, we agree with Mr Edgar and Mr Barr that the setback of buildings from water bodies should include recognition of their amenity values. Accordingly, we recommend that Rule 21.5.6 be relocated into Table 5 Standards for Farm Buildings, be renumbered and worded as follows;

21.8.4	<b>Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing)</b> All milking sheds or buildings used to house or feed milking stock must be located at least 300 metres from any adjoining property, lake, river or formed road.	D
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#### 7.7 Rule 21.5.7 – Dairy Farming

757. Rule 21.5.7, as notified, read as follows;

	<b>Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing)</b> Stock shall be prohibited from standing in the bed of, or on the margin of a water body.  For the purposes of this rule: a. Margin means land within 3.0 metres from the edge of the bed b. Water body has the same meaning as in the RMA, and also includes any drain or water race that goes to a lake or river.	PR
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758. Submissions on this rule variously sought that it be retained<sup>721</sup>, be deleted<sup>722</sup>, be widened or clarified to include other livestock including “deer, beef”<sup>723</sup> or expressed concern regarding it overlapping Regional Plan rules<sup>724</sup>.
759. In the Section 42A Report, Mr Barr considered that dairy farming was more intensive than traditional sheep and beef grazing with a greater potential to damage riparian margins and contaminate waterbodies. Mr Barr considered that the effects of stock in waterways was not only a water quality issue but also a biodiversity, landscape and amenity value issue, and that the proposed rule complemented the functions of the Otago Regional Council.<sup>725</sup>

<sup>720</sup> C Barr, Section 42A Report, Page 24, Para 9.20

<sup>721</sup> Submission 335, 384

<sup>722</sup> Submission 600

<sup>723</sup> Submission 117, 289, 339, 706, 755

<sup>724</sup> Submission 798

<sup>725</sup> C Barr, Section 42A Report, Pages 25 – 27, Paras 9.24 – 9.36

760. In evidence for Federated Farmers, Mr Cooper raised the issue of confusion for plan users between rules in the Regional Water Plan and Rule 21.5.7. He considered that this was not fully addressed in the Section 32 Report.<sup>726</sup> We agree.

761. To us, this is a clear duplication of rules that does not meet the requirements of section 32 as being the most effective and efficient way of meeting the objectives of the QLDC plan. Accordingly, we recommend that the submission of Federated Farmers be accepted and Rule 21.5.7, as notified, be deleted.

#### **7.8 Rule 21.5.8 – Factory Farming**

762. As notified, this rule stated in relation to factory farming (excluding the boarding of animals):

*Factory farming within 2 kilometres of a Residential, Rural Residential, Rural Lifestyle, Township, Rural Visitor, Town Centre, Local Shopping Centre or Resort Zone.*

763. Non-compliance required consent as a discretionary activity.

764. The only submissions on this rule supported its retention<sup>727</sup>, however it has a number of problems. First, it lists zones which are not notified as part of stage 1 (or Stage 2) of the PDP, notably the Rural Visitor and Township. It also lists Resort Zones as if that is a zone or category, which it is not in the PDP.

765. The most significant problem with the rule, however, is that it appears the author has confused standard and activity status. Given that our recommended Rule 21.4.3 classifies factory farming of pigs or poultry as permitted activities, it appears to be inconsistent that such activities would be discretionary when they were located more than 2 kilometres from the listed zones, but permitted within 2 kilometres. We recommend this be corrected under Clause 16(2) of the First Schedule by wording this rule as:

*Factory farming (excluding the boarding of animals) must be located at least 2 kilometres from a Residential, Rural Residential, Rural Lifestyle, Town Centre, Local Shopping Centre Zone, Millbrook Resort Zone, Waterfall Park Zone, or Jacks Point Zone.*

766. We also recommend it be renumbered and relocated into Table 3.

#### **7.9 Rule 21.5.9 – Factory Farming**

767. This rule, as notified, set standards that factory farming of pigs were to comply with. Non-compliance required consent as a non-complying activity. No submissions were received to this rule and we recommend it be adopted as notified with a minor wording changes to make it clear it is a standard, and renumbered and relocated into Table 3.

#### **7.10 Rule 21.5.10 – Factory Farming of Poultry**

768. This rule, as notified, set standards that factory farming of poultry were to comply with. Non-compliance required consent as a non-complying activity. No submissions were received to this rule and we recommend it be adopted as notified with a minor wording changes to make it clear it is a standard, and renumbered and relocated into Table 3.

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<sup>726</sup> D Cooper, EIC, Para 44

<sup>727</sup> Submissions 335 and 384

### 7.11 Rule 21.5.11 – Factory Farming

769. As notified, this rule read:

*Any factory farming activity other than factory farming of pigs or poultry.*

770. Non-compliance was listed as non-complying. Again there were no submissions on this rule.

771. It appears to us that this rule is intended as a catch-all activity status rule, rather than a standard. We recommend it be retained as notified, but relocated into Table 1 and numbered as Rule 21.4.4.

### 7.12 Rule 21.5.12 – Airport Noise – Wanaka Airport

772. As notified, this rule read:

*Alterations or additions to existing buildings, or construction of a building on a building platform approved before 20 October 2010 within the Outer Control Boundary, shall be designed to achieve an internal design sound level of 40 dB L<sub>dn</sub>, based on the 2036 noise contours, at the same time as meeting the ventilation requirements in Table 5, Chapter 36. Compliance can either be demonstrated by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the internal design sound level, or by installation of mechanical ventilation to achieve the requirements in Table 5, Chapter 36.*

773. Non-compliance required consent as a non-complying activity.

774. The only submission<sup>728</sup> on this rule sought that it be retained.. As a consequence of recommendations made by the Hearing Stream 5 Panel, Table 5 has been deleted from Chapter 36. The reference should be to Rule 36.6.2 in Chapter 36.

775. We also recommend a minor change to the wording so that the standard applies to buildings containing Activities Sensitive to Aircraft Noise, consistent with the following rule applying to Queenstown Airport. Thus, we recommend that the standard, renumbered as Rule 21.5.5, read:

*Alterations or additions to existing buildings, or construction of a building on a building platform approved before 20 October 2010 that contain an Activity Sensitive to Aircraft Noise and are within the Outer Control Boundary, must be designed to achieve an internal design sound level of 40 dB L<sub>dn</sub>, based on the 2036 noise contours, at the same time as meeting the ventilation requirements in Rule 36.6.2, Chapter 36. Compliance can either be demonstrated by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the internal design sound level, or by installation of mechanical ventilation to achieve the requirements in Rule 36.6.2, Chapter 36.*

### 7.13 Rule 21.5.13 – Airport Noise – Queenstown Airport

776. As notified, this rule contained similar provisions as Rule 21.5.12, albeit distinguishing between buildings within the Air Noise Boundary and those within the Outer Control Boundary. Again, there was only one submission<sup>729</sup> in respect of this rule, and that submission sought that the rule be retained.

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<sup>728</sup> Submission 433, opposed by FS1030, FS1097 and FS1117

<sup>729</sup> Submission 433, opposed by FS1097 and FS1117



777. Subject to amending the standard to refer to Rule 36.6.2 in place of Table 5 in Chapter 36 and other minor word changes, we recommend the rule be renumbered 21.5.6 and adopted as notified.

## 8 TABLE 3 – STANDARDS FOR STRUCTURES AND BUILDINGS

### 8.1 Rule 21.5.14 - Structures

778. Rule 21.5.14, as notified, read as follows;

<b>21.5.14</b>	<p><b>Structures</b></p> <p>Any structure within 10 metres of a road boundary, which is greater than 5 metres in length, and between 1 metre and 2 metres in height, except for:</p> <p>21.5.14.1 post and rail, post and wire and post and mesh fences, including deer fences;</p> <p>21.5.14.2 any structure associated with farming activities as defined in this plan.</p> <p>Discretion is restricted to all of the following:</p> <ol style="list-style-type: none"> <li>a. Effects on landscape character, views and amenity, particularly from public roads</li> <li>b. The materials used, including their colour, reflectivity and permeability</li> <li>c. Whether the structure will be consistent with traditional rural elements.</li> </ol>	RD
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779. One submission sought that the rule be retained<sup>730</sup>, two sought that “nature conservation values” be added the matters of discretion<sup>731</sup>, one submission sought that 21.5.14.2 be amended without specifying such amendments<sup>732</sup>, and another sought that 21.5.14.2 be amended to read “*any structure associated with farming activities as defined in this Plan. This includes any structures associated with irrigation including centre pivots and other irrigation infrastructure*”<sup>733</sup>. Lastly, two submissions sought that 21.5.14 be amended to be restricted to matters that are truly discretionary<sup>734</sup>.

780. We also note that there were two submissions seeking the heading for Table 3 as notified be amended to specifically provide for irrigation structures and infrastructure.<sup>735</sup>

781. Mr Barr, in Appendix 2 of the Section 42A Report<sup>736</sup>, considered that applying nature conservation values to the matters of discretion would be too broad as it would encapsulate ecosystems, hence removing the specificity of the restricted discretionary status and the reason for needing a consent. We heard no other evidence on this matter. We agree with Mr Barr that the relief sought would make the discretion too wide and therefore not be effective in

<sup>730</sup> Submission 335, 384

<sup>731</sup> Submissions 339, 706

<sup>732</sup> Submission 701

<sup>733</sup> Submissions 784

<sup>734</sup> Submission 701, 784

<sup>735</sup> Submissions 701, 784

<sup>736</sup> C Barr, Section 42A Report, Appendix 2, Page 107

achieving the objective. Accordingly, we recommend that those submissions be rejected. We note that Mr Atly and Forest & Bird made requests for similar relief to Rules 21.5.15 – 21.5.17. We recommend that those submissions be rejected for the same reasons.

782. Mr Barr, in Appendix 2 of the Section 42A Report<sup>737</sup>, considered that irrigators were not buildings, as per the QLDC Practice Note<sup>738</sup> and therefore did not require specific provisions. We heard no other evidence on this matter. We agree with Mr Barr that irrigators are not buildings and therefore the amendments sought are not required. Accordingly we recommend that those submissions be rejected. This similarly applies to the submissions requesting the change to the Table 3 Heading.
783. In the Section 42A Report, Mr Barr addressed a range of submissions that sought that the matters of discretion be tightened, and specifically the removal of reference to “rural amenity values’ in the consent of Rule 21.5.18<sup>739</sup>. We address all the submissions on this matter at Rule 21.5.18.
784. In line with our recommendation in Section 7.1 regarding rule and table structure, we recommend that Rule 21.5.14 be relocated to Table 4, renumbered and worded as follows:

<b>21.7.1</b>	<p><b>Structures</b> Any structure which is greater than 5 metres in length, and between 1 metre and 2 metres in height must be located a minimum distance of 10 metres from a road boundary, except for:</p> <p>21.5.14.1 post and rail, post and wire and post and mesh fences, including deer fences;</p> <p>21.5.14.2 any structure associated with farming activities as defined in this plan.</p>	<p>RD Discretion is restricted to:</p> <p>a. Effects on landscape character, views and amenity, particularly from public roads</p> <p>b. The materials used, including their colour, reflectivity and permeability</p> <p>c. Whether the structure will be consistent with traditional rural elements.</p>
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## 8.2 Rule 21.5.15 - Buildings

785. Rule 21.5.15, as notified read as follows;

<sup>737</sup> C Barr, Section 42A Report, Appendix 2, Page 107

<sup>738</sup> QLDC – Practice Note 1/2014

<sup>739</sup> Submission 600

21.5.15	<p><b>Buildings</b></p> <p>Any building, including any structure larger than 5m<sup>2</sup>, that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building are subject to the following:</p> <p>All exterior surfaces shall be coloured in the range of browns, greens or greys (except soffits), including;</p> <p>21.5.15.1 Pre-painted steel and all roofs shall have a reflectance value not greater than 20%; and,</p> <p>21.5.15.2 All other surface finishes shall have a reflectance value of not greater than 30%.</p> <p>21.5.12.3 In the case of alterations to an existing building not located within a building platform, it does not increase the ground floor area by more than 30% in any ten year period.</p> <p>Discretion is restricted to all of the following:</p> <ol style="list-style-type: none"> <li>a. External appearance</li> <li>b. Visual prominence from both public places and private locations</li> <li>c. Landscape character</li> <li>d. Visual amenity.</li> </ol>	RD
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786. One submission sought that the rule be retained<sup>740</sup>; two sought that the reference to colour be removed<sup>741</sup>; one submission sought that 21.5.15.1 be deleted<sup>742</sup>; one submission sought that wording be amended for clarity and that the reflectance value not apply to locally sourced schist<sup>743</sup>; another submission sought amendments such that the area be increased to 10m<sup>2</sup> and that the reflectance value be increased to 36% for walls and roofs, and a number of finishes to be excluded<sup>744</sup>; two submissions sought that buildings within Ski Area Sub-Zones be excluded from these requirements<sup>745</sup>; one submission sought that 21.5.15.3 be less restrictive and amended to 30% in any 5 year period<sup>746</sup>; lastly, one submission sought the benefits of the buildings to rural sustainable land use be added as a matter of discretion.<sup>747</sup>

787. In the Section 42A Report, Mr Barr acknowledged that the permitted limits were conservative, but overall, considered that the provisions as notified would reduce the volume of consents that were required by the ODP<sup>748</sup>, and that these issues had been fully canvassed in the Section 32 Report, which concluded that the ODP rules were inefficient.<sup>749</sup> Mr Barr also considered that for long established buildings and any non-compliance with the standards, the proposed rules allow case by case assessment.<sup>750</sup> We concur with Mr Barr that the shift from controlled activity under the ODP to permitted under the PDP, subject to the specified standards, is a more efficient approach to controlling the effects of building colour.

<sup>740</sup> Submission 600

<sup>741</sup> Submissions 368, 829

<sup>742</sup> Submission 411

<sup>743</sup> Submission 608

<sup>744</sup> Submission 368

<sup>745</sup> Submissions 610, 613

<sup>746</sup> Submission 829

<sup>747</sup> Submissions 624

<sup>748</sup> C Barr, Section 42A Report, page 34, paragraph 11.13

<sup>749</sup> C Barr. Section 42A Report, Pages 37 – 38, Paras 12.2, 12.5

<sup>750</sup> C Barr. Section 42A Report, Page 38, Paras 12.3 – 12.5

788. Mr Barr did not consider that the exclusion of certain natural materials from the permitted activity standards to be appropriate, recording difficulties with interpretation and potential lack of certainty<sup>751</sup>. However, in an attempt to provide some ability for landowners to utilise natural materials as a permitted activity, Mr Barr recommended slightly revising wording of the standard<sup>752</sup>.
789. We heard detailed evidence for Darby Planning from Ms Pflüger, a landscape Architect, and for QLDC from Dr Read, also a landscape architect, that schist has no LRV, and concerning the difference between dry stacked schist and bagged schist<sup>753</sup>. The latter was considered by Dr Read to be inappropriate due to its resemblance to concrete walls. Ms Pflüger, on the other hand, was of the view that bagged schist was sufficiently different to concrete walls as to be appropriate in the landscape context of the district. Mr Ferguson, in his evidence for Darby Planning, relying on the evidence of Ms Pflüger, considered that schist should be excluded from the identified surfaces with LRV.<sup>754</sup>
790. In his Reply Statement, Mr Barr maintained his opinion that a list of material should not be included in this rule, as *“over the life of the district plan there will almost certainly be other material that come onto the market and it would be ineffective and inefficient if these materials required a resource consent because they were not listed.”*<sup>755</sup>
791. We agree in part with Mr Barr’s recommended amendments:
- a. To exclude soffits, windows and skylights (but not glass balustrades) from the exterior surfaces that have colour and reflectivity controls; and
  - b. To include a clarification in 21.5.15.2 (as notified) that it includes cladding and built landscaping that cannot be measured by way of light reflective value.
792. However, we disagree with his view that the inclusion of an exemption for schist from the light reflective control would somehow lead to inefficiencies due to other materials coming on the market. We agree with Ms Pflüger that incorporating schist into buildings is an appropriate response to the landscape in this district. We also consider that the term “luminous reflectance value” proposed by Mr Barr is more readily understood if phrased “light reflectance value”.
793. Mr Barr in the Section 42A Report, agreed that Rule 21.5.15 need not apply to the Ski Area Sub Zones, because these matters were already provided for by the controlled activity status for the construction and alteration of buildings in those Sub-Zones<sup>756</sup>. Accordingly, we accept Mr Barr’s recommendation to clarify that position in this rule and recommend that the submissions on this aspect be accepted. We note that the same submission issue applies to Rule 21.5.16<sup>757</sup> and we reach a similar recommendation. As a consequence, we do not address this matter further.
794. Accordingly, with other minor changes to the wording, we recommend that Rule 21.5.15 be relocated into Table 4, renumbered, and worded as follows:

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<sup>751</sup> C Barr, Section 42A Report, Page 39, Paras 12.9 – 12.10

<sup>752</sup> C Barr, Section 42A Report, page 39-40, paragraph 12.13

<sup>753</sup> Y Pflüger, EIC, Pages 13 -14, Paras 7.3 – 7.5 and Dr M Read, EIC, Pages 8 – 9, Paras 5.2 – 5.6

<sup>754</sup> C Fergusson, EIC, Page 14, Para 65

<sup>755</sup> C Barr, Reply Statement, page 23, paragraph 7.4

<sup>756</sup> C Barr, Section 42A Report, Page 41, Para 12.19

<sup>757</sup> Submissions 610, 613

<p><b>21.7.2</b></p>	<p><b>Buildings</b>  Any building, including any structure larger than 5m<sup>2</sup>, that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building, are subject to the following:  All exterior surfaces* must be coloured in the range of browns, greens or greys, including;</p> <p>21.7.2.1 Pre-painted steel and all roofs must have a light reflectance value not greater than 20%; and,</p> <p>21.7.2.2 All other surface** finishes, except for schist, must shall have a light reflectance value of not greater than 30%.</p> <p>21.7.2.3 In the case of alterations to an existing building not located within a building platform, it does not increase the ground floor area by more than 30% in any ten year period.</p> <p>Except this rule does not apply within the Ski Area Sub-Zones.</p> <p>* Excludes soffits, windows and skylights (but not glass balustrades).</p> <p>** Includes cladding and built landscaping that cannot be measured by way of light reflectance value but is deemed by the Council to be suitably recessive and have the same effect as achieving a light reflectance value of 30%.</p>	<p>RD  Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>a. external appearance;</li> <li>b. visual prominence from both public places and private locations;</li> <li>c. landscape character;</li> <li>d. visual amenity.</li> </ol>
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**8.3 Rule 21.5.16 – Building Size**

795. Rule 21.5.16, as notified read as follows;

<p>21.5.16</p>	<p><b>Building size</b>  The maximum ground floor area of any building shall be 500m<sup>2</sup>.</p> <p>Discretion is restricted to all of the following:</p> <ol style="list-style-type: none"> <li>a. External appearance</li> <li>b. Visual prominence from both public places and private locations</li> <li>c. Landscape character</li> <li>d. Visual amenity</li> <li>e. Privacy, outlook and amenity from adjoining properties.</li> </ol>	<p>RD</p>
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796. One submission sought that this rule be retained<sup>758</sup> and two submissions sought that the rule be deleted<sup>759</sup>.
797. We note that at the hearing on 18 May 2016, Mr Vivian, appearing among others for Woodlot Properties, withdrew submission 501 relating to Rule 21.5.16.
798. The reasons contained in the remaining submission seeking deletion suggested that there were circumstances on large subdivided lots where larger houses could be appropriate and that restricting the size of the houses would have a less acceptable outcome. The submitters considered that each should be judged on its own merit and that restrictions on size were already in place via the defined building platform.
799. In the Section 42A Report, Mr Barr noted that the rule was part of the permitted activity regime for buildings in the Rural Zone and that the purpose of the limit was to provide for the assessment of buildings that may be of a scale that is likely to be prominent. Mr Barr noted that buildings of 1000m<sup>2</sup> were not common and that the rule provided discretion as to whether additional mitigation was required due to the scale of the building.<sup>760</sup>
800. We agree with Mr Barr. Completely building out a 1000m<sup>2</sup> building platform is not an appropriate way to achieve the objectives of the PDP and, in our view, the 500m<sup>2</sup> limit enables appropriately scaled buildings. Proposals involving larger floor plates can still be considered under the discretion for buildings greater than 500m<sup>2</sup>.
801. Accordingly, we recommend that the submission seeking the deletion of the rule be rejected and the rule be relocated into Table 4, renumbered and amended to be worded as follows:

21.7.3	<p><b>Building size</b></p> <p>The ground floor area of any building must not exceed 500m<sup>2</sup>.</p> <p>Except this rule does not apply to buildings specifically provided for within the Ski Area Sub-Zones.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. external appearance;</li> <li>b. visual prominence from both public places and private locations;</li> <li>c. landscape character;</li> <li>d. visual amenity;</li> <li>e. privacy, outlook and amenity from adjoining properties.</li> </ul>
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#### 8.4 Rule 21.5.17 – Building Height

802. Rule 21.5.17, as notified limited the height of buildings to 8m. Two submissions sought that rule be amended, one to exclude the rule from applying to passenger lift systems<sup>761</sup> and one to exclude the rule from applying to mining buildings<sup>762</sup>. One submission sought that the rule be retained as notified<sup>763</sup>.

<sup>758</sup> Submission 600

<sup>759</sup> Submission 368, 501

<sup>760</sup> C Barr, Section 42A Report, Pages 40-41, Paras 12.15 – 12.18

<sup>761</sup> Submission 407

<sup>762</sup> Submission 519

<sup>763</sup> Submission 600

803. As regards exclusion of passenger lift systems from the rule, we note that this is related to our discussion on the definition of passenger lifts systems in paragraphs 191 – 193 where we recommended that this matter should be addressed in the definitions hearing.
804. That said, in evidence for Mt Cardrona Station Ltd, Mr Brown considered that passenger lift systems should be excluded from the general standards applying to buildings and structures in the same way that farm buildings are exceptions<sup>764</sup>, although he did not discuss any of the rules in Table 3 in detail.
805. The submission of NZTM (519) seeking exclusion of mining building from this rule was also framed in the general. Mr Vivian’s evidence<sup>765</sup> addressed this submission, opining that mining buildings necessary for the undertaking of mining activities could be treated much the same way as farm buildings, as they would be expected in the landscape where mining occurs.
806. We noted above, in discussing the definition of Passenger Lift Systems, (Section 5.16) Mr Fergusson’s understanding that ski tows and machinery were exempt from the definition of building in the Building Act. Other than that evidence, we were not provided with any reasons why passenger lift systems should be excluded from this rule. If Mr Fergusson’s understanding is correct, then the pylons of passenger lift systems would not be subject to the rule in any event. In the absence of clear evidence justifying the exclusion of passenger lift systems from the effect of this rule we are not prepared to recommend such an exclusion.
807. Turning to the NZTM submission, we consider that mining building buildings are not in the same category as farm buildings. The policy direction of this zone is to enable farming as the main activity in the zone. The separate provisions for farm buildings recognise the need for such buildings so as to enable the farming activity. However, such buildings are constrained as to frequency in the landscape, location, size, colour and height. In addition, mining, other than for farming purposes, cannot occur without a resource consent. While Mr Vivian may be correct that one would expect buildings to be associated with a mine, without detailed evidence on what those buildings may entail and how any adverse effects of such buildings could be avoided, we are unable to conclude that some separate provision should be made for mining buildings.
808. Accordingly, we recommend that apart from relocation into Table 4, renumbering and minor wording changes, Rule 21.5.17 be retained as notified.

## 9 TABLE 4 – STANDARDS FOR FARM BUILDINGS

### 9.1 Rule 21.5.18 – Construction or Extension to Farm Buildings

809. Rule 21.5.18, as notified, set out the permitted activity standards for farm buildings (21.5.18.1 – 21.5.18.7) and provided matters of discretion for a restricted discretionary activity status when the standards were not complied with.
810. One submission opposed farm buildings being permitted activities and sought that provisions of the ODP be rolled over in their current form.<sup>766</sup> We have already addressed that matter in Section 7.4 above and have recommended that submission be rejected. In the Section 42A Report, however, Mr Barr relied on that submission and the evidence of Dr Read that a density of 1 farm building per 25 hectares (Rule 21.5.18.2 as notified) created the risk to the landscape from a proliferation of built form, as the basis for his recommendation that a density for farm

<sup>764</sup> J Brown, EIC, Page 24, Paras 2.39 – 2.40

<sup>765</sup> C Vivian, EIC, page 21, paragraphs 4.95-4.96

<sup>766</sup> Submission 145

buildings of one per 50 hectares was more appropriate<sup>767</sup>. No other evidence was provided on this provision. We recommend that, subject to minor wording changes to make the rule clearer, Rule 12.5.18.2 be adopted as recommended by Mr Barr.

811. There were other submissions on specific aspects of 21.5.18 that we address now.
812. One submission sought that 21.5.18.3 be amended so that containers located on ONFs would be exempt from this rule<sup>768</sup>. Mr Barr did not address this matter directly in the Section 42A Report. Mr Vivian addressed this matter in evidence suggesting that provision for small farm buildings could be made<sup>769</sup>, but gave no particular reasons as to how he reached that opinion. Given the policy direction of the PDP contained in Chapters 3 and 6, we consider to exempt containers from this rule would represent an implementation failure. We recommend that submission be rejected.
813. One submission sought that 21.5.18.4 be amended to provide for buildings up to 200m<sup>2</sup> and 5m in height.<sup>770</sup>
814. Mr Barr, in the Section 42A Report, relying on the evidence of Dr Read as to the importance of landscape, considered the proposed rule as notified provided the appropriate balance between providing for farm buildings and ensuring landscape values were maintained. Mr Barr also considered that the rule was not absolute and provided for proposals not meeting the permitted standards to be assessed for potential effects on landscape and visual amenity.
815. We heard no evidence in support of the submission. We agree with and adopt the reasons of Mr Barr. Accordingly, we recommended that the submission be rejected.
816. One submission sought that the permitted elevation for farm buildings be increased from 600 metres above sea level (masl) to 900 masl<sup>771</sup>. In the Section 42A Report, Mr Barr noted that this provision had been brought across from the ODP, acknowledged that there were some farms with areas over 600 masl, but considered that the 600 masl cut-off was appropriate because areas at the higher elevation were visually vulnerable.<sup>772</sup>
817. This is another area where we see that the permitted activity status for farming needs to be balanced against its potential adverse effects on landscape and visual amenity. We consider that the 600 masl cut-off is the most appropriate balance in terms of the rule achieving the objective. Accordingly, we recommend that the submission be rejected.
818. Two submissions opposed the open-ended nature of the matters of discretion that applied to this provision through the inclusion of reference to rural amenity values<sup>773</sup>. We note these submitters opposed other provisions in the standards of this chapter on a similar basis. Jeremy Bell Investment Limited (Submission 784) considered that the matters of discretion were so wide that they effectively made the provision a fully discretionary activity.

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<sup>767</sup> C Barr, Section 42A Report, Page 31, Para 10.19

<sup>768</sup> Submission 519

<sup>769</sup> C Vivian, EIC, Page 21, Para 4.100

<sup>770</sup> Submission 384

<sup>771</sup> Submission 829

<sup>772</sup> C Barr, Section 42A Report, Page 29, Para 10.10

<sup>773</sup> Submission 600, 784



819. In the Section 42A Report, Mr Barr considered that the matters of discretion related to the effects on landscape and were consistent with the ODP in this regard. However, Mr Barr went on to compare the matters of control for farm buildings under the ODP with the matters of discretion under the PDP, concluding that the ODP matters of control nullified the controlled activity status. Mr Barr acknowledged that the “scale” and “location” were broad matters, but he remained of the view that they were relevant and should be retained.<sup>774</sup>
820. We heard no evidence in support of these submissions. We also note that the change in approach of the PDP, providing for farm buildings as permitted activities, is accompanied by objectives and policies to protect landscape values. We agree with Mr Barr where, in the Section 42A Report, he observes that the matters of discretion relate to landscape and not other matters such as vehicle access and trip generation, servicing, natural hazards or noise. While the matters of discretion are broad, they are in line with the relevant objectives and policies.
821. Nonetheless, we questioned Mr Barr as to relevance of “location” and “scale” as matters of discretion given that matters of discretion listed in this rule already provide for these matters.
822. In reply, Mr Barr noted the importance of “location” and “scale”, observing that they were specifically identified in Policy 21.2.1.2 (as notified) but considered that “... *The matters of discretion would better suit the rural amenity, landscape character, privacy and lighting being considered in the context of the scale and location of the farm building.*”<sup>775</sup> Mr Barr, went on to recommend rewording of the matters of discretion so that location and scale are considered in the context of the other assessment matters. We agree and recommend that the wording of the matters of discretion be modified accordingly. Otherwise, we recommend that the submissions of Federated Farmers and JBIL be rejected.
823. Another submission sought that wahi tupuna be added to matters of discretion where farm buildings affect ridgelines and slopes<sup>776</sup>.
824. Mr Barr, in the Section 42A Report, considered that this matter was already addressed in Policy 21.2.1.7 and that as it pertained to ridgelines and slopes, it was already included in the matters of discretion<sup>777</sup>. We agree. Accordingly, we recommend that the submission be rejected.
825. Taking account of the amendments recommended above and our overall rewording of the provisions, we recommend that Rule 21.5.18 be located in Table 5, renumbered and worded as follows;

	<b>Table 5- Standards for Farm Buildings</b>	<b>Non-compliance</b>
	The following standards apply to Farm Buildings.	
21.8.1	<p><b>Construction, Extension or Replacement of a Farm Building</b></p> <p>The construction, replacement or extension of a farm building is a permitted activity, subject to the following standards:</p> <p>21.8.1.1 The landholding the farm building is located within must be greater than 100ha; and</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. <b>The extent to which the scale and location of the Farm Building is appropriate in terms of:</b></p> <p>i. rural amenity values.</p> <p>ii. landscape character.</p>

<sup>774</sup> C Barr, Section 42 A Report, Pages 3-32, Para 10.21 – 10.26

<sup>775</sup> C Barr, Reply, Page 15, Para 5.5

<sup>776</sup> Submission 810

<sup>777</sup> C Barr, Section 42A Report, Page 32, Para 10.27 – 10.28

	<b>Table 5- Standards for Farm Buildings</b> The following standards apply to Farm Buildings.	<b>Non-compliance</b>
	<p>21.8.1.2 The density of all buildings on the landholding, inclusive of the proposed building(s) must not exceed one farm building per 50 hectares; and</p> <p>21.8.1.3 The farm building must not be located within or on an Outstanding Natural Feature (ONF); and</p> <p>21.8.1.4 If located within the Outstanding Natural Landscape (ONL), the farm building must not exceed 4 metres in height and the ground floor area must not exceed 100m<sup>2</sup>; and</p> <p>21.8.1.5 The farm building must not be located at an elevation exceeding 600 masl; and</p> <p>21.8.1.6 If located within the Rural Character Landscape (RCL), the farm building must not exceed 5m in height and the ground floor area must not exceed 300m<sup>2</sup>; and</p> <p>21.8.1.7 Farm buildings must not protrude onto a skyline or above a terrace edge when viewed from adjoining sites, or formed roads within 2km of the location of the proposed building.</p>	<p>iii. privacy, outlook and rural amenity from adjoining properties.</p> <p>iv. visibility, including lighting.</p>

## 9.2 Rule 21.5.19 – Exterior colours of buildings

826. Rule 21.5.19, as notified, set out the permitted activity standards for exterior colours for farm buildings (21.5.19.1 – 21.5.19.3) and provided matters of discretion to support a restricted discretionary activity status where the standards were not complied with.
827. One submission sought that the rule be retained<sup>778</sup>, one submission sought that wording be amended for clarity and that the reflectance value not apply to locally sourced schist<sup>779</sup>, and one submission sought removal of visual amenity values from the matters of discretion<sup>780</sup>.
828. The submission on this provision from Darby Planning<sup>781</sup> is the same as that made to 21.5.15 which we addressed above (Section 8.15). For the same reasons, we recommend that the submission on provision 21.5.19 be accepted in part.
829. The submission from Federated Farmers<sup>782</sup> seeking the removal of visual amenity values from the matters of discretion is the same as that made to 21.5.15 in regard to rural amenity values, which we addressed above (Section 8.15). For the same reasons, we recommend that the submission on provision 21.5.19 be rejected.

<sup>778</sup> Submission 325

<sup>779</sup> Submission 608

<sup>780</sup> Submission 600

<sup>781</sup> Submission 608

<sup>782</sup> Submission 600

830. Accordingly, we recommend that 21.5.19 be located in Table 5, renumbered and worded as follows;

21.8.2	<p>Exterior colours of farm buildings:</p> <p>21.8.2.1 All exterior surfaces, except for schist, must be coloured in the range of browns, greens or greys (except soffits).</p> <p>21.8.2.2 Pre-painted steel, and all roofs must have a reflectance value not greater than 20%.</p> <p>21.8.2.3 Surface finishes, except for schist, must have a reflectance value of not greater than 30%.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. external appearance</li> <li>b. visual prominence from both public places and private locations</li> <li>c. landscape character</li> <li>d. visual amenity.</li> </ul>
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### 9.3 Rule 21.5.20 – Building Height

831. This standard set a maximum height of 10m for farm buildings. Two submissions<sup>783</sup> supported this provision. Other than some minor rewording to make the rule clearer, location in Table 5 and renumbering, we recommend it be adopted as notified.

## 10 TABLE 5 – STANDARDS FOR COMMERCIAL ACTIVITIES

### 10.1 Rule 21.5.21 – Commercial Recreational Activity

832. We have dealt with this standard in Section 7.15 above.

### 10.2 Rule 21.5.22 – Home Occupation

833. Rule 21.5.22, as notified set out the permitted activity standards for home occupations and provided for a restricted discretionary activity status for non-compliance with the standards.

834. One submission sought that the provision be retained<sup>784</sup> and one sought that it be amended to ensure that the rule was effects-based and clarified as to its relationship with rules controlling commercial and commercial recreational activities.<sup>785</sup>

835. In the Section 42A Report, Mr Barr considered that the rule did provide clear parameters and certainty.<sup>786</sup> We heard no other evidence on this provision. We agree with Mr Barr, that this rule is clear and note that it specifically applies to home occupations. Accordingly, we recommend that the submission seeking that the rule be amended, be rejected.

836. Accordingly, taking account of the amendments recommended above and our overall rewording of the provisions, we recommend that Rule 21.5.22 be located in Table 6, renumbered and worded as follows;

<sup>783</sup> Submissions 325 and 600 (supported by FS1209, opposed by FS1034)

<sup>784</sup> Submission 719

<sup>785</sup> Submission 806

<sup>786</sup> C Barr, Section 42A Report, Page 48, Par 13.36

21.9.2	<p><b>Home Occupation</b></p> <p>21.9.2.1 The maximum net floor area of home occupation activities must not exceed 150m<sup>2</sup>;</p> <p>21.9.2.2 Goods materials or equipment must not be stored outside a building;</p> <p>21.9.2.3 All manufacturing, altering, repairing, dismantling or processing of any goods or articles must be carried out within a building.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. the nature, scale and intensity of the activity in the context of the surrounding rural area.</p> <p>b. visual amenity from neighbouring properties and public places.</p> <p>c. noise, odour and dust.</p> <p>d. the extent to which the activity requires a rural location because of its link to any rural resource in the Rural Zone.</p> <p>e. access safety and transportation effects.</p>
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### 10.3 Rule 21.5.23 – Retail Sales

837. This rule imposed a setback from road boundaries of 30m on buildings in excess of 25m<sup>2</sup> used for retail sales. No submissions were received on this standard. Other than some wording changes for clarification purposes, we recommend the rule be located in Table 6, renumbered and adopted as notified.

### 10.4 Rule 21.5.24 – Retail Sales

838. As notified, this rule read:

*Retail sales where the access is onto a State Highway, with the exception of the activities listed in Table 1.*

839. Non-compliance was listed as a non-complying activity.

840. The sole submission<sup>787</sup> on the rule sought its retention.

841. The problem with this rule is that it is not a standard. It appears to us that the intention of the rule is to make any retail sales other than those specifically listed in Table 1 (21.4.14 Roadside stalls and 21.4.15 sales of farm produce) a non-complying activity. That being the case, we recommend the rule be relocated in Table 1 as Rule 21.4.21 to read:

*Retail sales where the access is onto a State Highway, with the exception of the activities provided for by Rule 21.4.14 or Rule 21.4.16.*

*Non-complying activity*

## 11 TABLE 6 – STANDARDS FOR INFORMAL AIRPORTS

842. We have dealt with this in Section 7.23 above.

## 12 TABLE 7 – STANDARDS FOR SKI AREA ACTIVITIES WITHIN THE SKI AREA SUB ZONE

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<sup>787</sup> Submission 719

**12.1 Rule 21.5.27 – Construction, relocation, addition or alteration of a building**

843. As notified, Rule 21.5.27 read:

21.5.27	Construction, relocation, addition or alteration of a building. Control is reserved to all of the following: <ol style="list-style-type: none"> <li>a. Location, external appearance and size, colour, visual dominance</li> <li>b. Associated earthworks, access and landscaping</li> <li>c. Provision of water supply, sewage treatment and disposal, electricity and communication services (where necessary)</li> <li>d. Lighting.</li> </ol>	C
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844. One submission sought to add provisions relating to the exterior colour of all buildings<sup>788</sup>; and one submission sought that the table be renamed “Standards for Ski Area Activities within Ski Area Sub Zones and Tourism Activities within the Cardrona Alpine Resort” and that numerous changes be made to 21.5.27 including adding reference to earthworks infrastructure, snow grooming, lift and tow provisions and particular reference to the Cardrona Alpine Resort.<sup>789</sup>

845. The submission seeking specification of the exterior colour for building stated as the reason for the request that the matters listed are assessment matters not standards. Mr Barr, in the Section 42A Report, acknowledged the ambiguity of the table and recommended it be updated to correct this issue. Mr Brown, in evidence for Mt Cardrona Station Ltd, supported such an amendment<sup>790</sup> and Mr Barr, in reply provided further modification to the Table to clarify activity status<sup>791</sup>. We agree with Mr Brown and Mr Barr that clarification as to the difference between activity status and standards is required. However, we do not think that their recommended amendments fully address the issue.

846. Accordingly, and in line with our recommendation in Section 7.1 above, we recommend that the activities for Ski Area Sub Zones be included in one table (Table 9).

847. Mr Barr, in the Section 42A Report, questioned if the substantive changes sought by Cardrona Alpine Resort Ltd were to be addressed in the Stream 11 hearing due to the extensive nature of changes sought by the submission. For the avoidance of doubt, Mr Barr assessed the amendments to 21.5.27 in a comprehensive manner, concluding that the submission should be rejected<sup>792</sup>. We heard no evidence in support of the amendments to Rule 21.5.27 sought by Cardrona Alpine Resort Ltd. As such, we agree with Mr Barr, for the reasons set out in the Section 42A Report, and recommend that the submission be rejected.

848. Accordingly, we recommend that Rule 21.5.27 be located in Table 9 Activities within the Ski Area Sub Zones, renumbered and worded as follows:

21.11.2	<b>Construction, relocation, addition or alteration of a building.</b> Control is reserved to: <ol style="list-style-type: none"> <li>a. location, external appearance and size, colour, visual dominance</li> <li>b. associated earthworks, access and landscaping</li> <li>c. provision of water supply, sewage treatment and disposal, electricity and communication services (where necessary)</li> </ol>	C
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<sup>788</sup> Submission 407

<sup>789</sup> Submission 615

<sup>790</sup> J Brown, EIC, Page 24, Para 2.38

<sup>791</sup> C Barr, Reply, Appendix 1, Page 21-21

<sup>792</sup> C Barr, Section 42A Report, Pages 63 – 64, Paras 14.43 – 14.51

	d. lighting.	
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## 12.2 Rule 21.5.28 – Ski tows and lifts

849. As notified, Rule 21.5.28 read as follows:

21.5.28	<p><b>Ski tows and lifts.</b></p> <p>Control is reserved to all of the following:</p> <ol style="list-style-type: none"> <li>a. The extent to which the ski tow or lift or building breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes</li> <li>b. Whether the materials and colour to be used are consistent with the rural landscape of which the tow or lift or building will form a part</li> <li>c. Balancing environmental considerations with operational characteristics.</li> </ol>	C
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850. One submission sought to replace ski tows and lift with passenger lift systems and add provisions relating to the exterior colour of all passenger lift systems<sup>793</sup>. We have already addressed the definition of passenger lift system in paragraphs Section 5.16 above, concluding that it is appropriate to use this term for all such systems, including gondolas, ski tows and lifts. In addition, the submission of Mt Cardrona Station Ltd regarding exterior colour has the same reasoning as we discussed in Section 13.1 above. We adopt that same reasoning here. After hearing more extensive evidence on passenger lift systems, the Stream 11 Panel has recommended the inclusion of an additional matter of control ((c) in the rule set out below). Accordingly, we recommend that Rule 21.5.28 be located in Table 9 as an activity rather an a standard, be renumbered and worded as follows:

21.11.3	<p><b>Passenger Lift Systems.</b></p> <p>Control is reserved over:</p> <ol style="list-style-type: none"> <li>a. the extent to which the passenger lift system breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes;</li> <li>b. whether the materials and colour to be used are consistent with the rural landscape of which the passenger lift system will form a part;</li> <li>c. the extent of any earthworks required to construct the passenger lift system, in terms of the limitations set out in Chapter 25 Earthworks;</li> <li>d. balancing environmental considerations with operational characteristics.</li> </ol>	C
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## 12.3 Rule 21.5.29 – Night Lighting

851. As notified, this rule made night lighting a controlled activity in the SASZ. There were no submissions on it. We recommend it be located in Table 9 as an activity rather than a standard, and adopted as notified subject to minor wording changes and renumbering.

## 12.4 Rule 21.5.30 – Vehicle Testing

852. As notified, this rule provided for vehicle testing facilities at the Waiorau Snow Farm SASZ as a controlled activity There were no submissions on it. We recommend it be located in Table 9 as

<sup>793</sup> Submission 407

an activity rather than a standard, and adopted as notified subject to minor wording changes and renumbering.

#### 12.5 Rule 21.5.31 – Retail activities ancillary to Ski Area Activities

853. As notified, this rule provided for retail activities ancillary to ski area activities as a controlled activity in the SASZ. There were no submissions on it. We recommend it be located in Table 9 as an activity rather than a standard, and adopted as notified subject to minor wording changes and renumbering.

#### 12.6 New Activity for Ski Area Sub Zone Accommodation within Ski Area Sub Zones

854. Two submissions sought to insert a new rule into Table 7 (as notified) to provide Residential and Visitor Accommodation<sup>794</sup>.

855. In Section 5.19 above, we set out findings as regards a definition and policy for Ski Area Sub Zone Accommodation. We do not repeat that here. Rather, having established the policy framework, we address here the formulation of an appropriate rule. We understood that Mr Barr and Mr Ferguson<sup>795</sup> were in general agreement as to the substance of the proposed rule. However, in terms of matters that we have not previously addressed, they had differences of opinion in relation to the inclusion in the rule of reference to landscape and ecological values.

856. Mr Ferguson initially recommended inclusion in the matters of discretion of reference to the positive benefits for landscape and ecological values<sup>796</sup>. However, in response to our questions, he made further amendments removing the reference to positive benefits.<sup>797</sup> Mr Barr, in reply, considered that it did not seem appropriate to have landscape and ecological values apply to Ski Area Sub-Zone Accommodation facilities and not to other buildings in the Sub-Zone, which are addressed by the framework in Chapter 33 and which provided for the maintenance of biological diversity<sup>798</sup>. We agree with Mr Barr. The inclusion of reference to ecological matters would be a duplication of provisions requiring assessment. We note that the policy framework for Ski Area Sub-Zones precludes the landscape classification from applying in the Sub-Zone. This is not to say that landscape considerations are unimportant, but, in our view, those considerations should be applied consistently when considering all buildings and structures in the Sub-Zone.

857. In Section 5.19, we noted the need for the inclusion of the 6 month stay period as it applies to Ski Area Sub Zone Accommodation to be part of this rule. Mr Ferguson included this matter as a separate rule<sup>799</sup>. Mr Barr, in reply, recommended the 6 month period be included as part of a single rule and also considered that given that such activities were in an alpine environment, natural hazards should be included as a matter of discretion.

858. In considering all of the above, we recommend that new rule be included in Table 9 to provide for Ski Area Sub Zone Accommodation, numbered and worded as follows:

21.12.7	<b>Ski Area Sub Zone Accommodation</b>	RD
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<sup>794</sup> Submissions 610, 613

<sup>795</sup> Expert Planning Witness for Submission Numbers 610 and 613

<sup>796</sup> C Ferguson, EIC, Page 32-33, Para 125

<sup>797</sup> C Ferguson, Response to Panel Questions, 27 May 2016, Pages 7 - 8

<sup>798</sup> C Barr, Reply, Pages 40 – 41, Para 14.12

<sup>799</sup> C Ferguson, Response to Panel Questions, 27 May 2016, Page 8

	<p>Comprising a duration of stay of up to 6 months in any 12 month period and including worker accommodation.</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>a. scale and intensity and whether these would have adverse effects on amenity, including loss of remoteness or isolation</li> <li>b. location, including whether that because of the scale and intensity the visitor accommodation should be located near the base building area (if any)</li> <li>c. parking</li> <li>d. provision of water supply, sewage treatment and disposal</li> <li>e. cumulative effects</li> <li>f. natural hazards</li> </ol>	
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### 12.7 New Rule – Ski Area Sub-Zone Activities

859. As a result of hearings in Stream 11, a new Rule 21.12.8 providing for a no build area in the Remarkables Ski Area Sub-Zone has been recommended by the Stream 11 Panel.

### 12.8 Standards for Ski Area Sub-Zones

860. As will be clear from above, we concluded that all the provisions listed in notified Table 7 were activities rather than standards. We had no evidence suggesting any specific standard be included for Ski Area Sub-Zone. Thus we recommend the table for such standards be deleted.

## 13 TABLE 8 – STANDARDS FOR ACTIVITIES WITHIN THE RURAL INDUSTRIAL SUB ZONE

### 13.1 Rule 21.5.32 – Buildings

861. As notified, Rule 21.5.32 read as follows;

21.5.32	<p><b>Buildings</b> Any building, including any structure larger than 5m<sup>2</sup>, that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building are subject to the following: All exterior surfaces shall be coloured in the range of browns, greens or greys (except soffits), including;</p> <p>21.5.32.1 Pre-painted steel and all roofs shall have a reflectance value not greater than 20%; and,</p> <p>21.5.32.2 All other surface finishes shall have a reflectance value of not greater than 30%.</p> <p>Discretion is restricted to all of the following:</p> <ul style="list-style-type: none"> <li>• External appearance</li> <li>• Visual prominence from both public places and private locations.</li> <li>• Landscape character</li> <li>• Visual amenity.</li> </ul>	RD
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862. One submission sought that the activity status be amended to fully discretionary or that the Rural Industrial Sub-Zone be removed from this Stage of the Review<sup>800</sup>. On reviewing the submission, we note that the concern expressed was that ‘rural amenity’ was not provided in the list of matters of discretion.
863. This submission was addressed by Mr Barr in the Section 42A Report, Appendix 2 where Mr Barr recorded that, *“The matters of discretion are considered to appropriately contemplate ‘rural amenity’. The matters of discretion specify ‘visual amenity’. Visual amenity would encompass rural amenity.”*<sup>801</sup>
864. We heard no evidence in support of the submission. We agree with Mr Barr for the reasons set out in the Section 42A Report. Accordingly, we recommend that the submission be rejected and subject to minor word changes, the rule be adopted as notified as Rule 21.14.1 in Table 11..

### 13.2 Rule 21.5.33 – Building size

865. As notified this rule set a maximum ground floor of buildings in the Rural Industrial Sub-Zone at 500m<sup>2</sup>, with non-compliance a restricted discretionary activity. No submissions were received on this rule.
866. Other than minor wording changes for clarity and renumbering, we recommend this rule be adopted as notified.

### 13.3 Rule 21.5.34 – Building height

867. As notified, this rule set the maximum building height at 10m in the Sub-Zone. No submissions were received on this rule.
868. Other than minor wording changes for clarity and renumbering, we recommend this rule be adopted as notified.

### 13.4 Rule 21.5.35 – Setback from Sub-Zone Boundaries

869. As notified, this rule set the setback from the Sub-Zone boundaries at 10m in the Sub-Zone. No submissions were received on this rule.
870. Other than minor wording changes for clarity and renumbering, we recommend this rule be adopted as notified.

### 13.5 Rule 21.5.36 – Retail Activities

871. As notified, this limited the location and area of space used for retail sales to being within a building, and not exceeding 10% of the building’s total floor area. Non-compliance was set as a non-complying activity. No submissions were received on this rule.
872. Other than minor wording changes for clarity and renumbering, we recommend this rule be adopted as notified.

### 13.6 Rule 21.5.37 – Lighting and Glare

873. As notified, Rule 21.5.37 read as follows;

21.5.37	Lighting and Glare	NC
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<sup>800</sup> Submission 314

<sup>801</sup> C Barr, Section 42A Report, Appendix 2, Page 127

	21.5.37.1	All fixed exterior lighting shall be directed away from adjoining sites and roads; and	
	21.5.37.2	No activity on any site shall result in greater than a 3.0 lux spill (horizontal and vertical) of light onto any other site measured at any point inside the boundary of the other site, provided that this rule shall not apply where it can be demonstrated that the design of adjacent buildings adequately mitigates such effects.	
	21.5.37.3	There shall be no upward light spill.	

874. One submission sought that this provision be relocated to Table 2 – General Standards<sup>802</sup>. At this point, we also note that there was one submission seeking shielding and filtration standards for outdoor lighting generally within the zone with any non-compliance to be classified as a fully discretionary activity<sup>803</sup>.

875. Mr Barr considered that shifting the standard to Table 2 – General Standards was appropriate relying on the evidence of Dr Read, “... that the absence of any lighting controls in the ONF/L is an oversight and is of the opinion that the lighting standards should apply District Wide”<sup>804</sup>. We agree for the reason set out in Mr Barr’s Section 42A Report and recommend that the submission be accepted in part. We also consider that this addresses the submission seeking new lighting standards and accordingly recommended that submission be accepted in part.

876. The submission of QLDC Corporate also sought the following additional wording be added to the standard, ‘Lighting shall be directed away from adjacent roads and properties, so as to limit effects on the night sky’.

877. We agree with Mr Barr that such a standard is too subjective in that the rule itself would limit effects on the night sky and that it would be too difficult to ascertain as a permitted standard. Accordingly, we recommended that that submission be rejected.

878. Consequently, we recommend this rule be located in Table 2 as Rule 21.5.7 with the only text change being the replacement in recommended Rule 21.5.7.3 of “shall” with “must”.

## 14 TABLE 9 – ACTIVITIES AND STANDARDS FOR ACTIVITIES ON THE SURFACE OF LAKES AND RIVERS

879. This table, as notified, contained a mixture of activities and standards. We recommend it be divided into two tables: Table 12 containing the activities on the surface of lakes and rivers, and Table 13 containing the standards for those activities.

### 14.1 Rule 21.5.38 – Jetboat Race Events

880. As notified, Rule 21.5.38 read as follows:

<sup>802</sup> Submission 383

<sup>803</sup> Submission 568

<sup>804</sup> C Barr, EIC, Page 101, Para 20.8

21.5.38	<p><b>Jetboat Race Events</b></p> <p>Jetboat Race Events on the Clutha River, between the Lake Outlet boat ramp and the Albert Town road bridge not exceeding 6 race days in any calendar year.</p> <p>Control is reserved to all of the following:</p> <ol style="list-style-type: none"> <li>a. The date, time, duration and scale of the jetboat race event, including its proximity to other such events, such as to avoid or mitigate adverse effects on residential and recreational activities in the vicinity</li> <li>b. Adequate public notice is given of the holding of the event</li> <li>c. Reasonable levels of public safety are maintained.</li> </ol>	C
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881. One submission sought that the rule be deleted as it would limit recreational opportunities and activities on the Clutha River<sup>805</sup>.

882. Mr Barr, in the Section 42A Report, noted that this rule was effectively brought over from the ODP with the same activity status. The only change was that the limitation of 6 races per year was specified in the rule, rather than in a note<sup>806</sup>. We heard no evidence in support of the submission and we do not consider a 6 race limit unreasonable. Accordingly, we recommend that the submission be rejected and that the only changes be to numbering and structuring, in line with our more general recommendations. Some minor changes to the matters of control are also recommended so they do not read as standards. It would therefore be located in Table 12 as an activity and worded as follows:

21.15.4	<p><b>Jetboat Race Events</b></p> <p>Jetboat Race Events on the Clutha River, between the Lake Outlet boat ramp and the Albert Town road bridge not exceeding 6 race days in any calendar year.</p> <p>Control is reserved to:</p> <ol style="list-style-type: none"> <li>a. the date, time, duration and scale of the jetboat race event, including its proximity to other such events, such as to avoid or mitigate adverse effects on residential and recreational activities in the vicinity;</li> <li>b. the adequacy of public notice of the event;</li> <li>c. public safety.</li> </ol>	C
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#### 14.2 Rule 21.5.39 - Commercial non-motorised boating activities and Rule 21.5.43 – Commercial boating activities

883. As notified, Rule 21.5.39 read as follows:

21.5.39	<p><b>Commercial non-motorised boating activities</b></p> <p>Discretion is restricted to all of the following:</p> <ol style="list-style-type: none"> <li>a. Scale and intensity of the activity</li> <li>b. Amenity effects, including loss of privacy, remoteness or isolation</li> <li>c. Congestion and safety, including effects on other commercial operators and recreational users</li> </ol>	RD
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<sup>805</sup> Submission 758

<sup>806</sup> C Barr, Section 42A Report, Pages 88 – 89, Paras 17.43 – 17.48

	<p>d. Waste disposal</p> <p>e. Cumulative effects</p> <p>f. Parking, access safety and transportation effects.</p>	
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884. One submission sought that the rule be retained<sup>807</sup>, one sought that it be deleted<sup>808</sup>, two submissions sought that the rule be amended to prohibit non-motorised commercial activities on Lake Hayes<sup>809</sup> and one submission sought that the rule be amended so that the matters of discretion included location<sup>810</sup>. We note that Queenstown Rafting Ltd lodged a number of further submissions opposing many of the submissions on this provision and also seeking that the activity status be made fully discretionary. We find this latter point is beyond the scope of the original submissions, and hence we not have considered that part of those further submissions.
885. Mr Barr, in the Section 42A Report, noted the safety concerns raised in the QRL submission<sup>811</sup>, but considered that the provision as notified adequately addressed safety issues and that the restricted discretionary activity status was appropriate. Mr Barr also considered that the addition of 'location' as a matter of discretion was appropriate.<sup>812</sup> Mr Farrell, in evidence for R/L agreed with Mr Barr<sup>813</sup>.
886. In evidence for QRL, Mr Boyd (Managing Director of QRL) suggested that restricted discretionary activity status would result in the Council not considering other river and lake users when assessing such applications. He also highlighted the potential impact of accidents on tourism activities.<sup>814</sup>
887. Mr Brown, in his evidence for Kawarau Jet Services Holdings Limited<sup>815</sup> considered safety and congestion an important factor that should be considered for any application involving existing and new motorised and non-motorised boating activities<sup>816</sup>.
888. In reply, Mr Barr considered that the inclusion of safety in the matters of assessment meant that restricted discretionary status did not unduly impinge on a thorough analysis and application of section 104 and section 5.<sup>817</sup>
889. Considering the evidence of the witnesses we heard, we had difficulty in reaching the conclusion that restricted discretionary activity status was appropriate for commercial non-motorised boating activities (Rule 21.5.39) alongside fully discretionary activity status for commercial motorised boating activities (Rule 21.4.43), particularly where motorised and non-motorised activities may occur on the same stretch of water. It appeared to us that the same activity status should apply to both motorised and non-motorised commercial boating activities.
890. We therefore consider Rule 21.5.43 at this point. As notified, this rule read as follows;

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<sup>807</sup> Submissions 45, 719

<sup>808</sup> Submission 167

<sup>809</sup> Submission 11, 684

<sup>810</sup> Submission 621

<sup>811</sup> Submission 167

<sup>812</sup> C Barr, Section 42A Report, Page 84-85, Paras 17.25 – 17.28

<sup>813</sup> B Farrell, EIC, Page 27, Paras 125 - 126

<sup>814</sup> RV Boyd, EIC, Pages 3- 5, Paras 3.3 – 4.5

<sup>815</sup> Submission 307

<sup>816</sup> J Brown, EIC, Page 20, Para 2.28

<sup>817</sup> C Barr, Reply, Page 30, Para 10.2

21.5.43	<p><b>Commercial boating activities</b> Motorised commercial boating activities.</p> <p>Note: Any person wishing to commence commercial boating activities could require a concession under the QLDC Navigation Safety Bylaw. There is an exclusive concession currently granted to a commercial boating operator on the Shotover River between Edith Cavell Bridge and Tucker Beach until 1 April 2009 with four rights of renewal of five years each.</p>	D
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891. One submission sought that the term “motorised commercial boating activities” be deleted from the rule<sup>818</sup> and one submission sought that the rule be amended to separately provide for commercial ferry operations for public transport between the Kawarau River, Frankton Arm, and Queenstown CBD as a controlled activity<sup>819</sup>.
892. We were unable to find direct reference in the Section 42A Report to this rule or to the submission from QRL. Rather, the focus of the Section 42A Report remained on the commercial non-motorised boating activities as discussed above.
893. Reading Submission 167 as a whole, the combination of relief resulting from deleting rule 21.5.39 and deleting “*motorised commercial boating activities*” from Rule 21.5.43 would mean that all commercial boating activities (meaning both motorised and non-motorised operations) would become fully discretionary activities. For the reasons discussed above, we agree that it is appropriate that the same activity status apply to motorised and non-motorised boating activities. We have no jurisdiction to consider restricted discretionary status for motorised activities (other than for commercial ferry operations in the areas specified in Submission 806).
894. Accordingly, we recommend that Rule 21.5.39 and Rule 21.4.43 be combined and renumbered, with the following wording;

21.15.9	<p><b>Motorised and non-motorised Commercial Boating Activities</b> Except where otherwise limited by a rule in Table 12.</p> <p>Note: Any person wishing to commence commercial boating activities could require a concession under the QLDC Navigation Safety Bylaw. There is an exclusive concession currently granted to a commercial boating operator on the Shotover River between Edith Cavell Bridge and Tucker Beach until 1 April 2009 with four rights of renewal of five years each.</p>	D
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895. In relation to the submission of QPL seeking commercial ferry operations for public transport between the Kawarau River, Frankton Arm, and Queenstown CBD be subject to a separate rule as a controlled activity, this issue has also been raised by RJL. Both QPL and RJL sought related amendments to a number of provisions and we address those matters later in the report in Section 15.4.

<sup>818</sup> Submission 167

<sup>819</sup> Submission 806

#### 14.3 Rule 21.5.40 – Jetties and Moorings in the Frankton Arm

896. As notified, this rule provided for jetties and moorings in the Frankton Arm as a restricted discretionary activity. No submissions were received on this rule.
897. Other than minor wording changes and renumbering, we recommend this be adopted as notified.

#### 14.4 Rule 21.5.41 and Rule 21.5.42 – Structures and Moorings

898. As notified, Rules 21.5.41 and 21.5.42 read as follows;

21.5.41	<b>Structures and Moorings</b> Any structure or mooring that passes across or through the surface of any lake or river or is attached to the bank of any lake and river, other than where fences cross lakes and rivers.	D
21.5.42	<b>Structures and Moorings</b> Any structures or mooring that passes across or through the surface of any lake or river or attached to the bank or any lake or river in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying.	NC

899. One submission sought that Rule 21.5.41 be amended to include pipelines for water takes that are permitted in a regional plan and gabion baskets or similar low impact erosion control structures installed for prevention of bank erosion<sup>820</sup>.
900. Two submissions sought that Rule 21.5.42 be amended to provide for jetties and other structures for water based public transport on the Kawarau River and Frankton Arm, as a controlled activity<sup>821</sup>.
901. In relation to the amendment sought by RJL regarding water take pipelines and erosion controls, we could not find reference to this submission point in the Section 42A Report. Mr Farrell, likewise did not address this matter in evidence for RJL. In reply, Mr Barr recommended amending 21.5.41 to clarify that post and wire fences were in this situation permitted activities, although he provided no discussion of this change or reference to a submission seeking it.
902. Having heard no evidence in support of the amendments for inclusion of water pipeline takes and erosion control devices, we recommend that that submission be rejected.
903. While there may have been an intention that post and wire fences crossing lakes and rivers were a permitted activity, Rule 21.5.41 as notified did not classify those activities in that way. What the rule did do is exclude fences crossing lakes and rivers from the discretionary activity category. Given the application of (notified) Rule 21.4.1, those fences would therefore be non-complying activities. There is no scope for those activities to be reclassified as permitted. Therefore, we do not agree with Mr Barr's recommended amendment.
904. What we do recommend is a minor, non-substantive change to Rule 21.5.41 to make it clear that it is subject to Rule 21.5.42 (as notified).

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<sup>820</sup> Submission 621

<sup>821</sup> Submission 621, 806

905. Accordingly, we recommend that Rules 21.5.41 and 21.5.42 be renumbered and worded as follows:

21.15.7	<b>Structures and Moorings</b> Subject to Rule 21.15.8, any structure or mooring other than post and wire fences that passes across or through the surface of any lake or river or is attached to the bank of any lake and river.	D
21.15.8	<b>Structures and Moorings</b> Any structures or mooring that passes across or through the surface of any lake or river or attached to the bank or any lake or river in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying.	NC

906. Returning to the submissions regarding jetties and other structures for water based public transport on the Kawarau River and Frankton Arm as a controlled activity, we have already addressed these matters at a policy level in Section 5.48 above, where we recommended separating public ferry systems from other commercial boating activities. We also recorded the need for jetties and moorings to be considered in the context of policies related to protection landscape quality and character, and amenity values.

907. Mr Barr, in the Section 42A Report, was opposed to controlled activity status for jetties and other structures and his recommendation was *“that the restricted discretionary activity status is appropriate, as is a discretionary, or non-complying activity status for other areas as identified in the provisions.”*<sup>822</sup> Mr Farrell, in evidence for RJL, agreed with Mr Barr as to the restricted discretionary activity status for structures associated with water based public transport in the Frankton Arm<sup>823</sup>.

908. We could not identify anywhere in the Section 42A Report or in his Reply Statement where Mr Barr included any recommendations so that the revised text of the PDP would provide for jetties and other structures as restricted discretionary activities. Even if we are wrong on that matter, we do not agree that that is the appropriate activity status. In our view, Policy 21.2.12.8 recommended above goes far enough towards encouraging public ferry systems and beyond that, the rules need to be balanced so that consideration is given to landscape quality and character, and amenity values, that are to be maintained and enhanced under Policies 6.3.29 and 6.3.30.

909. Accordingly, we recommend that the submissions seeking rule amendments to provide for jetties and other structures for water based public transport on the Kawarau River and Frankton Arm as a controlled activity be rejected.

#### 14.5 Rule 21.5.44 – Recreational and commercial boating activities

910. As notified, Rule 21.5.44 read as follows:

21.5.44	<b>Recreational and commercial boating activities</b> The use of motorised craft on the following lakes and rivers is prohibited, except where the activities are for emergency search and rescue, hydrological survey, public scientific research,	PR
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<sup>822</sup> C Barr, Section 42A Report, Page 87, Para 17.36

<sup>823</sup> B Farrell, EIC, Page 28, Para 129

	resource management monitoring or water weed control, or for access to adjoining land for farming activities.	
21.5.44.1	Hawea River.	
21.5.44.2	Commercial boating activities on Lake Hayes.	
21.5.44.3	Any tributary of the Dart and Rees rivers (except the Rockburn tributary of the Dart River) or upstream of Muddy Creek on the Rees River.	
21.5.44.4	Young River or any tributary of the Young or Wilkin Rivers and any other tributaries of the Makarora River.	
21.5.44.5	Dingle Burn and Timaru Creek.	
21.5.44.6	The tributaries of the Hunter River.	
21.5.44.7	Hunter River during the months of May to October inclusive.	
21.5.44.8	Motatapu River.	
21.5.44.9	Any tributary of the Matukituki River.	
21.5.44.10	Clutha River - More than six jet boat race days per year as allowed by Rule 21.5.38.	

911. Submissions to this rule variously sought that:

- a. 21.5.44 be retained<sup>824</sup>
- b. 21.5.44.1 be amended to provide for recreational jet sprint racing on the Hawea River<sup>825</sup>
- c. 21.5.44.3 be amended to provide for recreational and commercial boating activities on the Beansburn tributary of the Dart River<sup>826</sup>
- d. 21.5.44.7 amend rule to permitted activity status<sup>827</sup>
- e. 21.5.44.10 amend rule to permitted activity status<sup>828</sup>.

912. Mr Barr, in the Section 42A Report, addressed the submission of Jet Boat NZ as regards jet sprint racing on the Hawea River, noting that the ODP did provide for such activities 6 days per year on an identified course on the river. However, Mr Barr set out in detail the reasons he considered that the activity status in the PDP should remain as prohibited, as follows;

- “a. There is not any 'one approved jet sprint course' on the ODP planning maps. I accept this is not the fault of the submitter, however it illustrates that the rule has not been exercised.*
- a. *The qualifiers in the exemption to the prohibited status are cumbersome and subject to third party approvals from a whitewater group and the Queenstown Harbour Master.*
  - b. *There is a jet sprint course constructed and in operation near the Wanaka Airport<sup>53</sup> for these activities that negate the need to manage risks to safety, amenity and nature conservation values as required in the qualifiers in Rule 5.3.3.5(a) through undertaking the activity on the Hawea River.*
  - c. *The jet sprint course near Wanaka Airport held a New Zealand Jet Sprint Championship event, however the resource consent was for a one-off event<sup>54</sup>. While these activities require a resource consent the physical works associated with constructing a jet sprint course are already done*

<sup>824</sup> Submission 688

<sup>825</sup> Submission 758

<sup>826</sup> Submission 716

<sup>827</sup> Submission 758

<sup>828</sup> Submission 758



d. *The jet sprint course on the Hawea River has not been used for a long time and is disused. The Council's Albert Town Reserve Management Plan 2010<sup>55</sup> noted this and states that the jet sprint course was not compatible with the quiet values of the reserve and adjacent camping areas and, Central Otago Whitewater have expressed an interest in using the disused course for a pond to complement the kayak slalom site.*<sup>829</sup>

53. *<http://www.jetsprint.co.nz/tracks/oxbow-aquatrack-wanaka/> Downloaded 28 February 2016.*

54. *RM130098 Oxbow Limited. To hold the fifth round of the New Zealand Jet Sprint Championship on the 30 March 2013 and undertake earthworks to construct the jet sprint course*

55. *[http://www.qldc.govt.nz/assets/OldImages/Files/Reserve\\_Management\\_Plan\\_s/Albert\\_Town\\_Recreation\\_Reserve\\_Mgmt\\_Plan\\_2010.pdf](http://www.qldc.govt.nz/assets/OldImages/Files/Reserve_Management_Plan_s/Albert_Town_Recreation_Reserve_Mgmt_Plan_2010.pdf)*

913. Mr McSoriley, in evidence for JBNZ, considered that Mr Barr's interpretation of the rules in the ODP was incorrect and that the rules provided for both jet boating runs on the Hawea River itself, as well as jet sprint events on the identified course<sup>830</sup>. Mr McSoriley considered that there was no support for a blanket prohibition on the Hawea River and also set out the reasons for the limited utilisation of jet sprint course and factors that may have led to the PDP discouraging recreational jet boating<sup>831</sup>.

914. In reply, Mr Barr considered that it was appropriate to have jet boating runs on the Hawea River as per the ODP Rule 5.3.3.5i (a) (2) despite the cumbersome nature of the provisions in the ODP and recommended amendments to that effect<sup>832</sup>. Having considered the witness's evidence, we agree.

915. We questioned Mr Barr, as to whether the jet sprint course was part of the river, or whether, because it was artificially constructed, it therefore fell under Council's jurisdiction as a land-based activity rather than a surface of water activity. We understood from Mr Barr's evidence in reply that he supported the second interpretation. It followed that any activity on the course would require consideration under the provisions governing noise, commercial recreation activities and temporary activities. Mr Barr provided a copy of a consent from 14 Dec 1999 for a one-off jet sprint event to be held on 3 Jan 2000.

916. We agree with Mr Barr that the jet sprint course is not part of the surface of a lake or river, but that this use should be addressed under other provisions in Plan. We also note that we did not receive any evidence that the activity was lawfully established. In our view, the activity would be most appropriately addressed as a temporary activity.

917. Accordingly we recommend that the submission of JBNZ seeking the reinstatement of the Jet Sprint Course be rejected and recreational jet boat runs on the Hawea be provided for subject to limitations as follows;

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<sup>829</sup> C Barr, Section 42A Report, Pages 90 – 91, Para 17.52

<sup>830</sup> L McSoriley, EIC, Pages 2-3, Para 10 - 12

<sup>831</sup> L McSoriley, EIC, Pages 4-5, Paras 14 - 24

<sup>832</sup> C Barr, Reply, Page 31, Para 10.6

21.15.3	<p><b>Motorised Recreational Boating Activities</b></p> <p>Hawea River, motorised recreational boating activities on no more than six (6) days in each year subject to the following conditions:</p> <ol style="list-style-type: none"> <li>a. at least four (4) days of such activity are to be in the months January to April, November and December</li> <li>b. The Jet Boat Association of New Zealand (“JBANZ”) (JBANZ or one of the Otago and Southland Branches as its delegate) administers the activity on each day</li> <li>c. The prior written approval of Central Otago Whitewater Inc is obtained if that organisation is satisfied that none of its member user groups are organising activities on the relevant days; and</li> <li>d. JBANZ gives two (2) calendar months written notice to the Council’s Harbour-Master of both the proposed dates and the proposed operating schedule</li> <li>e. The Council’s Harbour-Master satisfies himself that none of the regular kayaking, rafting or other whitewater (non-motorised) river user groups or institutions (not members of Central Otago Whitewater Inc) were intending to use the Hawea River on that day, and issues an approved operating schedule</li> <li>f. JBANZ carries out, as its expense, public notification on two occasions 14 and 7 days before the proposed jet boating</li> <li>g. Public notification for the purposes of (f) means a public notice with double-size font heading in both the Otago Daily Times and the Southland Times, and written notices posted at the regular entry points to the Hawea River.</li> </ol>	P
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918. As regards the submission of Ngai Tahu Tourism Ltd seeking that Rule 21.5.44.3 be amended to provide for recreational and commercial boating activities on the Beansburn tributary of the Dart River, Mr Barr, in the Section 42A Report, considered that the submission did not contain any evaluation of safety effects, or how natural conservation values or amenity values of other recreational users would be impacted<sup>833</sup>.

919. Mr Edmonds spoke to the submission of Ngai Tahu Tourism Ltd, noting that the jet boat trip includes a stop at toilet facilities up the Beansburn River for which Ngai Tahu Tourism have a concession and presented maps showing stopping points. Mr Barr, in reply, agreed with Mr Edmonds and included a recommended amendment as part of a section 32AA assessment to provide for the exception of Beansburn tributary of the Dart River<sup>834</sup>.

920. We agree that an exception in this case is appropriate in addressing a practical aspect of the existing commercial boating operation. By excluding the Beansburn from the rule, the more general Rule 21.15.9 (as recommended) would apply making the activities described by Mr Edmonds a discretionary activity. Accordingly, we recommend that 21.5.44.3 be renumbered and worded as follows:

<sup>833</sup> C Barr, Section 42A Report, Page 91, Para 17.55

<sup>834</sup> C Barr, Reply, Appendix 2, Page 12, Rule 21.5.44.3

*Any tributary of the Dart and Rees rivers (except the Beansburn and Rockburn tributaries of the Dart River) or upstream of Muddy Creek on the Rees River.*

921. The submission of JBNZ sought to amend Rule 21.5.44.7, which prohibited recreational motorised craft on the Hunter River during the months of May to October, so that it would be permitted. Mr Barr in the Section 42A Report, noted that the submission stated that the rule would, *“prohibit recreational opportunities in certain months which is a permitted activity under the Operative District Plan”*. Mr Barr recorded that the rule is in fact carried over from the ODP and he considered the rule appropriate in terms of navigation and safety considerations and environmental impacts.
922. We heard no evidence from JBNZ in support of the submission that would contradict Mr Barr’s evidence. Therefore we recommend that the submission be rejected.
923. As regards the amendment sought by JBNZ to Rule 21.5.44.10 seeking permitted activity status for jet boating racing on the Clutha River (up to 6 race days a year), Mr Barr noted in the Section 42A Report that controlled activity status under Rule 21.5.38 is the same as in the ODP.<sup>835</sup> Mr Barr did not consider the reasons provided by JBNZ to be compelling enough to alter the existing situation.
924. As for our consideration of Rule 21.5.38, JBNZ did not present any evidence in support of the submission that would cause us to take a different view to Mr Barr. We therefore recommend that the submission be rejected.
925. Notwithstanding the recommended acceptance and rejection of submissions set out above, we consider this rule has some inherent difficulties. As we understand the intention of the rule, it is to make it a prohibited activity for motorised craft to use the listed rivers and Lake Hayes (limited to commercial motorised craft). However, the rule also implies that where motorised craft are used for emergency search and rescue, hydrological survey, public scientific research, resource management monitoring or water weed control, or for access to adjoining land for farming activities, then they can use those rivers and Lake Hayes, presumably as a permitted activity.
926. In our view, the PDP would be a more easily understood document if the permitted activities were specified as such, and the prohibited activity rule was drafted so that it did not apply to those activities. For those reasons, we recommend this rule be split into two rules as follows:

21.15.2	<b>Motorised Recreational and Commercial Boating Activities</b> The use of motorised craft for the purpose of emergency search and rescue, hydrological survey, public scientific research, resource management monitoring or water weed control, or for access to adjoining land for farming activities.	P
21.15.10	<b>Motorised Recreational and Commercial Boating Activities</b> The use of motorised craft on the following lakes and rivers is prohibited except as provided for under Rules 21.15.2 and 21.15.3. 21.15.10.1 Hawea River. 21.15.10.2 Lake Hayes - Commercial boating activities only.	PR

<sup>835</sup> C Barr, Section 42A Report, Page 89, Para 17.47

	<p>21.15.10.3 Any tributary of the Dart and Rees Rivers (except the Beansburn and Rockburn tributaries of the Dart River) or upstream of Muddy Creek on the Rees River.</p> <p>21.15.10.4 Young River or any tributary of the Young or Wilkin Rivers and any other tributaries of the Makarora River.</p> <p>21.15.10.5 Dingle Burn and Timaru Creek.</p> <p>21.15.10.6 The tributaries of the Hunter River.</p> <p>21.15.10.7 Hunter River during the months of May to October inclusive.</p> <p>21.15.10.8 Motatapu River.</p> <p>21.15.10.9 Any tributary of the Matukituki River.</p> <p>21.15.10.10 Clutha River - More than six jet boat race days per year as allowed by Rule 21.15.4</p>	
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#### 14.6 Rule 21.5.45 – Boating Craft used for Accommodation

927. As notified, this rule provided standards applying to the use of craft for overnight accommodation. Non-compliance was a non-complying activity. No submissions were received to this rule.

928. In his Reply Statement, Mr Barr recommended changed wording so as to make it clear that the activity is allowed subject to the standards. In large part we agree with his recommended amendments. We consider such an amendment to be minor and available under Clause 16(2).

929. We recommend the rule be renumbered and adopted with the following wording:

21.16.1	<p><b>Boating craft used for Accommodation</b></p> <p>Boating craft on the surface of the lakes and rivers may be used for accommodation, provided that:</p> <p>21.16.1.1 The craft must only be used for overnight recreational accommodation; and</p> <p>21.16.1.2 The craft must not be used as part of any commercial activity; and</p> <p>21.16.1.3 All effluent must be contained on board the craft and removed, ensuring that no effluent is discharged into the lake or river.</p>	NC
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#### 14.7 Rule 21.5.46 – Jetties in Frankton Arm

930. As notified, Rules 21.5.46 read as follows:

21.5.46	<p>No new jetty within the Frankton Arm identified as the area east of the Outstanding Natural Landscape Line shall:</p> <p>21.5.46.1 be closer than 200 metres to any existing jetty;</p> <p>21.5.46.2 exceed 20 metres in length;</p> <p>21.5.46.3 exceed four berths per jetty, of which at least one berth is available to the public at all times;</p> <p>21.5.46.4 be constructed further than 200 metres from a property in which at least one of the registered owners of the jetty resides.</p>	NC
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931. One submission sought that the standard be amended to exclude jetties associated with water based public transport or amended to provide flexibility for the provision of such jetties<sup>836</sup>. Two other submissions similarly sought that the rule not apply to jetties for public transport linkage on the Kawarau River, the Frankton Arm and Queenstown CBD<sup>837</sup>.
932. Submissions to this rule were not directly referenced in the Section 42A Report, Mr Barr noting in Appendix 2 that the matter was addressed under his consideration of Objective 21.2.12 (as notified)<sup>838</sup>.
933. Mr Farrell, in evidence for RJJ opined that the importance of water based public transport warranted discretionary activity status for associated jetties and structures rather than the non-complying activity status<sup>839</sup>. Mr Farrell did not provide any further reasons for reaching that opinion.
934. We have already addressed the issue of water based public transport infrastructure at a policy level in Section 5.48 above, where we recommended separating public ferry systems from other commercial boating activities and, in particular, recording the need for jetties and moorings to be considered within the context of landscape quality and character, and amenity values all being maintained and enhanced under Policies 6.3.29 and 6.3.30. For the same reasons, we recommend that these submissions be rejected.
935. Mr Barr, in reply did recommend clarification of the rule by inserting a reference to Outstanding Natural Landscape line as shown on the District Plan Maps<sup>840</sup>. We agree that this is a useful clarification. Accordingly, we recommend that Rule 21.5.46 be renumbered and the wording be as follows;

21.16.2	<p>Jetties and Moorings in the Frankton Arm</p> <p>Jetties and moorings in the Frankton Arm, identified as the areas located to the east of the Outstanding Natural Landscape line as shown on District Plan Map</p> <p>No new jetty within the Frankton Arm identified as the area east of the Outstanding Natural Landscape Line shall:</p> <p>21.16.2.1 Be closer than 200 metres to any existing jetty;</p> <p>21.16.2.2 Exceed 20 metres in length;</p> <p>21.16.2.3 Exceed four berths per jetty, of which at least one berth is available to the public at all times;</p> <p>21.16.2.4 Be constructed further than 200 metres from a property in which at least one of the registered owners of the jetty resides.</p>	NC
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#### 14.8 Rule 21.5.47 – Specific Standards

936. As notified, Rule 21.5.47 read as follows;

21.5.47	The following activities are subject to compliance with the following standards:	NC
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<sup>836</sup> Submission 621

<sup>837</sup> Submissions 766, 806

<sup>838</sup> C Barr, Section 42A Report, Appendix 2, Page 131

<sup>839</sup> B Farrell, EIC, Page 29, Para 135

<sup>840</sup> C Barr, Reply, Appendix 1, Page 21-27

	<p>21.5.47.1 Kawarau River, Lower Shotover River downstream of Tucker Beach and Lake Wakatipu within Frankton Arm - Commercial motorised craft shall only operate between the hours of 0800 to 2000.</p> <p>21.5.47.2 Lake Wanaka, Lake Hawea and Lake Wakatipu - Commercial jetski operations shall only be undertaken between the hours of 0800 to 2100 on lakes Wanaka and Hawea and 0800 and 2000 on Lake Wakatipu.</p> <p>21.5.47.3 Dart and Rees Rivers - Commercial motorised craft shall only operate between the hours of 0800 to 1800, except that above the confluence with the Beansburn on the Dart River commercial motorised craft shall only operate between the hours of 1000 to 1700.</p> <p>21.5.47 Dart River – The total number of commercial motorised boating activities shall not exceed 26 trips in any one day. No more than two commercial jet boat operators shall operate upstream of the confluence of the Beansburn, other than for tramper and angler access only.</p>	
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937. One submission sought that the rule be amended to clarify that it did not apply to commercial boating operations providing a public transport service<sup>841</sup>. Another submission sought that Rule 21.5.47.1 be amended so as not to provide a disincentive for public transport<sup>842</sup>. A third submission sought that rule 21.5.47.4 be amended to refer to ‘one’ instead of ‘two’ commercial jet boat operators<sup>843</sup>.
938. Mr Barr, in the Section 42A Report, agreed that the hours of operation specified in Rule 21.5.47.1 could provide a disincentive for public transport and recommended amending the rule to exclude public transport ferries, rather than deleting the rule entirely.<sup>844</sup>
939. We have already addressed public transport ferry activities above. We agree with Mr Barr that the restriction on the hours of operation would be a disincentive that should be removed.
940. In speaking to the submission of Ngai Tahu Tourism Ltd<sup>845</sup> seeking an amendment to Rule 21.5.47.4, to refer to ‘one’ instead of ‘two’ commercial jet boat operators, Mr Edmonds explained that Ngai Tahu Tourism Ltd now owned all the jet boat operations on the Dart River.
941. We are concerned that, notwithstanding that Ngai Tahu Tourism Limited may be the only present operator on the Dart River, restricting the number of operators to one would amount to a restriction of trade competition. In the absence of evidence of resource management reasons as to why the standard should be further restricted, we do not recommend it be changed.

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<sup>841</sup> Submission 806

<sup>842</sup> Submission 383

<sup>843</sup> Submission 716

<sup>844</sup> C Barr, Section 42A Report, Page 87, Para 17.39

<sup>845</sup> Submission 716

942. Taking account of all of the above, we recommend that rule 21.5.47 be renumbered and worded as follows:

21.16.3	<p>The following activities are subject to compliance with the following standards:</p> <p>21.16.3.1 Kawarau River, Lower Shotover River downstream of Tucker Beach and Lake Wakatipu within Frankton Arm - Commercial motorised craft other than public transport ferry activities, may only operate between the hours of 0800 to 2000.</p> <p>21.16.3.2 Lake Wanaka, Lake Hawea and Lake Wakatipu - Commercial jetski operations must only be undertaken between the hours of 0800 to 2100 on Lakes Wanaka and Hawea and 0800 and 2000 on Lake Wakatipu.</p> <p>21.16.3.3 Dart and Rees Rivers - Commercial motorised craft must only operate between the hours of 0800 to 1800, except that above the confluence with the Beansburn on the Dart River commercial motorised craft must only operate between the hours of 1000 to 1700.</p> <p>21.16.3.4 Dart River – The total number of commercial motorised boating activities must not exceed 26 trips in any one day. No more than two commercial jet boat operators may operate upstream of the confluence of the Beansburn, other than for tramper and angler access only.</p>	NC
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## 15 TABLE 10 – CLOSEBURN STATION

943. As notified, this table contained one activity rule and four standards applying solely to Closeburn Station. The only submission<sup>846</sup> on these supported the provisions.
944. We recommend these be split into two tables: Table 14: Closeburn Station – Activities; and Table 15: Closeburn Station – Standards. Other than that, renumbering and a minor grammatical correction to the height standards, we recommend the rules be adopted as notified.

## 16 NEW STANDARDS SOUGHT

945. The NZFS<sup>847</sup> sought inclusion of a standard requiring compliance with the NZFS Code of Practice SNZ PAS 4509:2003 in relation to water supply and access. We were not able to find any further submissions opposing the relief sought.
946. In the Section 42A Report, Mr Barr supported the request but raised concerns around the reliance on the Code of Practice, which is a document outside the PDP, for a permitted activity status. As there were no development rights attached to dwellings in the Rural Zone, Mr Barr

<sup>846</sup> Submission 323

<sup>847</sup> Submission 438

did not consider the rule necessary and recommended that the submission be rejected<sup>848</sup>. We note that in Section 5.4 above that we have already dealt with the policy matter of the provision of firefighting water supply and fire service vehicle access within this Chapter and the other rural chapters. We also note that Mr Barr, in the Section 42A Report on Chapter 22, recommended that the specifics of the Code of Practice be incorporated into the wording of a standard<sup>849</sup>.

947. We heard evidence from Mr McIntosh, Area Manager Central/North Otago at the NZFS, as to the detail of the Code of Practice and the importance of water supply and access to property in the event of the NZFS attending emergency call outs<sup>850</sup>. We also heard evidence from Ms A McLeod, a planner appearing for NZFS. Ms McLeod had a different view to Mr Barr, considering that a standard should be included. Her reasons included greater certainty and clarity for plan users, consistency with the priority given to fire-fighting water supply in section 14(3) of the RMA and by being *“the most appropriate way to achieve the purpose of the RMA by enabling people and community to provide for their health, safety and well-being by managing a potential adverse effect of relatively low probability but high consequence.”*<sup>851</sup>
948. In her evidence, Ms McLeod considered that reference to codes of practice were provided for by the Act and that interpreting the code into the provision as proposed by Mr Barr could lead to the PDP being more restrictive than the code itself<sup>852</sup>. We questioned the NZFS witnesses regarding the detail of the application of the code and proposed standard and activity status during the hearing and also sought additional information on specific questions relating to the treatment of multiple units, separation distances and the suggested 45,000 litre tank size. We received that information on 7 June 2016.
949. Taking into account all the evidence and information we were provided with, we think that reliance on the code of practice is not appropriate in terms of specifying the requirements and that those requirements should be set out in the Plan. We agree that the tank/s size should be 45,000litres and the activity status for non-compliance should be restricted discretionary. In line with our policy recommendation above, we also consider that these provisions be consistently applied across all the rural chapters.
950. Accordingly we recommend the NZFS submission be accepted in part and that the provisions be located in Table 4 (Standards for Structures and Buildings), numbered and worded as follows:

21.7.5	<p><b>Fire Fighting water and access</b></p> <p>All new buildings, where there is no reticulated water supply or any reticulated water supply is not sufficient for fire-fighting water supply, must make the following provision for fire-fighting:</p> <p>21.7.5.1 A water supply of 45,000 litres and any necessary couplings.</p> <p>21.7.5.2 A hardstand area adjacent to the firefighting water supply</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. The extent to which SNZ PAS 4509: 2008 can be met including the adequacy of the water supply.</p> <p>b. The accessibility of the firefighting water connection point for fire service vehicles.</p>
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<sup>848</sup> C Barr, Section 42A Report, Pages 99 -100, Paras 20.1 – 20.5

<sup>849</sup> C Barr, Chapter 22 Section 42A Report, Page 34, Paras 16.6 – 16.8

<sup>850</sup> D McIntosh, EIC, Pages 2 – 5, Paras 19 - 33

<sup>851</sup> A McLeod, EIC, Pages 8-9, Para 5.10

<sup>852</sup> A McLeod, EIC, Pages 9 – 11, Paras 5.13 – 5.18



	<p>capable of supporting fire service vehicles.</p> <p>21.7.5.3 Firefighting water connection point within 6m of the hardstand, and 90m of the dwelling.</p> <p>21.7.5.4 Access from the property boundary to the firefighting water connection capable of accommodating and supporting fire service vehicles.</p>	c. Whether and the extent to which the building is assessed as a low fire risk.
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## 17 RULE 21.6 – NON-NOTIFICATION OF APPLICATIONS

951. As notified, Rule 21.6 read as follows;

### 21.6 Non-Notification of Applications

*Any application for resource consent for the following matters shall not require the written consent of other persons and shall not be notified or limited-notified:*

21.6.1 *Controlled activity retail sales of farm and garden produce and handicrafts grown or produced on site (Rule 21.4.14), except where the access is onto a State highway.*

21.6.2 *Controlled activity mineral exploration (Rule 21.4. 31).*

21.6.3 *Controlled activity buildings at Closeburn Station (Rule 21.5.48).*

952. One submission sought that the rule be amended to include a provision that states consent to construct a building will proceed non-notified<sup>853</sup>. The reasons set out in the submission include that, *“Buildings within the rural zone can have limited impact upon the environment and the community. Often buildings are related to the activities that occur onsite. Given the limited impact that buildings have on the rural environment and communities it is appropriate that consent for any building proceed non-notified.”*<sup>854</sup>

953. In the Section 42A Report, Mr Barr considered that it was important that all buildings had the potential to be processed on a notified or limited notified basis and recommended that the submission be rejected<sup>855</sup>. We heard no evidence in support of the submission.

954. We agree with Mr Barr that buildings should have the potential to be processed as notified or limited notified. Any decision as regards buildings in the Rural Zone is needs to be subject of a separate assessment as to effects and potentially affected parties. In appropriate cases, applications will proceed on a non-notified basis.

955. Accordingly, we recommend that submission be rejected and that apart from numbering, the provisions remain as notified.

<sup>853</sup> Submission 701

<sup>854</sup> Submission 701, Page 3, Para 23

<sup>855</sup> C Barr, Section 42A Report, Page 92, Para 18.4

## 18 SUMMARY OF CONCLUSIONS ON RULES

956. We have set out in full in Appendix 1 the rules we recommend the Council adopt. For all the reasons set out above, we are satisfied that these rules are the most effective and efficient means of implementing the policies so as to achieve the objectives of Chapter 21, and those in the Strategic Directions chapters. Where we have recommended rules not be included, that is because, as our reasons above show, we do not consider them to be efficient or effective.

## 19 21.7 – ASSESSMENT MATTERS (LANDSCAPE)

### 19.1 21.7.1 Outstanding Natural Features and Outstanding Natural Landscapes

957. As notified Clauses 21.7.1 and 21.7.1.1 – 21.7.1.2 read as follows;

21.7.1 *Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL).*

*These assessment matters shall be considered with regard to the following principles because, in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations within the zone:*

21.7.1.1 *The assessment matters are to be stringently applied to the effect that successful applications will be exceptional cases.*

21.7.1.2 *Existing vegetation that:*

*a. was either planted after, or, self-seeded and less than 1 metre in height at 28 September 2002; and,*

*b. obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:*

*i. as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and*

*ii. as part of the permitted baseline.*

958. Submissions on these provisions sought that the introductory note be deleted entirely<sup>856</sup>, or that the wording in the introductory note be variously amended to remove the wording “*the applicable activities are inappropriate in almost all locations within the zone.*”<sup>857</sup>; or to refer only to the Wakatipu Basin<sup>858</sup>; that the provision be amended to take into account the locational constraints of infrastructure<sup>859</sup>; that the assessment criteria be amended to accord with existing case law<sup>860</sup>; and that 21.7.1.1<sup>861</sup> and 21.7.1.2<sup>862</sup> be deleted.

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<sup>856</sup> Submissions 179, 421

<sup>857</sup> Submission 355, 608, 693, 702

<sup>858</sup> Submission 519

<sup>859</sup> Submission 433

<sup>860</sup> Submission 806

<sup>861</sup> Submissions 179, 191, 249, 355, 421, 598, 621, 624, 693, 702, 781

<sup>862</sup> Submission 249

959. In the Section 42A Report, Mr Barr provided a table that set out in detail the comparison between the assessment criteria under the ODP and PDP<sup>863</sup> and recommended that 21.7.1 and 21.7.1.1 be amended in response to the submissions and should be worded as follows:

**19.1.1.1            ~~21.7.1~~ Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL).**

*These assessment matters shall be considered with regard to the following principles because, in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations within the Wakatipu Basin, and inappropriate in many locations throughout the District wide Outstanding Natural Landscapes:*

**~~19.1.1.2            21.7.1.1            The assessment matters are to be stringently applied to the effect that successful applications will be exceptional cases.~~**

960. Mr Barr's reasoning supporting the amendments, was to clarify that the assessment criteria were not a 'test', and to remove the word exceptional which has connotations to section 104D of the RMA given it is discretionary activities that the assessment is generally applied to<sup>864</sup>.

961. In evidence for Darby Planning, Mr Ferguson considered the wording of the assessment criteria as notified predetermined that activities were inappropriate in almost all locations, and that this was itself inappropriate and unnecessary<sup>865</sup>.

962. Mr Vivian, in evidence for NZTM agreed with Mr Barr's recommendation as to referencing that activities are inappropriate in almost all locations within the Wakatipu Basin and noted the Environment Court decision from which the assessment criteria was derived (C180/99). However, Mr Vivian considered that the term Wakatipu Basin was not adequately defined and recommended additional wording for clarification purposes.<sup>866</sup>

963. Mr Haworth, in evidence for UCES on wider assessment criteria matters, referred to the assessment criteria as a 'test'<sup>867</sup>. We questioned Ms Lucas as to her tabled evidence for UCES as to what the meaning of 'test' was in the context of her evidence. Ms Lucas' response was that "A "test", that is, in application of the assessment matter, "shall be satisfied" that".

964. Mr Barr, in reply, made some changes to the recommended assessment criteria in light of the submissions and evidence noted above, but considered that some of the wording changes added little value or would potentially weaken the assessment required<sup>868</sup>. Also in reply, Mr Barr detailed his view that a test was appropriately located in the objective and policies and that assessment matters provide guidance in considering specified environment effects<sup>869</sup>.

965. In the Section 42A Report, Mr Barr did not support the amendment sought by QAC for the inclusion of locational constraints within the assessment criteria on the basis that it was the

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<sup>863</sup> C Barr, Section 42A Report, Page 110, Table 1, Issue 12: Landscape Assessment Matters: cross referencing with PDP Landscape Policy and ODP assessment matters

<sup>864</sup> C Barr, Section 42A Report, Page 98, Para 19.21

<sup>865</sup> C Ferguson, EIC, Page 15, Para 66

<sup>866</sup> C Vivian, EIC, Page 22, Paras 4.102 – 4.106

<sup>867</sup> J Haworth, EIC, Page 12, Para 88

<sup>868</sup> C Barr, Reply, Pages 31-32, Para 11.1

<sup>869</sup> C Barr, Reply, Pages 32, Para 11.4

place of policies or higher order planning documents to direct consideration of any such constraints and amendments to the strategic directions chapter had been recommended<sup>870</sup>.

966. In evidence for QAC, Ms O’Sullivan took a different view, considering “*that the Assessment Matters, as drafted, may inappropriately constrain the development, operation and upgrade of infrastructure and utilities that have a genuine operational and/or locational requirement to be located ONLs, ONFs or RCLs. I also consider the complex cross referencing between the Chapter 6 Landscapes, Chapter 21 Rural and Chapter 30 Energy and Utilities will give rise to inefficiencies and confusion in interpretation*”<sup>871</sup>. To address these issues Ms O’Sullivan recommended new assessment criteria, narrowing the assessment to regional significant infrastructure with the assessment criteria be worded as follows;

21.7.3.4 *For the construction, operation and replacement of regionally significant infrastructure and for additions, alterations, and upgrades to regionally significant infrastructure, in addition to the assessment matters at 21.7.1, 21.7.2, 21.7.3.2 and 21.7.3.3, whether the proposed development:*

- a. *Is required to provide for the health, safety or wellbeing of the community; and*
- b. *Is subject to locational or functional requirements that necessitate a particular siting and reduce the ability of the development to avoid adverse effects; and*
- c. *Avoids, remedies or mitigates adverse effects on surrounding environments to the extent practicable in accordance with Objective 30.2.7 and Policies 30.2.7.1 – 30.2.7.4 (as applicable).*

967. We agree with Mr Barr that the assessment criteria are for landscape assessment and the policies are the place where consideration by decision-makers as to policy direction on locational constraints of infrastructure should be found. Earlier in this decision we addressed the inclusion of infrastructure into this chapter<sup>872</sup>. For the reasons we set out there, and because we doubt that Ms O’Sullivan’s suggestion is within the scope of the QAC submission, we recommend that the submission of QAC be rejected.

968. The wording of the first paragraph of 21.7.1 along with 21.7.1.1 are derived from (notified) policy 6.3.1.3. The issue as to inappropriateness and stringency of application were also canvassed before the Hearing Stream 1B in hearing submissions on Policy 6.3.1.3.. We refer to and adopt the reasoning of that Panel<sup>873</sup>. That Panel has recommended that (revised) Policy 6.3.11 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.*

969. In considering all of the above, we agree in part with Mr Barr that the objectives and policies need to link through to the assessment criteria. However, to our minds, the recommendations

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<sup>870</sup> C Barr, Section 42A Report, Pages 97 – 98, Para 19.20

<sup>871</sup> K O’Sullivan, EIC, Page5, Para 3.4

<sup>872</sup> Section 5

<sup>873</sup> Report 3, Recommendations on Chapters 3, 4 and 6, Section 10.6

to establish that connection do not go far enough. Accordingly, we recommend that there be direct reference to the policies from Chapters 3 and 6 included within the assessment criteria description. In addition, we agree with Mr Barr as the assessment criteria are not tests and accordingly recommend that the submission of UCES be rejected.

970. Given the recommended wording of Policy 6.3.11, we recommend that the introductory paragraph and 21.7.1.1 be reworded consistent with that policy.

971. We heard no evidence from Willowridge Developments Limited<sup>874</sup> in relation to its submission seeking the deletion of Rule 21.7.1.2. Mr Barr did not particularly discuss the submission, nor recommend any changes to the provision. We understand the provision has been taken directly from the ODP (Section 5.4.2.2(1)). Without any evidence as to why the provision should be deleted or changed, we recommend it remain unaltered.

972. Accordingly we recommend that the introductory part of 21.7.1 be numbered and worded as follows:

21.21 *Assessment Matters (Landscapes)*

21.21.1 *Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL).*

*The assessment matters set out below are derived from Policies 3.3.30, 6.3.10 and 6.3.12 to 6.3.18 inclusive Applications shall be considered with regard to the following assessment matters.*

21.20.1.1 *In applying the assessment matters, the Council will work from the presumption that in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations and that 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.*

21.20.1.2 *Existing vegetation that:*

- a. *was either planted after, or, self-seeded and less than 1 metre in height at 28 September 2002; and*
- b. *obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:*
  - i. *as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and*
  - ii. *as part of the permitted baseline.*

## 19.2 Assessment Matters 21.7.1.3 to 21.7.1.6 Inclusive

973. The only submission on these assessment matters supported 21.7.1.5<sup>875</sup>. We recommend those matters be adopted as notified, subject to renumbering.

## 19.3 Section 21.7.2 Rural Landscape Classification (RCL) and 21.7.2.1 – 21.7.2.2

974. As notified Rule 21.7.2 and 21.7.2.1 – 21.7.2.2 read as follows;

### 21.7.2 Rural Landscape Classification (RLC)

*These assessment matters shall be considered with regard to the following principles because in the Rural Landscapes the applicable activities are inappropriate in many locations:*

21.7.2.1 *The assessment matters shall be stringently applied to the effect that successful applications are, on balance, consistent with the criteria.*

21.7.2.2 *Existing vegetation that:*

- a. *was either planted after, or, self seeded and less than 1 metre in height at 28 September 2002; and,*
- b. *obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:*
  - i. *as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and*
  - ii. *as part of the permitted baseline.*

975. Submissions on these provisions variously sought that the introductory note be deleted entirely<sup>876</sup>, that the wording in the introductory note be amended to remove the wording “*the applicable activities are inappropriate in almost all locations within the zone:*”<sup>877</sup>, that the current assessment criteria in 21.7.2 be deleted and replaced with a set of assessment matters that better reflect and provide for the “Other Rural Landscape (ORL) category of landscapes<sup>878</sup>, that 21.7.2 be amended to provide for cultural and historic values<sup>879</sup>, and that 21.7.2.1<sup>880</sup> and 21.7.1.2<sup>881</sup> be deleted.

976. In the Section 42A Report, Mr Barr disagreed with the request for the inclusion of the ORL category of landscape criteria which the submitters were seeking to transfer from the ODP. Relying on Dr Read’s evidence that the ORL has only been applied in two circumstances, Mr Barr considered that the ORL criteria were too lenient on development and would not maintain amenity values, quality of the environment or finite characteristics of natural physical

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<sup>875</sup> Submission 719

<sup>876</sup> Submissions 179, 251, 781

<sup>877</sup> Submission 608

<sup>878</sup> Submission 345, 456

<sup>879</sup> Submission 798

<sup>880</sup> Submissions 179, 191, 421, 781

<sup>881</sup> Submission 251

resources<sup>882</sup>. We agree for reasons set out in Mr Barr’s Section 42A Report. We also note that it has already been determined by the Stream 1B Hearing Panel that there are only two landscape categories (ONL/ONR and RCL) and that is reflected in our recommendations on this Chapter. Accordingly, we recommend that Submissions 345 and 456 be rejected.

977. In the Section 42A Report, Mr Barr recommended that 21.7.2 and 21.7.2.1 be amended in response to the submissions and should be worded as follows:

*21.7.2 Rural Landscape Classification (RLC)*

*These assessment matters shall be considered with regard to the following principles because in the Rural Landscapes the applicable activities are unsuitable in many locations:*

~~*21.7.2.1 The assessment matters shall be stringently applied to the effect that successful applications are, on balance, consistent with the criteria.*~~

978. Mr Barr did not alter his opinion in his Reply Statement.
979. We note that before addressing the detail of this provision, a consequential change is required to refer to Rural Character Landscapes (RCL) consistent with the recommendations of the Stream 1B Hearing Panel. In addition, the reference in the introductory sentence to “Rural Landscapes” should be changed to “Rural Character Landscapes” so as to make it clear that these assessment criteria do not apply in ONLs or on ONFs.
980. As in the discussion on 21.7.1 above, we consider the introductory remarks should refer the relevant policies from Chapters 3 and 6. For those reasons, and taking into account Mr Barr’s recommendations, we recommend that 21.7.2 and 21.7.2.1 be renumbered and worded as follows :

*21.7.2 Rural Character Landscape (RCL)*

*The assessment matters below have been derived from Policies 3.3.32, 6.3.10 and 6.3.19 to 6.3.29 inclusive. Applications shall be considered with regard to the following assessment matters because in the Rural Character Landscapes the applicable activities are unsuitable in many locations:*

~~*21.7.2.1 The assessment matters shall be stringently applied to the effect that successful applications are, on balance, consistent with the criteria.*~~

**19.4 Assessment Matters 21.7.2.2 and 21.7.2.3**

981. There were no submissions on these assessment matters and, accordingly, we recommend they be adopted as notified subject to renumbering.

**19.5 Assessment Matters 21.7.2.4, 21.2.2.5 and 21.7.2.7**

982. As notified Rule 21.7.2.4, 21.7.2.5 and 21.7.2.7 read as follows;

*21.7.2.4 Effects on visual amenity:*

*Whether the development will result in a loss of the visual amenity of the Rural Landscape, having regard to whether and the extent to which:*

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<sup>882</sup> C Barr, Section 42A report, Page 98, Para 9.24

- a. *the visual prominence of the proposed development from any public places will reduce the visual amenity of the Rural Landscape. In the case of proposed development which is visible from unformed legal roads, regard shall be had to the frequency and intensity of the present use and, the practicalities and likelihood of potential use of these unformed legal roads as access*
- b. *the proposed development is likely to be visually prominent such that it detracts from private views*
- c. *any screening or other mitigation by any proposed method such as earthworks and/or new planting will detract from or obstruct views of the Rural Landscape from both public and private locations*
- d. *the proposed development is enclosed by any confining elements of topography and/or vegetation and the ability of these elements to reduce visibility from public and private locations*
- e. *any proposed roads, boundaries and associated planting, lighting, earthworks and landscaping will reduce visual amenity, with particular regard to elements which are inconsistent with the existing natural topography and patterns*
- f. *boundaries follow, wherever reasonably possible and practicable, the natural lines of the landscape or landscape units.*

21.7.2.5 *Design and density of development:*

***In considering the appropriateness of the design and density of the proposed development, whether and to what extent:***

- a. *opportunity has been taken to aggregate built development to utilise common access ways including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise)*
- b. *there is merit in clustering the proposed building(s) or building platform(s) having regard to the overall density and intensity of the proposed development and whether this would exceed the ability of the landscape to absorb change*
- c. *development, including access, is located within the parts of the site where they will be least visible from public and private locations*
- d. *development, including access, is located in the parts of the site where they will have the least impact on landscape character.*

21.7.2.7 *Cumulative effects of development on the landscape:*

***Taking into account whether and to what extent any existing, consented or permitted development (including unimplemented but existing resource consent or zoning) has degraded landscape quality, character, and visual amenity values. The Council shall be satisfied;***



- a. *the proposed development will not further degrade landscape quality, character and visual amenity values, with particular regard to situations that would result in a loss of valued quality, character and openness due to the prevalence of residential or non-farming activity within the Rural Landscape*
- b. *where in the case resource consent may be granted to the proposed development but it represents a threshold to which the landscape could absorb any further development, whether any further cumulative adverse effects would be avoided by way of imposing a covenant, consent notice or other legal instrument that maintains open space.*

983. Submissions on these provisions variously sought that;

- a. 21.7.4.2 (b) be deleted<sup>883</sup>
- b. 21.7.2.5 (b) be incorporated into the ODP assessment matters<sup>884</sup>
- c. 21.7.2.5 (c) be deleted<sup>885</sup>
- d. 21.7.2.7 be deleted<sup>886</sup>

984. In the Section 42A Report, having addressed the majority of the submissions in relation to 21.7.2, Mr Barr did not specifically address these submissions, but recommended that the assessment matters be retained as notified<sup>887</sup>.

985. Mr Brown and Mr Farrell, in evidence for the submitters, made recommendations to amend the assessment criteria in 21.7.2.4, 21.7.2.5 and 21.7.2.7. Mr Brown and Mr Farrell also made recommendations to amend other assessment criteria in 21.7.2<sup>888</sup>. In summary, Mr Brown and Mr Farrell recommended amendments to reflect RMA language, rephrase from negative to positive language, and remove repetition<sup>889</sup>.

986. In reply, Mr Barr considered that the amendments to these provisions added little value or potentially weakened the assessment required<sup>890</sup> and hence remained of the view that the provisions as notified should be retained. We agree.

987. In addition, the amendments recommend by Mr Brown and Mr Farrell in some instances go beyond the relief sought. Accordingly, we recommend that the submissions be rejected.

988. We have already the UECS submission seeking the retaining of the ODP provisions. We do not repeat that here and recommend that submission on this provision be rejected.

## **19.6 Assessment Matter 21.7.2.6**

989. There were no submissions in relation to this matter. We recommend it be adopted as notified, subject to renumbering.

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<sup>883</sup> Submissions 513, 515, 522, 531, 532, 534, 535, 537

<sup>884</sup> Submission 145

<sup>885</sup> Submission 513, 515, 522, 531, 532, 534, 535, 537

<sup>886</sup> Submission 513, 515, 522, 531, 532, 534, 535, 537

<sup>887</sup> C Barr, Section 42A Report, Page 99, Para 19.25

<sup>888</sup> J Brown, EIC, Attachment B, Pages 35-37 and Mr B Farrell, EIC, Pages 30-32, Para 138

<sup>889</sup> J Brown, EIC, Page 15, Para 2.22 and Mr B Farrell, EIC, Page 29, Para 137

<sup>890</sup> C Barr, Reply, Pages 31-32, Para 11.1

### **19.7 21.7.3 Other factors and positive effects, applicable in all the landscape categories (ONF, ONL and RLC)**

990. One submission<sup>891</sup> supported this entire section. No submissions were lodged specifically in relation to 21.7.3.1. We therefore recommend that 21.7.3.1 be adopted as notified, subject to renumbering and amending the title to refer to Rural Character Landscapes.

### **19.8 Assessment Matter 21.7.3.2**

991. As notified, 21.7.3.2 read as follows:

*Other than where the proposed development is a subdivision and/or residential activity, whether the proposed development, including any buildings and the activity itself, are consistent with rural activities or the rural resource and would maintain or enhance the quality and character of the landscape.*

992. One submission sought that this provision be amended to enable utility structures in landscapes where there is a functional or technical requirement<sup>892</sup>.

993. We addressed this matter in above in discussing the provisions sought by QAC in 21.7.1. We heard no evidence in relation to this submission. We recommend that the submission be rejected.

### **19.9 Assessment Matter 21.7.3.3**

994. As notified, this criterion set out the matters to be taken into account in considering positive effects. Two submissions<sup>893</sup> sought the retention of this matter, and one<sup>894</sup> supported it subject to inclusion of an additional clause to enable the consideration of the positive effects of services provided by utilities.

995. We heard no evidence in support of the amendment sought by PowerNet Limited. We agree with Mr Barr's comments<sup>895</sup> made in relation to the QAC submission discussed above. Assessment criteria are a means of assessing applications against policies in the Plan. The amendment sought by the submitter should be located in the policies, particularly those in Chapter 6. Consequently, we recommend this submission be rejected, and 21.7.3.3 be adopted as notified, subject to renumbering.

## **20 SUMMARY REGARDING ASSESSMENT MATTERS**

996. We have included our recommended set of assessment matters in Appendix 1. We are satisfied that application of these assessment matters on resource consent applications will implement the policies in the Strategic Direction Chapters and those of Chapter 21.

## **21 SUBMISSIONS ON DEFINITIONS NOT OTHERWISE DEALT WITH**

997. Several submissions relating to definitions were set down to be heard that were relevant to this chapter that have not been dealt with in the discussion above. In each case we received no evidence in support of the submission therefore we do not recommend any changes to the relevant definitions, which were as follows:

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<sup>891</sup> Submission 378, opposed by FS1049, FS1095 and FS1282

<sup>892</sup> Submission 251, supported by FS1097 and FS1121

<sup>893</sup> Submissions 355 and 806

<sup>894</sup> Submission 251, supported by FS1097, opposed by FS1320

<sup>895</sup> C Barr, Section 42A Report, page 97, paragraph 19.20

- a. Factory farming<sup>896</sup>;
- b. Farming activity<sup>897</sup>;
- c. Farm building<sup>898</sup>;
- d. Forestry<sup>899</sup>;
- e. Holding<sup>900</sup>;
- f. Informal airport<sup>901</sup>;
- g. Rural industrial activity<sup>902</sup>;
- h. Rural selling place.<sup>903</sup>

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<sup>896</sup> Submission 805

<sup>897</sup> Submissions 243 and 805

<sup>898</sup> Submissions 600 and 805

<sup>899</sup> Submission 600

<sup>900</sup> Submission 600

<sup>901</sup> Submissions 220, 296, 433 and 600

<sup>902</sup> Submission 252

<sup>903</sup> Submission 600

# 27 SUBDIVISION & DEVELOPMENT

## 27.1

# Purpose

Subdivision and the resultant development enables the creation of new housing and land use opportunities, and is a key driver of the District’s economy. The council will support subdivision that is well designed, is located in the appropriate locations anticipated by the District Plan with the appropriate capacity for servicing and integrated transportation.

All subdivision requires resource consent unless specified as a permitted activity. It is recognised that subdivisions will have a variable nature and scale with different issues to address. Good subdivision design, servicing and the appropriate management of natural hazards are underpinned by a shared objective to create healthy, attractive and safe places.

Good subdivision can help to create neighbourhoods and places that people want to live or work within, and should also result in more environmentally responsive development that reduces car use, encourages walking and cycling, and maximises access to sunlight.

Good subdivision design will be encouraged by the use of the QLDC Subdivision Design Guidelines 2015. The QLDC Subdivision Design Guidelines includes subdivision and urban design principles and outcomes that give effect to the objectives and policies of the Subdivision and Strategic Directions Chapters, in both designing and assessing subdivision proposals in urban areas. Proposals at odds with this document are not likely to be consistent with the policies of the Subdivision and Strategic Directions chapters, and therefore, may not achieve the purpose of the Act. Some aspects of the Subdivision Design Guidelines may be relevant to rural subdivisions.

The QLDC Land Development and Subdivision Code of Practice provides assistance in the design of subdivision and development infrastructure in the District and should also be considered by subdivision applicants.

The Council uses its Development Contributions Policy set out in its 10 Year Plan to fix the contributions payable by subdividers for infrastructure upgrades. That policy operates in parallel with the provisions of this chapter and should also be referred to by subdivision consent applicants.

The subdivision chapter is the primary method to ensure that the District’s neighbourhoods are quality environments that take into account the character of local places and communities.

## 27.2

# Objectives and Policies - District Wide

### 27.2.1 **Objective - Subdivision that will enable quality environments to ensure the District is a desirable place to live, visit, work and play.**

- |          |  |
|----------|--|
| Policies | <p><b>27.2.1.1</b> Require subdivision infrastructure to be constructed and designed so that it is fit for purpose, while recognising opportunities for innovative design.</p> <p><b>27.2.1.2</b> Enable urban subdivision that is consistent with the QLDC Subdivision Design Guidelines 2015, recognising that good subdivision design responds to the neighbourhood context and the opportunities and constraints of the application site.</p> <p><b>27.2.1.3</b> Require that allotments are a suitable size and shape, and are able to be serviced and developed for the anticipated land use under the applicable zone provisions.</p> |
|----------|--|

- 27.2.1.4** Discourage non-compliance with minimum allotment sizes. However, where minimum allotment sizes are not achieved in urban areas, consideration will be given to whether any adverse effects are mitigated or compensated by providing:
  - a. desirable urban design outcomes;
  - b. greater efficiency in the development and use of the land resource;
  - c. affordable or community housing.
- 27.2.1.5** Recognise that there is an expectation by future landowners that the key effects of and resources required by anticipated land uses will have been resolved through the subdivision approval process.
- 27.2.1.6** Ensure the requirements of other relevant agencies are fully integrated into the subdivision development process.
- 27.2.1.7** Recognise there will be certain subdivision activities, such as boundary adjustments, that will not require the provision of services.

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## **27.2.2 Objective - Subdivision design achieves benefits for the subdivider, future residents and the community.**

- Policies
- 27.2.2.1** Ensure subdivision design provides a high level of amenity for future residents by aligning roads and allotments to maximise sunlight access.
  - 27.2.2.2** Ensure subdivision design maximises the opportunity for buildings in urban areas to front the road.
  - 27.2.2.3** Locate open spaces and reserves in appropriate locations having regard to topography, accessibility, use and ease of maintenance, while ensuring these areas are a practicable size for their intended use.
  - 27.2.2.4** Urban subdivision shall seek to provide for good and integrated connections and accessibility to:
    - a. existing and planned areas of employment;
    - b. community facilities;
    - c. services;
    - d. trails;
    - e. public transport; and
    - f. existing and planned adjoining neighbourhoods, both within and adjoining the subdivision area.

- 27.2.2.5** Urban subdivision design will integrate neighbourhoods by creating and utilising connections that are easy and safe to use for pedestrians and cyclists and that reduce vehicle dependence within the subdivision.
- 27.2.2.6** Encourage innovative subdivision design that responds to the local context, climate, landforms and opportunities for views or shelter.
- 27.2.2.7** Promote informal surveillance for safety in urban areas through overlooking of open spaces and transport corridors from adjacent sites and dwellings and by effective lighting.
- 27.2.2.8** Manage subdivision within the National Grid Corridor or near to electricity distribution lines to facilitate good amenity and urban design outcomes, while minimising potential adverse effects (including reverse sensitivity effects) on the National Grid and avoiding, remedying or mitigating potential adverse effects (including reverse sensitivity effects) on electricity distribution lines.

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### **27.2.3 Objective - The potential of small scale and infill subdivision in urban areas is recognised and provided for while acknowledging their design limitations.**

- Policies
- 27.2.3.1** Accept that small scale subdivision in urban areas, (for example subdivision involving the creation of fewer than four allotments), and infill subdivision where the subdivision involves established buildings, might have limited opportunities to give effect to policies 27.2.2.4, 27.2.2.5 and 27.2.2.7.
  - 27.2.3.2** While acknowledging potential limitations, encourage small scale and infill subdivision in urban areas to:
    - a. ensure lots are shaped and sized to allow adequate sunlight to living and outdoor spaces, and provide adequate on-site amenity and privacy;
    - b. where possible, locate lots so that they over-look and front road and open spaces;
    - c. avoid the creation of multiple rear sites, except where avoidance is not practicable;
    - d. where buildings are constructed with the intent of a future subdivision, encourage site and development design to maintain, create and enhance positive visual coherence of the development with the surrounding neighbourhood;
    - e. identify and create opportunities for connections to services and facilities in the neighbourhood.

---

## 27.2.4 **Objective - Natural features, indigenous biodiversity and heritage values are identified, incorporated and enhanced within subdivision design.**

- Policies
- 27.2.4.1** Incorporate existing and planned waterways and vegetation into the design of subdivision, transport corridors and open spaces where that will maintain or enhance biodiversity, riparian and amenity values.
  - 27.2.4.2** Ensure that subdivision and changes to the use of land that result from subdivision do not reduce the values of heritage features and other protected items scheduled or identified in the District Plan.
  - 27.2.4.3** Encourage subdivision design to protect and incorporate archaeological sites or cultural features, recognising these features can contribute to and create a sense of place. Where applicable, have regard to Maori culture and traditions in relation to ancestral lands, water, sites, wāhi tapu and other taonga.
  - 27.2.4.4** Encourage initiatives to protect and enhance landscape, vegetation and indigenous biodiversity by having regard to:
    - a. whether any landscape features or vegetation are of a sufficient value that they should be retained and the proposed means of protection;
    - b. where a reserve is to be set aside to provide protection to vegetation and landscape features, whether the value of the land so reserved should be off-set against the development contribution to be paid for open space and recreation purposes.

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## 27.2.5 **Objective - Infrastructure and services are provided to new subdivisions and developments.**

### **Transport, Access and Roads**

- Policies
- 27.2.5.1** Integrate subdivision roading with the existing road networks in a safe and efficient manner that reflects expected traffic levels and the provision for safe and convenient walking and cycling.
 

For the purposes of this policy, reference to 'expected traffic levels' refers to those traffic levels anticipated as a result of the zoning of the area in the District Plan.
  - 27.2.5.2** Ensure safe and efficient pedestrian, cycle and vehicular access is provided to all lots created by subdivision and to all developments.
  - 27.2.5.3** Provide linkages to public transport networks, and to trail, walking and cycling networks, where useful linkages can be developed.
  - 27.2.5.4** Ensure the physical and visual effects of subdivision and roading are minimised by utilising existing topographical features.



- 27.2.5.5** Ensure appropriate design and amenity associated with roading, vehicle access ways, trails and trail connections, walkways and cycle ways are provided for within subdivisions by having regard to:
- the location, alignment, gradients and pattern of roading, vehicle parking, service lanes, access to lots, trails, walkways and cycle ways, and their safety and efficiency;
  - the number, location, provision and gradients of access ways and crossings from roads to lots for vehicles, cycles and pedestrians, and their safety and efficiency;
  - the standard of construction and formation of roads, private access ways, vehicle crossings, service lanes, walkways, cycle ways and trails;
  - the provision and vesting of corner splays or rounding at road intersections;
  - the provision for and standard of street lighting, having particular regard to siting and location, the provision for public safety and the avoidance of upward light spill adversely affecting views of the night sky;
  - the provision of appropriate tree planting within roads;
  - any requirements for widening, formation or upgrading of existing roads;
  - any provisions relating to access for future subdivision on adjoining land;
  - the provision and location of public transport routes and bus shelters.

#### **Water supply, stormwater, wastewater**

- 27.2.5.6** All new lots shall be provided with connections to a reticulated water supply, stormwater disposal and/or sewage treatment and disposal system, where such systems are available or should be provided for.

#### **Water**

- 27.2.5.7** Ensure water supplies are of a sufficient capacity, including fire fighting requirements, and of a potable standard, for the anticipated land uses on each lot or development.
- 27.2.5.8** Encourage the efficient and sustainable use of potable water by acknowledging that the Council's reticulated potable water supply may be restricted to provide primarily for households' living and sanitation needs and that water supply for activities such as irrigation and gardening may be expected to be obtained from other sources.
- 27.2.5.9** Encourage initiatives to reduce water demand and water use, such as roof rain water capture and use and greywater recycling.
- 27.2.5.10** Ensure appropriate water supply, design and installation by having regard to:
- the availability, quantity, quality and security of the supply of water to the lots being created;
  - water supplies for fire fighting purposes;
  - the standard of water supply systems installed in subdivisions, and the adequacy of existing supply systems outside the subdivision;
  - any initiatives proposed to reduce water demand and water use.

### **Stormwater**

**27.2.5.11** Ensure appropriate stormwater design and management by having regard to:

- a. any viable alternative designs for stormwater management that minimise run-off and recognises stormwater as a resource through re-use in open space and landscape areas;
- b. the capacity of existing and proposed stormwater systems;
- c. the method, design and construction of the stormwater collection, reticulation and disposal systems, including connections to public reticulated stormwater systems;
- d. the location, scale and construction of stormwater infrastructure;
- e. the effectiveness of any methods proposed for the collection, reticulation and disposal of stormwater run-off, including opportunities to maintain and enhance water quality through the control of water-borne contaminants, litter and sediments, and the control of peak flow.

**27.2.5.12** Encourage subdivision design that includes the joint use of stormwater and flood management networks with open spaces and pedestrian/cycling transport corridors and recreational opportunities where these opportunities arise and will maintain the natural character and ecological values of wetlands and waterways.

### **Wastewater**

**27.2.5.13** Treat and dispose of sewage in a manner that:

- a. maintain public health;
- b. avoids adverse effects on the environment in the first instance; and
- c. where adverse effects on the environment cannot be reasonably avoided, mitigates those effects to the extent practicable.

**27.2.5.14** Ensure appropriate sewage treatment and disposal by having regard to:

- a. the method of sewage treatment and disposal;
- b. the capacity of, and impacts on, the existing reticulated sewage treatment and disposal system;
- c. the location, capacity, construction and environmental effects of the proposed sewage treatment and disposal system.

**27.2.5.15** Ensure that the design and provision of any necessary infrastructure at the time of subdivision takes into account the requirements of future development on land in the vicinity.

### **Energy Supply and Telecommunications**

**27.2.5.16** Ensure adequate provision is made for the supply and installation of reticulated energy, including street lighting, and communication facilities for the anticipated land uses while:

- a. providing flexibility to cater for advances in telecommunication and computer media technology, particularly in remote locations;

- b. ensure the method of reticulation is appropriate for the visual amenity and landscape values of the area by generally requiring services are underground, and in the context of rural environments where this may not be practicable, infrastructure is sited in a manner that minimises visual effects on the receiving environment;
- c. generally require connections to electricity supply and telecommunications systems to the boundary of the net area of the lot, other than lots for access, roads, utilities and reserves.

#### **Easements**

**27.2.5.17** Ensure that services, shared access and public access is identified and managed by the appropriate easement provisions.

**27.2.5.18** Ensure that easements are of an appropriate size, location and length for the intended use of both the land and easement.

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### **27.2.6 Objective - Esplanades created where opportunities arise.**

- Policies
- 27.2.6.1** Create esplanade reserves or strips where they would provide nature conservation, natural character, natural hazard mitigation, infrastructural or recreational benefits. In particular, Council will encourage esplanades where they:
    - a. are important for public access or recreation, would link with existing or planned trails, walkways or cycleways, or would create an opportunity for public access;
    - b. have high actual or potential value with regard to the maintenance of indigenous biodiversity;
    - c. comprise significant indigenous vegetation or significant habitats of indigenous fauna;
    - d. are considered to comprise an integral part of an outstanding natural feature or outstanding natural landscape;
    - e. would benefit from protection, in order to safeguard the life supporting capacity of the adjacent lake and river;
    - f. would not put an inappropriate burden on Council, in terms of future maintenance costs or issues relating to natural hazards affecting the land.
  - 27.2.6.2** Use opportunities through the subdivision process to improve the level of protection for the natural character and nature conservation values of lakes and rivers, as provided for in Section 230 of the Act.

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### **27.2.7 Objective - Boundary adjustments, cross-lease and unit title subdivision are provided for.**

- Policies
- 27.2.7.1** Enable cross-lease and unit title subdivision of existing units in urban areas without the need to obtain resource consent where there is no potential for adverse effects associated with the change in boundary location.

- 27.2.7.2** Ensure boundary adjustment, cross-lease and unit title subdivisions are appropriate with regard to:
  - a. the location of the proposed boundaries;
  - b. in rural areas, the location of boundaries with regard to approved residential building platforms, existing buildings, and vegetation patterns and existing or proposed accesses;
  - c. boundary treatment;
  - d. the location and terms of existing or proposed easements or other arrangements for access and services.

## 27.3

# Location-specific objectives and policies

In addition to the district wide objectives and policies in Part 27.2, the following objectives and policies relate to subdivision in specific locations.

### Peninsula Bay

#### 27.3.1 **Objective - Ensure effective public access is provided throughout the Peninsula Bay land.**

- |          |   |
|----------|---|
| Policies | <ul style="list-style-type: none"> <li><b>27.3.1.1</b> Ensure that before any subdivision or development occurs within the Peninsula Bay Lower Density Suburban Residential Zone, a subdivision consent has been approved confirming easements for the purposes of public access through the Open Space Zone.</li> <li><b>27.3.1.2</b> Within the Peninsula Bay site, to ensure that public access is established through the vesting of reserves and establishment of easements prior to any further subdivision.</li> <li><b>27.3.1.3</b> Ensure that easements for the purposes of public access are of an appropriate size, location and length to provide a high quality, recreational resource, with excellent linkages, and opportunities for different community groups.</li> </ul> |
|----------|---|

## Kirimoko

### 27.3.2 **Objective** - A liveable urban environment that achieves best practice in urban design; the protection and incorporation of landscape and environmental features into the design of the area; and high quality built form.

Policies	<b>27.3.2.1</b>	Protect the landscape quality and visual amenity of the Kirimoko Block and preserve sightlines to local natural landforms.
	<b>27.3.2.2</b>	Protect the natural topography of the Kirimoko Block and incorporate existing environmental features into the design of the site.
	<b>27.3.2.3</b>	Ensure that urban development of the site is restricted to lower areas and areas of concealed topography, such as gullies and that visually sensitive areas such as the spurs are left undeveloped.
	<b>27.3.2.4</b>	Ensure the provision of open space and community facilities that are suitable for the whole community and that are located in safe and accessible areas.
	<b>27.3.2.5</b>	Develop an interconnected network of streets, footpaths, walkways and open space linkages that facilitate a safe, attractive and pleasant walking, cycling and driving environment.
	<b>27.3.2.6</b>	Provide for road and walkway linkages to neighbouring developments.
	<b>27.3.2.7</b>	Ensure that all roads are designed and located to minimise the need for extensive cut and fill and to protect the natural topographical layout and features of the site.
	<b>27.3.2.8</b>	Minimise disturbance of existing native plant remnants and enhance areas of native vegetation by providing linkages to other open space areas and to areas of ecological value.
	<b>27.3.2.9</b>	Design for stormwater management that minimises run-off and recognises stormwater as a resource through re-use in open space and landscape areas.
	<b>27.3.2.10</b>	Require the roading network within the Kirimoko Block to be planted with appropriate trees to create a green living environment appropriate to the areas.

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## Large Lot Residential A Zone between Studholme Road and Meadowstone Drive.

### 27.3.3 **Objective** - Landscape and amenity values of the zone’s low density character and transition with rural areas be recognised and protected.

- Policies
- 27.3.3.1** Have regard to the impact of development on landscape values of the neighbouring rural areas and features of these areas, with regard to minimising the prominence of housing on ridgelines overlooking the Wanaka township.
  - 27.3.3.2** Subdivision and development within land located on the northern side of Studholme Road shall have regard to the adverse effects of development and associated earthworks on slopes, ridges and skylines.
- 

## Bob’s Cove Rural Residential Zone (excluding sub-zone)

### 27.3.4 **Objective** - The special character of the Bob’s Cove Rural Residential Zone is recognised and provided for.

- Policies
- 27.3.4.1** In order to maintain the rural character of the zone, any required street lighting shall be low in height from the ground, of reduced lux spill and directed downwards to avoid adverse effects on views of the night sky.
- 

## Ferry Hill Rural Residential Sub-Zone

### 27.7.6 **Objective** - Maintain and enhance visual amenity values and landscape character within and around the Ferry Hill Rural Residential Sub-Zone.

- Policies
- 27.7.6.1** At the time of considering a subdivision application, the following matters shall be had particular regard to:
    - a. The subdivision design has had regard to minimising the number of accesses to roads;
    - b. the location and design of on-site vehicular access avoids or mitigates adverse effects on the landscape and visual amenity values by following the natural form of the land to minimise earthworks, providing common driveways and by ensuring that appropriate landscape treatment is an integral component when constructing such access;

- c. the extent to which plantings with a predominance of indigenous species enhances the naturalness of the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone;
- d. The extent to which the species, location, density, and maturity of the planting is such that residential development in the Ferry Hill Rural Residential sub-zone will be successfully screened from views obtained when travelling along Tucker Beach Road<sup>1</sup>.

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## Wyuna Station Rural Lifestyle Zone

### 27.3.5 **Objective** - Provision for a deferred rural lifestyle zone on the terrace to the east of, and immediately adjoining, the Glenorchy Township.

- Policies **27.3.5.1** Prohibit or defer development of the zone until such a time that:
- a. the zone can be serviced by a reticulated wastewater disposal scheme within the property that services both the township and proposed zone. This may include the provision of land within the zone for such purpose; or
  - b. the zone can be serviced by a reticulated wastewater disposal scheme located outside of the zone that has capacity to service both the township and proposed zone; or
  - c. the zone can be serviced by an on-site (individual or communal) wastewater disposal scheme no sooner than two years from the zone becoming operative on the condition that should a reticulated scheme referred to above become available and have capacity within the next three years then all lots within the zone shall be required to connect to that reticulated scheme.

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### 27.3.6 **Objective** - Subject to Objective 27.3.5, rural living development is enabled in a way that maintains the visual amenity values that are experienced from the Glenorchy Township, Oban Street and the Glenorchy-Paradise Road.

- Policies **27.3.6.1** The subdivision design, identification of building platforms and associated mitigation measures shall ensure that built form and associated activities within the zone are reasonably inconspicuous when viewed from Glenorchy Township, Oban Street or the Glenorchy-Paradise Road. Measures to achieve this include:
- a. prohibiting development over the sensitive areas of the zone via building restriction areas;
  - b. appropriately locating buildings within the zone, including restrictions on future building bulk;
  - c. using excavation of the eastern part of the terrace to form appropriate building platforms;
  - d. using naturalistic mounding of the western part of the terrace to assist visual screening of development;

<sup>1</sup>. Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

- e. using native vegetation to assist visual screening of development;
- f. the maximum height of buildings shall be 4.5m above ground level prior to any subdivision development.

- 27.3.6.2** Maintain and enhance the indigenous vegetation and ecosystems within the building restriction areas of the zone and to suitably and comprehensively maintain these areas into the future. As a minimum, this shall include:
- a. methods to remove or kill existing wilding exotic trees and weed species from the lower banks of the zone area and to conduct this eradication annually;
  - b. methods to exclude and/or suitably manage pests within the zone in order to foster growth of indigenous vegetation within the zone, on an ongoing basis;
  - c. a programme or list of maintenance work to be carried out on a year to year basis on order to bring about the goals set out above.

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## Jacks Point Zone

### 27.3.7 Objective - Subdivision occurs consistent with the Jacks Point Structure Plan.

- Policies
- 27.3.7.1** Ensure that subdivision and development achieves the objectives and policies located within Chapter 41.
- 27.3.7.2** Within the R(HD) Activity Areas, subdivision design shall provide for the following matters:
- a. the development and suitability of public transport routes, pedestrian and cycle trail connections within and beyond the Activity Area;
  - b. mitigation measures to ensure that no building will be highly visible from State Highway 6 or Lake Wakatipu;
  - c. road and street designs;
  - d. the location and suitability of proposed open spaces;
  - e. commitments to remove wilding trees.
- 27.3.7.3** Within the R(HD-SH) Activity Areas, minimise the visual effects of subdivision and future development on landscape and amenity values as viewed from State Highway 6.
- 27.3.7.4** Within the R(HD) Activity Area, in the consideration of the creation of sites sized less than 550m<sup>2</sup>, particular regard shall be given to the following matters and whether they should be given effect to by imposing appropriate legal mechanism of controls over:
- a. building setbacks from boundaries;
  - b. location and heights of garages and other accessory buildings;



- c. height limitations for parts of buildings, including recession plane requirements;
- d. window locations;
- e. building coverage;
- f. roadside fence heights.

**27.3.7.5** Within the OS Activity Areas shown on the Jacks Point Zone Structure Plan, implement measures to provide for the establishment and management of open space, including native vegetation.

**27.3.7.6** Within the R(HD) A - E Activity Areas, ensure cul-de-sacs are straight (+/- 15 degrees).

**27.3.7.7** In the Hanley Downs areas where subdivision of land within any Residential Activity Area results in allotments less than 550m<sup>2</sup> in area:

- a. such sites are to be configured:
  - i. with good street frontage;
  - ii. to enable sunlight to existing and future residential units;
  - iii. to achieve an appropriate level of privacy between homes;
- b. parking, access and landscaping are to be configured in a manner which:
  - i. minimises the dominance of driveways at the street edge;
  - ii. provides for efficient use of the land;
  - iii. maximises pedestrian and vehicular safety; and.
  - iv. addresses nuisance effects such as from vehicle lights.
- c. subdivision design should ensure:
  - i. public and private spaces are clearly demarcated, and ownership and management arrangements are proposed to appropriately manage spaces in common ownership.
- d. consideration is to be given as to whether design parameters are required to be secured through an appropriate legal mechanism. These are height, building mass, window sizes and locations, building setbacks, fence heights, locations and transparency, building materials and landscaping.

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## Waterfall Park

**27.3.8 Objective – Subdivision that provides for a range of visitor, residential and recreational facilities, sympathetic to the natural setting and has regard to location specific opportunities and constraints identified within the Waterfall Park Structure Plan.**

Policies **27.3.8.1** Enable subdivision which provides for appropriate, integrated and orderly development in accordance with the Waterfall Park Structure Plan located within Section 27.13.

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## Millbrook

### **27.3.9 Objective – Subdivision that provides for resort development while having particular regard to landscape, heritage, ecological, water and air quality values.**

Policies **27.3.9.1** Enable subdivision which provides for appropriate, integrated and orderly development in accordance with the Millbrook Structure Plan located within Section 27.13.

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## Coneburn Industrial

### **27.3.10 Objective - Subdivision that creates opportunities for industrial activities and Service activities to occur.**

Policies **27.3.10.1** Enable subdivision which provides for a combination of lot sizes and low building coverage to ensure that this area is retained for yard based industrial and service activities as well as smaller scale industrial and service activities.

**27.1.10.2** Require the establishment, restoration and ongoing maintenance of the open space areas (shown on the Coneburn Structure Plan located in Section 27.13) to:

- a. visually screen development using the planting of native species;
- b. retain existing native garden species unless they are wilding;
- c. give effect to the Ecological Management Plan required by Rule 44.4.12 so its implementation occurs at the rate of development within the Zone.

**27.10.4.3** Ensure subdivision works and earthworks results in future industrial and service development (buildings) being difficult to see from State Highway 6.

**27.10.4.4** At the time of subdivision ensure that there is adequate provision for road access, onsite parking (staff and visitors) and loading and manoeuvring for all types of vehicle so as to cater for the intended use of the site.

- 27.10.4.5** Ensure subdivision creates lots and sites that are capable of accommodating development that meets the relevant zone standards for the Coneburn Industrial Zone.
- 27.10.4.6** Ensure that shared infrastructure (water, wastewater and stormwater) is provided, managed, and maintained if development cannot connect to Council services.
- 27.10.4.7** Require safe accesses to be provided from the State Highway into the Zone at the rate the Zone is developed.

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## West Meadows Drive

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

- Policies
- 27.3.11.1** Enable subdivision at the western end of West Meadows Drive which has a roading layout that is consistent with the West Meadows Drive Structure Plan.
  - 27.3.11.2** Enable variances to the West Meadows Drive Structure Plan on the basis that the roading layout results in the western end of West Meadows Drive being extended to connect with the roading network and results in West Meadows Drive becoming a through-road.

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## Frankton North

### **27.3.12 Objective - Subdivision of the Medium Density Residential and Business Mixed Use Zones on the north side of State Highway 6 between Hansen Road and Quail Rise enables development integrated into the adjacent urban areas while minimising traffic impacts on the State Highway.**

- Policies
- 27.3.12.1** Limit the roading access to Frankton North to Hansen Road, Ferry Hill Drive or the Hawthorne Drive/SH6 roundabout.
  - 27.3.12.2** Ensure subdivision and development enables access to the roading network from all sites in the Frankton North Medium Density Residential and Business Mixed Use Zones and is of a form that accounts for long-term traffic demands without the need for subsequent retrofitting or upgrade.
  - 27.3.12.3** Ensure subdivision and development in the Frankton North Medium Density Residential and Business Mixed Use Zones provides, or has access to, a safe and legible walking and cycling environment adjacent to and across the State Highway linking to other pedestrian and cycling networks.

# 27.4

## Other Provisions and Rules

### 27.4.1 District Wide

The rules of the zone the proposed subdivision is located within are applicable. Attention is drawn to the following District Wide chapters.

1 Introduction	2 Definitions	3 Strategic Direction
4 Urban Development	5 Tangata Whenua	6 Landscapes and Rural Character
25 <i>Earthworks</i>	26 Historic Heritage	28 Natural Hazards
29 <i>Transport</i>	30 Energy and Utilities	31 <i>Signs</i>
32 Protected Trees	33 Indigenous Vegetation	34 Wilding Exotic Trees
35 Temporary Activities and Relocated Buildings	36 Noise	37 Designations
Planning Maps		

### 27.4.2 Earthworks associated with subdivision

**27.4.2.1** Earthworks undertaken for the development of land associated with any subdivision shall not require a separate resource consent under the rules of the District Wide Earthworks Chapter, but shall be considered against the matters of control or discretion of the District Wide Earthworks Chapter as part of any subdivision activity<sup>2</sup>.

### 27.4.3 Natural Hazards

**27.4.3.1** The Natural Hazards Chapter of the District Plan sets a policy framework to address land uses and natural hazards throughout the District. All subdivision is able to be assessed against a natural hazard through the provisions of section 106 of the RMA. In addition, in some locations natural hazards have been identified and specific provisions apply.

<sup>2</sup>. Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

## 27.5

## Rules - Subdivision

**27.5.1 All subdivision requires resource consent unless specified as a permitted activity. The abbreviations set out below are used in the following tables. Any activity which is not permitted (P) or prohibited (PR) requires resource consent.**

P	Permitted	C	Controlled	RD	Restricted Discretionary
D	Discretionary	NC	Non-Complying	PR	Prohibited

Where an activity falls within more than one rule, unless stated otherwise, its status shall be determined by the most restrictive rule.

	Boundary Adjustments	Activity Status
27.5.2	<p><b>An adjustment to existing cross-lease or unit title due to:</b></p> <ul style="list-style-type: none"> <li>a. an alteration to the size of the lot by alterations to the building outline;</li> <li>b. the conversion from cross-lease to unit title; or</li> <li>c. the addition or relocation of an accessory building;</li> </ul> <p>providing the activity complies with all other provisions of the District Plan or has obtained a land use consent.</p> <p>Advice Note: In order to undertake such a subdivision a certificate of compliance (s139 of the Act) will need to be obtained (see s223(1)(b)).</p>	P

	<b>Boundary Adjustments</b>	<b>Activity Status</b>
<b>27.5.3</b>	<p>For boundary adjustment subdivision activities where there are two or more existing lots which each have separate Certificates of Title, new lots may be created by subdivision for the purpose of an adjustment of the boundaries between the existing lots, provided:</p> <ol style="list-style-type: none"> <li>in the case of the Rural, Gibbston Character and Rural Lifestyle Zones the building platform is retained in its approved location;</li> <li>no additional or relocated residential building platform is identified and approved as part of a boundary adjustment within Rural, Gibbston Character and Rural Lifestyle Zones;</li> <li>no additional separately saleable lots are created;</li> <li>the areas of the resultant lots either comply with the minimum lot size requirement for the zone (where applicable) or where any lot does not comply with an applicable minimum lot size requirement for the zone, the extent of such non-compliance is not increased; and</li> <li>lots must be immediately adjoining each other.</li> </ol> <p>Control is reserved to:</p> <ol style="list-style-type: none"> <li>the location of the proposed boundaries;</li> <li>boundary treatment;</li> <li>easements for existing and proposed access and services.</li> </ol>	C
<b>27.5.4</b>	<p>For boundary adjustments that either:</p> <ol style="list-style-type: none"> <li>involve any site that contains a heritage or any other protected item identified on the District Plan maps; or</li> <li>are within the urban growth boundary of Arrowtown;</li> </ol> <p>where there are two or more existing lots which each have separate Certificates of Title, new lots may be created by subdivision for the purpose of an adjustment of the boundaries between the existing lots, provided:</p> <ol style="list-style-type: none"> <li>no additional separately saleable lots are created;</li> <li>the areas of the resultant lots comply with the minimum lot size requirement for the zone;</li> <li>lots must be immediately adjoining each other;</li> </ol> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>the impact on the heritage values of the protected item;</li> <li>the maintenance of the historic character of the Arrowtown Residential Historic Management Zone;</li> <li>the location of the proposed boundaries;</li> <li>boundary treatment;</li> <li>easements for access and services.</li> </ol>	RD

	<b>Unit Title or Leasehold Subdivision</b>	<b>Activity Status</b>
<b>27.5.5</b>	<p>Where land use consent is approved for a multi unit commercial or residential development, including visitor accommodation development, and a unit title or leasehold (including cross lease) subdivision is subsequently undertaken in accordance with the approved land use consent, provided:</p> <ol style="list-style-type: none"> <li>all buildings must be in accordance with an approved land use resource consent;</li> <li>all areas to be set aside for the exclusive use of each building or unit must be shown on the survey plan, in addition to any areas to be used for common access or parking or other such purpose;</li> <li>all service connections and on-site infrastructure must be located within the boundary of the site they serve or have access provided by an appropriate legal mechanism.</li> </ol> <p>Control is reserved to:</p> <ol style="list-style-type: none"> <li>the effect of the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces;</li> <li>the effects of and on infrastructure provision.</li> </ol> <p>This rule does not apply a subdivision of land creating a separate fee simple title.</p> <p>The intent is that it applies to subdivision of a lot containing an approved land use consent, in order to create titles in accordance with that consent.</p>	C

	<b>Subdivision Activities - District Wide</b>	<b>Activity Status</b>
<b>27.5.6</b>	Any subdivision that does not fall within any rule in this section 27.5.	D

	<b>Subdivision Activities - District Wide</b>	<b>Activity Status</b>
<b>27.5.7</b>	<p>All urban subdivision activities, unless otherwise provided for, within the following zones:</p> <ol style="list-style-type: none"> <li>1. Lower Density Suburban Residential Zone;</li> <li>2. Medium Density Residential Zone;</li> <li>3. High Density Residential Zone;</li> <li>4. Town Centre Zones;</li> <li>5. Arrowsmith Residential Historic Management Zone;</li> <li>6. Large Lot Residential Zone;</li> <li>7. Local Shopping Centre;</li> <li>8. Business Mixed Use Zone;</li> <li>9. Airport Zone - Queenstown.</li> </ol> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>a. subdivision design and any consequential effects on the layout of lots and on lot sizes and dimensions;</li> <li>b. Internal roading design and provision, relating to access to and service easements for future subdivision on adjoining land, and any consequential effects on the layout of lots, and on lot sizes and dimensions;</li> <li>c. property access and roading;</li> <li>d. esplanade provision;</li> <li>e. the adequacy of on site measures to address the risk of natural and other hazards on land within the subdivision;</li> <li>f. fire fighting water supply;</li> <li>g. water supply;</li> <li>h. stormwater design and disposal;</li> <li>i. sewage treatment and disposal;</li> <li>j. energy supply and telecommunications, including adverse effects on energy supply and telecommunication networks;</li> <li>k. open space and recreation;</li> <li>l. ecological and natural values;</li> <li>m. historic heritage;</li> <li>n. easements.</li> </ol> <p>For the avoidance of doubt, where a site is governed by a Structure Plan, that is included in the District Plan, subdivision activities shall be assessed in accordance with Rule 27.7.1.</p>	RD



	<b>Subdivision Activities - District Wide</b>	<b>Activity Status</b>
<b>27.5.8</b>	<p>All subdivision activities, unless otherwise provided for, in the District's Rural Residential and Rural Lifestyle Zones</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>a. in the Rural Lifestyle Zone, the location and size of building platforms and in respect of any buildings within those building platforms: <ol style="list-style-type: none"> <li>i. external appearance;</li> <li>ii. visibility from public places;</li> <li>iii. landscape character; and</li> <li>iv. visual amenity.</li> </ol> </li> <li>b. subdivision design and any consequential effects on the layout of lots and on lot sizes and dimensions;</li> <li>c. internal roading design and provision, relating to access and service easements for future subdivision on adjoining land, and any consequential effects on the layout of lots and on lot sizes and dimensions;</li> <li>d. property access and roading;</li> <li>e. esplanade provision;</li> <li>f. the adequacy of on site measures to address the risk of natural and other hazards on land within the subdivision;</li> <li>g. fire fighting water supply;</li> <li>h. water supply;</li> <li>i. stormwater disposal;</li> <li>j. sewage treatment and disposal;</li> <li>k. energy supply and telecommunications including adverse effects on energy supply and telecommunication networks;</li> <li>l. open space and recreation;</li> <li>m. ecological and natural values;</li> <li>n. historic heritage;</li> <li>o. easements.</li> </ol>	RD
<b>27.5.9</b>		
<b>27.5.10</b>	<p>Subdivision of land in any zone within the National Grid Corridor except where any allotment identifies a building platform to be located within the National Grid Yard.</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>a. impacts on the operation, maintenance, upgrade and development of the National Grid;</li> <li>b. the ability of future development to comply with NZECP34:2001;</li> <li>c. the location, design and use of any proposed building platform as it relates to the National Grid transmission line.</li> </ol>	RD
<b>27.5.11</b>	All subdivision activities in the Rural and Gibbston Character Zones and Airport Zone - Wanaka, unless otherwise provided for.	D

	<b>Subdivision Activities - District Wide</b>	<b>Activity Status</b>
<b>27.5.12</b>	The subdivision of land containing a heritage or any other protected item scheduled in the District Plan. This rule does not apply to boundary adjustments under Rule 27.5.4.	D
<b>27.5.13</b>	The subdivision of land identified on the planning maps as a Heritage Area.	D
<b>27.5.14</b>	The subdivision of a site containing a known archaeological site.	D
<b>27.5.15</b>	Subdivision that would alter, or create a new boundary within a Significant Natural Area scheduled in the District Plan.	D
<b>27.5.16</b>	A Unit Titles Act subdivision lodged concurrently with an application for building consent, or land use consent.	D
<b>27.5.17</b>	Within the Jacks Point Zone, subdivision that does not comply with the minimum lot areas specified in Part 27.6 and the zone and location specific rules in Part 27.7, excluding: a. in the R(HD) activity area, where the creation of lots less than 380m <sup>2</sup> shall be assessed under Rule 27.7.5.2 (as a restricted discretionary activity).	D
<b>27.5.18</b>	Within the Coneburn Industrial Zone Activity Area 2a, subdivision which does not comply with the minimum lot areas specified in Part 27.6.	D
<b>27.5.19</b>	Subdivision that does not comply with the minimum lot areas specified in Part 27.6 with the exception of the Jacks Point Zone which is assessed pursuant to Rule 27.5.17 and Coneburn Industrial Zone Activity Area 2a which is assessed pursuant to Rule 27.5.18.	NC
<b>27.5.20</b>	A subdivision under the Unit Titles Act not falling within Rules 27.5.5 or 27.5.16 where the building is not completed (meaning the applicable code of compliance certificate has not been issued), or building consent or land use consent has not been granted for the buildings.	NC
<b>27.5.21</b>	The further subdivision of an allotment that if undertaken as part of a previous subdivision would have caused that previous subdivision to exceed the minimum average density requirements for subdivision in the Rural Lifestyle Zone or the Rural Residential Zone.	NC
<b>27.5.22</b>	The subdivision of land resulting in the division of a building platform.	NC
<b>27.5.23</b>	The subdivision of a residential flat from a residential unit.	NC
<b>27.5.24</b>	Any subdivision of land in any zone within the National Grid Corridor, which does not comply with Rule 27.5.10.	NC
<b>27.5.25</b>	Subdivision that does not comply with the standards related to servicing and infrastructure under Rule 27.7.15.	NC

## 27.6

## Rules - Standards for Minimum Lot Areas

### 27.6.1 No lots to be created by subdivision, including balance lots, shall have a net site area or where specified, an average net site area less than the minimum specified.

Zone		Minimum Lot Area
<b>Town Centres</b>		No minimum
<b>Local Shopping Centre</b>		No minimum
<b>Business Mixed Use</b>		200m <sup>2</sup>
<b>Airport</b>		No minimum
<b>Coneburn Industrial</b>	Activity Area 1a	3000m <sup>2</sup>
	Activity Area 2a	1000m <sup>2</sup>
<b>Residential</b>	High Density	450m <sup>2</sup>
	Medium Density	250m <sup>2</sup>
	Lower Density Suburban	450m <sup>2</sup>
		Within the Queenstown Airport Air Noise Boundary and Outer Control Boundary: 600m <sup>2</sup>
	Arrowtown Residential Historic Management	800m <sup>2</sup>
	Large Lot Residential A	2000m <sup>2</sup>
	Large Lot Residential B	4000m <sup>2</sup>
<b>Rural</b>	Rural	No minimum
	Gibbston Character	
<b>Rural Lifestyle</b>	Rural Lifestyle	One hectare providing the average lot size is not less than 2 hectares. For the purpose of calculating any average, any allotment greater than 4 hectares, including the balance, is deemed to be 4 hectares.
	Rural Lifestyle Deferred A and B <sup>3</sup>	No minimum, but each of the two parts of the zone identified on the planning map shall contain no more than two allotments.
	Rural Lifestyle Buffer <sup>4</sup>	The land in this zone shall be held in a single allotment.
<b>Rural Residential</b>	Rural Residential	4000m <sup>2</sup>
	Rural Residential Bob's Cove sub-zone	No minimum, providing the total lots to be created, inclusive of the entire area within the zone shall have an average of 4000m <sup>2</sup> .
	Rural Residential Ferry Hill Subzone <sup>5</sup>	4000m <sup>2</sup> with no more than 17 lots created for residential activity.

<sup>3,4,5</sup> Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

Zone		Minimum Lot Area
	Rural Residential Camp Hill	4000m <sup>2</sup> with no more than 36 lots created for residential activity
<b>Jacks Point</b>	Residential Activity Areas	380m <sup>2</sup> In addition, subdivision shall comply with the average density requirements set out in Rule 41.5.8.
<b>Millbrook</b>		No minimum
<b>Waterfall Park</b>		No minimum

Advice Note:

Non-compliance with the minimum lot areas specified above means that a subdivision will fall under one of Rules 27.5.17-19, depending on its location.

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**27.6.2** Lots created for access, utilities, roads and reserves shall have no minimum size.

# 27.7

## Zone - Location Specific Rules

	Zone and Location Specific Rules	Activity Status
<b>27.7.1</b>	<p>Subdivision consistent with a Structure Plan that is included in the District Plan.</p> <p>Control is reserved to:</p> <ul style="list-style-type: none"> <li>a. subdivision design and any consequential effects on the layout of lots and on lot sizes and dimensions;</li> <li>b. internal roading design and provision, and any consequential effects on the layout of lots, and on lot sizes and dimensions;</li> <li>c. property access and roading;</li> <li>d. esplanade provision;</li> <li>e. the adequacy of on site measures to address the risk of natural and other hazards on land within the subdivision;</li> <li>f. fire fighting water supply;</li> <li>g. water supply;</li> <li>h. stormwater design and disposal;</li> <li>i. sewage treatment and disposal;</li> <li>j. energy supply and telecommunications, including adverse effects on energy supply and telecommunication networks;</li> <li>k. open space and recreation; and</li> <li>l. ecological and natural values;</li> <li>m. historic heritage;</li> <li>n. easements;</li> <li>o. any additional matters relevant to achievement of the objectives and policies in part 27.3 of this Chapter.</li> </ul>	C
<b>27.7.2</b>	<p><b>Kirimoko</b></p> <p><b>27.7.2.1</b> In addition to those matters of control listed under Rule 27.7.1 when assessing any subdivision consistent with the principal roading layout depicted in the Kirimoko Structure Plan shown in part 27.13, the following shall be additional matters of control:</p> <ul style="list-style-type: none"> <li>a. roading layout;</li> <li>b. the provision and location of walkways and the green network;</li> <li>c. the protection of native species as identified on the structure plan as green network.</li> </ul>	C

	<b>Zone and Location Specific Rules</b>	<b>Activity Status</b>
	<b>27.7.2.2</b> Any subdivision that does not comply with the principal roading layout and reserve net-work depicted in the Kirimoko Structure Plan included in Part 27.13 (including the creation of additional roads, and/or the creation of access ways for more than 2 properties).	NC
	<b>27.7.2.3</b> Any subdivision of land zoned Rural proposed to create a lot entirely within the Rural Zone, to be held in a separate certificate of title.	NC
	<b>27.7.2.4</b> Any subdivision of land described as Lots 3 to 7 and Lot 9 DP300734, and Lot 1 DP 304817 (and any title derived therefrom) that creates more than one lot that has included in its legal boundary land zoned Rural.	NC
<b>27.7.3</b>	<p><b>Bob's Cove Rural Residential Sub-Zone</b></p> <p><b>27.7.3.1</b> Activities that do not meet the following standards:</p> <ul style="list-style-type: none"> <li>a. boundary planting – Rural Residential sub-zone at Bobs Cove: <ul style="list-style-type: none"> <li>i. within the Rural Residential sub-zone at Bobs Cove, where the 15 metre building Restriction Area adjoins a development area, it shall be planted in indigenous tree and shrub species common to the area, at a density of one plant per square metre; and</li> <li>ii. where a building is proposed within 50 metres of the Glenorchy-Queenstown Road, such indigenous planting shall be established to a height of 2 metres and shall have survived for at least 18 months prior to any residential buildings being erected.</li> </ul> </li> <li>b. development areas and undomesticated areas within the Rural Residential sub-zone at Bob's Cove: <ul style="list-style-type: none"> <li>i. within the Rural Residential sub-zone at Bob's Cove, at least 75% of the zone shall be set aside as undomesticated area, and shown on the Subdivision Plan as such, and given effect to by consent notice registered against the title of the lots created, to the benefit of all lot holders and the Council;</li> <li>ii. at least 50% of the 'undomesticated area' shall be retained, established, and maintained in indigenous vegetation with a closed canopy such that this area has total indigenous litter cover. This rule shall be given effect to by consent notice registered against the title of the lot created, to the benefit of the lot holder and the Council;</li> <li>iii. the remainder of the area shall be deemed to be the 'development area' and shall be shown on the Subdivision Plan as such, and given effect to by consent notice registered against the title of the lots created, to the benefit of all holders and the Council;</li> <li>iv. the landscaping and maintenance of the undomesticated area shall be detailed in a landscaping plan that is provided as part of any subdivision application. This Landscaping Plan shall identify the proposed species and shall provide details of the proposed maintenance programme to ensure a survival rate of at least 90% within the first 5 years; and</li> <li>v. this area shall be established and maintained in indigenous vegetation by the subdividing owner and subsequent owners of any individual allotment on a continuing basis. Such areas shall be shown on the Subdivision Plan and given effect to by consent notice registered against the title of the lots;</li> <li>vi. any lot created that adjoins the boundary with the Queenstown-Glenorchy Road shall include a 15 metre wide building restriction area, and such building restriction area shall be given effect to by consent notice registered against the title of the lot created, to the benefit of the lot holder and the Council.</li> </ul> </li> </ul>	NC

	Zone and Location Specific Rules	Activity Status
27.7.4	<p><b>Ladies Mile</b></p> <p><b>27.7.4.1</b> Subdivision of land situated south of State Highway 6 (“Ladies Mile”) and southwest of Lake Hayes that is zoned Lower Density Suburban Residential or Rural Residential as shown on the Planning Maps and that does not meet the following standards:</p> <ol style="list-style-type: none"> <li>the landscaping of roads and public places is an important aspect of property access and subdivision design. No subdivision consent shall be granted without consideration of appropriate landscaping of roads and public places shown on the plan of subdivision.</li> <li>no separate residential lot shall be created unless provision is made for pedestrian access from that lot to public open spaces and recreation areas within the land subject to the application for subdivision consent and to public open spaces and rural areas ad-joining the land subject to the application for subdivision consent.</li> </ol>	NC
27.7.5	<p><b>Jacks Point</b></p> <p><b>27.7.5.1</b> Subdivision Activity failing to comply with the Jacks Point Structure Plan located within Section 27.13. For the purposes of interpreting this rule, the following shall apply:</p> <ol style="list-style-type: none"> <li>a variance of up to 120m from the location and alignment shown on the Structure Plan of the Primary Road, and their intersection with State Highway 6, shall be acceptable;</li> <li>Public Access Routes and Secondary Roads may be otherwise located and follow different alignments provided that any such alignment enables a similar journey;</li> <li>subdivision shall facilitate a road connection at each Key Road Connection shown on the Structure Plan to enable vehicular access to roads which connect with the Primary Roads, provided that a variance of up to 50m from the location of the connection shown on the Structure Plan shall be acceptable;</li> <li>Open Spaces are shown indicatively, with their exact location and parameters to be established through the subdivision process.</li> </ol>	D

	<b>Zone and Location Specific Rules</b>	<b>Activity Status</b>
	<p><b>27.7.5.2</b> Subdivision failing to comply with the 380m<sup>2</sup> minimum lot size for subdivision within the Hanley Downs part of the Jacks Point Zone.</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> <li>a. subdivision design and any consequential effects on the layout of lots and on lot sizes and dimensions;</li> <li>b. internal roading design and provision, and any consequential effects on the layout of lots, and on lot sizes and dimensions;</li> <li>c. property access and roading;</li> <li>d. esplanade provision;</li> <li>e. the adequacy of on site measures to address the risk of natural and other hazards on land within the subdivision;</li> <li>f. fire fighting water supply;</li> <li>g. water supply;</li> <li>h. stormwater design and disposal;</li> <li>i. sewage treatment and disposal;</li> <li>j. energy supply and telecommunications, including adverse effects on energy supply and telecommunication networks;</li> <li>k. open space and recreation; and</li> <li>l. ecological and natural values;</li> <li>m. historic heritage;</li> <li>n. easements;</li> <li>o. location and height of buildings, or parts of buildings, including windows;</li> <li>p. configuration of parking, access and landscaping.</li> </ol>	RD
	<p><b>27.7.5.3</b> Subdivision within the OSR-North Activity Area of the Jacks Point Zone that does not, prior to application for subdivision consent being made:</p> <ol style="list-style-type: none"> <li>a. provide to the Council noise modelling data that identifies the 55dB Ldn noise contour measured, predicted and assessed in accordance with NZS 6805:1992 Airport Noise Management and Land Use Planning and NZS 6801:2008 Acoustics – Measurement of Environmental Sound, by a person suitably qualified in acoustics, based on any consented operations from the airstrip on Lot 8 DP443832; and</li> <li>b. register a consent notice on any title the subject of subdivision that includes land that is located between the 55 dB Ldn contour and the airstrip preventing any ASAN from locating on that land.</li> </ol>	NC
<b>27.7.6</b>	<p><b>Millbrook Resort Zone</b></p> <p><b>27.7.6.1</b> Any subdivision of the Millbrook Resort Zone that is inconsistent with the Millbrook Resort Zone Structure Plan contained in Section 27.13.</p>	D



	Zone and Location Specific Rules	Activity Status
<b>27.7.7</b>	<p><b>Coneburn Industrial</b></p> <p><b>27.7.7.1</b> Subdivision not in general accordance with the Coneburn Industrial Structure Plan located in Section 27.13. For the purposes of this rule:</p> <ol style="list-style-type: none"> <li>any fixed connections (road intersections) shown on the Structure Plan may be moved no more than 20 metres;</li> <li>any fixed roads shown on the Structure Plan may be moved no more than 50 metres in any direction;</li> <li>the boundaries of any fixed open spaces shown on the Structure Plan may be moved up to 5 metres.</li> </ol>	NC
	<p><b>27.7.7.2</b> Subdivision failing to comply with any of the following:</p> <ol style="list-style-type: none"> <li>consent must have been granted under Rule 44.4.10 for landscaping of the Open Space Area shown on the Structure Plan in accordance with an Ecological Management Plan prior to lodgement of the subdivision application;</li> <li>subdivision of more than 10%, in area, of the Activity Areas shown on the Structure Plan shall not occur unless the work required under the Ecological Management Plan consented under Rule 44.4.10 has been completed on not less than 25% of the Open Space Area shown on the Structure Plan;</li> <li>subdivision of more than 25%, in area, of the Activity Areas shown on the Structure Plan shall not occur unless the work required under the Ecological Management Plan consented under Rule 44.4.10 has been completed on not less than 50% of the Open Space Area shown on the Structure Plan;</li> <li>subdivision of more than 50%, in area, of the Activity Areas shown on the Structure Plan shall not occur unless the work required under the Ecological Management Plan consented under Rule 44.4.10 has been completed on not less than 100% of the Open Space Area shown on the Structure Plan.</li> </ol>	NC
	<p><b>27.7.7.3</b> Subdivision whereby prior to the issue of a s224(c) certification under the Act for any subdivision of any land within the zone:</p> <ol style="list-style-type: none"> <li>prior to the Northern Access Point being constructed as a Priority T Intersection (Austroads Guide to Road Design (Part 4A)) and being available for public use every subdivision of any land within the zone must contain a condition requiring that the Northern Access Point be constructed as a Priority T Intersection (Austroads Guide to Road Design (Part 4A)) and be available for public use prior to issue of a s.224(c) certificate;</li> <li>any subdivision of land within the Activity Areas 1a and 2a which, by itself or in combination with prior subdivisions of land within the zone, involves subdivision of more than 25% of the land area of Activity Areas 1a and 2a must include a condition requiring the construction of the Southern Access Point as a Priority T intersection (Austroads Guide to Road Design (Part 4A)) and that it be available for public use prior to issue of a s.224(c) certificate, unless the Southern Access Point has been constructed and is available for public use at the time the consent is granted.</li> </ol>	NC

	<b>Zone and Location Specific Rules</b>	<b>Activity Status</b>
<b>27.7.8</b>	<p><b>West Meadows Drive</b></p> <p><b>27.7.8.1</b> Subdivision of lots zoned Lower Density Suburban Residential at the western end of West Meadows Drive identified in Section 27.13.6 which is consistent with the West Meadows Drive Structure Plan in Section 27.13.</p> <p>Control is reserved to:</p> <ul style="list-style-type: none"> <li>a. the matters of control listed under Rule 27.7.1; and</li> <li>b. roading layout.</li> </ul>	C
	<p><b>27.7.8.2</b> Subdivision of lots zoned Lower Density Suburban Residential at the western end of West Meadows Drive identified in Section 27.13.6 that is inconsistent with the West Meadows Drive Structure Plan in Section 27.13.</p>	D
<b>27.7.9</b>	<p><b>Frankton North</b></p> <p><b>27.7.9.1</b> All subdivision activity in the Business Mixed Use Zone and Medium Density Residential Zone located north of State Highway 6 between Hansen Road and Ferry Hill Drive that complies with the following standards in addition to the requirements of Rule 27.5.7:</p> <ul style="list-style-type: none"> <li>a. access to the wider roading network shall only be via one or more of: <ul style="list-style-type: none"> <li>i. Hansen Road;</li> <li>ii. Ferry Hill Drive; and/or</li> <li>iii. Hawthorne Drive/State Highway 6 roundabout.</li> </ul> </li> <li>b. no subdivision shall be designed so as to preclude an adjacent site complying with clause a.</li> </ul> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a. safe and effective functioning of the State Highway network;</li> <li>b. integration with other access points through the zones to link up to Hansen Road, Ferry Hill Drive or the Hawthorne Drive/State Highway 6 roundabout;</li> <li>c. integration with pedestrian and cycling networks, including those across the State Highway.</li> </ul>	RD
	<p><b>27.7.9.2</b> Any subdivision activity in the Business Mixed Use Zone and Medium Density Residential Zone located north of State Highway 6 between Hansen Road and Ferry Hill Drive that does not comply with Rule 27.7.9.1.</p>	NC

**Ferry Hill Rural Residential sub-zone**

- 27.8.6.1** Notwithstanding any other rules, any subdivision of the Ferry Hill Rural Residential sub-zone shall be in accordance with the subdivision design as identified in the Concept Development Plan for the Ferry Hill Rural Residential sub-zone.
- 27.8.6.2** Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone shall be retained for Landscape Amenity Purposes and shall be held in undivided shares by the owners of Lots 1-8 and Lots 11-15 as shown on the Concept Development Plan.
- 27.8.6.3** Any application for subdivision consent shall:
- a. provide for the creation of the landscape allotments(s) referred to in rule 27.8.6.2 above;
  - b. be accompanied by details of the legal entity responsible for the future maintenance and administration of the allotments referred to in rule 27.8.6.2 above;
  - c. be accompanied by a Landscape Plan that shows the species, number, and location of all plantings to be established, and shall include details of the proposed timeframes for all such plantings and a maintenance programme. The landscape Plan shall ensure:
    - i. that the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone is planted with a predominance of indigenous species in a manner that enhances naturalness; and
    - ii. that residential development is subject to screening along Tucker Beach Road.
- 27.8.6.4** Plantings at the foot of, on, and above the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone shall include indigenous trees, shrubs, and tussock grasses.
- 27.8.6.5** Plantings elsewhere may include maple as well as indigenous species.
- 27.8.6.6** The on-going maintenance of plantings established in terms of rule 27.8.6.3 above shall be subject to a condition of resource consent, and given effect to by way of consent notice that is to be registered on the title and deemed to be a covenant pursuant to section 221(4) of the Act.
- 27.8.6.7** Any subdivision shall be subject to a condition of resource consent that no buildings shall be located outside the building platforms shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone. The condition shall be subject to a consent notice that is registered on the title and deemed to be a covenant pursuant to section 221(4) of the Act.
- 27.8.6.8** Any subdivision of Lots 1 and 2DP 26910 shall be subject to a condition of resource consent that no residential units shall be located and no subdivision shall occur on those parts of Lots 1 and 2 DP 26910 zoned Rural General and identified on the planning maps as a building restriction area. The condition shall be subject to a consent notice that is to be registered and deemed to be a covenant pursuant to section 221(4) of the Act<sup>6</sup>.

<sup>6</sup> Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

- 27.7.10** In the following zones, every allotment created for the purposes of containing residential activity shall identify one building platform of not less than 70m<sup>2</sup> in area and not greater than 1000m<sup>2</sup> in area.
- a. Rural Zone;
  - b. Gibbston Character Zone;
  - c. Rural Lifestyle Zone;

**27.7.11** The dimensions of lots in the following zones, other than for access, utilities, reserves or roads, shall be able to accommodate a square of the following dimensions:

Zone		Minimum Dimensions (m = Metres)
Residential	Medium Density	12m x 12m
	Large Lot	30m x 30m
	All others	15m x 15m
Rural Residential	Rural Residential (inclusive of sub-zones)	30m x 30m

**27.7.12** Subdivision applications not complying with either Rule 27.7.10 or Rule 27.7.11 shall be non-complying activities.

**27.7.13 Subdivision associated with infill development**

The specified minimum allotment size in Rule 27.6.1, and minimum dimensions in Rule 27.11 shall not apply in the High Density Residential Zone, Medium Density Residential Zone and Lower Density Suburban Residential Zone where each allotment to be created, and the original allotment, all contain at least one established residential unit (established meaning a Building Code of Compliance Certificate has been issued or alternatively where a Building Code of Compliance Certificate has not been issued, construction shall be completed to not less than the installation of the roof).

**27.7.14 Subdivision associated with residential development on sites less than 450m<sup>2</sup> in the Lower Density Suburban Residential Zone**

- 27.7.14.1** In the Lower Density Suburban Residential Zone, the specified minimum allotment size in Rule 27.6.1 shall not apply in cases where the residential units are not established, providing;
- a. a certificate of compliance is issued for a residential unit(s); or
  - b. a resource consent has been granted for a residential unit(s).

In addition to any other relevant matters pursuant to s221 of the Act, the consent holder shall register on the Computer Freehold Register of the applicable allotments:

- a. that the construction of any residential unit shall be undertaken in accordance with the applicable certificate of compliance or resource consent (applies to the additional undeveloped lot to be created);
- b. the maximum building height shall be 5.5m (applies to the additional undeveloped lot to be created).
- c. there shall be not more than one residential unit per lot (applies to all lots).

**27.7.14.2** Rule 27.7.14.1 shall not apply to the Lower Density Suburban Residential Zone within the Queenstown Airport Air Noise Boundary and Outer Control Boundary as shown on the planning maps.

## **27.7.15 Standards related to servicing and infrastructure**

### **Water**

**27.7.15.1** Subject to Rule 27.15.3, all lots, other than lots for access, roads, utilities and reserves except where irrigation is required, shall be provided with a connection to a reticulated water supply laid to the boundary of the net area of the lot, as follows:

To a Council or community owned and operated reticulated water supply:

- a. all Residential, Business, Town Centre, Local Shopping Centre Zones, and Airport Zone - Queenstown;
- b. Rural Residential Zones at Wanaka, Lake Hawea, Albert Town, Luggate and Lake Hayes;
- c. Millbrook Resort Zone and Waterfall Park Zone.

**27.7.15.2** Where any reticulation for any of the above water supplies crosses private land, it shall be accessible by way of easement to the nearest point of supply.

**27.7.15.3** Where no communal owned and operated water supply exists, all lots other than lots for access, roads, utilities and reserves, shall be provided with a potable water supply of at least 1000 litres per day per lot.

### **Telecommunications/Electricity**

**27.7.15.4** Electricity reticulation must be provided to all allotments in new subdivisions (other than lots for access, roads, utilities and reserves).

**27.7.15.5** Telecommunication services must be available to all allotments in new subdivisions in the Rural Zone, Gibbston Character Zone and Rural Lifestyle Zone (other than lots for access, roads, utilities and reserves).

**27.7.15.6** Telecommunication reticulation must be provided to all allotments in new subdivisions in zones other than the Rural Zone, Gibbston Character Zone and Rural Lifestyle Zone (other than lots for access, roads, utilities and reserves).

## 27.8

# Rules - Esplanade Reserve Exemptions

### 27.8.1

Esplanade reserves or strips shall not be required where a proposed subdivision arises solely due to land being acquired or a lot being created for a road designation, utility or reserve or in the case of activities authorised by Rule 27.5.2.

## 27.9

# Assessment Matters for Resource Consents

### 27.9.1 Boundary Adjustments

In considering whether or not to impose conditions in respect to boundary adjustments under Rule 27.5.3 and in considering whether or not to grant consent or impose conditions in respect to boundary adjustments under 27.5.4, the Council shall have regard to, but not be limited by, the following assessment criteria:

#### 27.9.1.1 Assessment Matters in relation to Rule 27.5.3 (Boundary Adjustments)

- a. whether the location of the proposed boundaries is appropriate, including in relation to their relationship to approved residential building platforms, existing buildings and vegetation patterns and existing or proposed accesses;
- b. whether the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces:
  - i. is able to accommodate development in accordance with the relevant district-wide and zone rules; and
  - ii. the potential effects on the safety of pedestrians and cyclists and other users of the space or access;
- c. whether any landscape features or vegetation, including mature forest, on the site are of a sufficient amenity value that they should be retained and if so, the proposed means for their protection;
- d. the extent to which Policies 27.2.1.7, 27.2.3.2, 27.2.5.10, 27.2.5.11, 27.2.5.14 and 27.2.7.2 are achieved.

**27.9.1.2 Assessment Matters in relation to Rule 27.5.4 (Boundary Adjustments involving Heritage Items and within Arrowtown’s urban growth boundary)**

- a. whether the location of the proposed boundaries is appropriate, including in relation to their relationship to existing buildings and vegetation patterns and existing or proposed accesses;
- b. whether the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces:
  - i. is able to accommodate development in accordance with the relevant district-wide and zone rules; and
  - ii. the potential effects on the safety of pedestrians and cyclists and other users of the space or access;
- c. whether any landscape features or vegetation, including mature trees, on the site are of a sufficient amenity value that they should be retained and, if so, the proposed means for their protection;
- d. the effect of subdivision on any places of heritage value including existing buildings, archaeological sites and any areas of cultural significance.
- e. where lots are being amalgamated within the Medium Density Residential Zone and Lower Density Suburban Residential Zone, the extent to which future development will affect the historic character of the Arrowtown Residential Historic Management Zone;
- f. the extent to which Policies 27.2.1.7, 27.2.3.2, 27.2.4.2, 27.2.4.4, 27.2.5.10, 27.2.5.11, 27.2.5.14 and 27.2.7.2 are achieved.

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**27.9.2 Controlled Unit Title and Leasehold Subdivision Activities**

In considering whether or not to impose conditions in respect to unit title or leasehold subdivision under Rule 27.5.5, the Council shall have regard to, but not be limited by, the following assessment criteria:

**27.9.2.1 Assessment Matters in relation to Rule 27.5.5 (Unit Title or Leasehold Subdivision)**

- a. whether all buildings comply with an approved resource consent;
- b. whether the location of the proposed boundaries is appropriate, including in relation to their relationship to existing buildings and existing or proposed accesses;
- c. whether the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces:
  - i. is able to accommodate development in accordance with the relevant district-wide and zone rules; and
  - ii. the potential effects the safety of pedestrians and cyclists and other users of the space or access;
- d. the effects of and on infrastructure provision;
- e. The extent to which Policies 27.2.1.7, 27.2.3.1, 27.2.3.2, 27.2.5.10, 27.2.5.11 and 27.2.5.14 are achieved.

### 27.9.3 Restricted Discretionary Activity Subdivision Activities

In considering whether or not to grant consent or impose conditions under Rules 27.5.7 and 27.5.8, the Council shall have regard to, but not be limited by, the following assessment criteria:

#### 27.9.3.1 Assessment Matters in relation to Rule 27.5.7 (Urban Subdivision Activities)

- a. whether lot sizes and dimensions are appropriate in respect of widening, formation or upgrading of existing and proposed roads and any provisions required for access for future subdivision on adjoining land;
- b. consistency with the principles and outcomes of the QLDC Subdivision Design Guidelines;
- c. whether any landscape features or vegetation, including mature forest, on the site are of a sufficient amenity value that they should be retained and the proposed means for their protection;
- d. the effect of subdivision on any places of heritage value including existing buildings, archaeological sites and any areas of cultural significance;
- e. whether the location, alignment, gradients and pattern of roading, service lanes, pedestrian accessways and cycle ways is appropriate, including as regards their safety and efficiency;
- f. the extent to which the provision for open space and recreation is consistent with the objectives and policies of the District Plan relating to the provision, diversity and environmental effects of open spaces and recreational facilities;
- g. whether the purposes for the creation of esplanade reserves or strips set out in section 229 of the Act are achieved;
- h. whether services are to be provided in accordance with Council's Code of Practice for Subdivision
- i. whether effects on electricity and telecommunication networks are appropriately managed;
- j. whether appropriate easements are provided for existing and proposed access and services.
- k. the extent to which Policies 27.2.1.1, 27.2.1.2, 27.2.1.3, 27.2.3.2, 27.2.4.4, 27.2.5.5, 27.2.5.6, 27.2.5.10, 27.2.5.11, 27.2.5.14, 27.2.5.16 and 27.2.6.1 are achieved.

#### 27.9.3.2 Assessment Matters in relation to Rule 27.5.8 (Rural Residential and Rural Lifestyle Subdivision Activities)

- a. the extent to which the design maintains and enhances rural living character, landscape values and visual amenity;
- b. the extent to which the location and size of building platforms could adversely affect adjoining non residential land uses;
- c. whether and what controls are required on buildings within building platforms to manage their external appearance or visibility from public places, or their effects on landscape character and visual amenity;
- d. the extent to which lots have been orientated to optimise solar gain for buildings and developments;
- e. whether lot sizes and dimensions are appropriate in respect of widening, formation or upgrading of existing and proposed roads and any provision required for access for future subdivision on adjoining land.



- f. whether any landscape features or vegetation, including mature forest, on the site are of a sufficient amenity value that they should be retained and the proposed means for their protection;
- g. the effect of subdivision on any places of heritage value including existing buildings, archaeological sites and any areas of cultural significance;
- h. whether the location, alignment, gradients and pattern of roading, service lanes, pedestrian accessways and cycle ways is appropriate, including as regards their safety and efficiency;
- i. the extent to which the provision for open space and recreation is consistent with the objectives and policies of the District Plan relating to the provision, diversity and environmental effects of open spaces and recreational facilities;
- j. whether the purposes for the creation of esplanade reserves or strips set out in section 229 of the Act are achieved;
- k. whether services are to be provided in accordance with Council's Code of Practice for Subdivision;
- l. whether effects on electricity and telecommunication networks are appropriately managed;
- m. whether appropriate easements are provided for existing and proposed access and services;
- n. where no reticulated water supply is available, whether sufficient water supply and access to water supplies for firefighting purposes in accordance with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 is provided.
- o. the extent to which Policies 27.2.1.2, 27.2.4.4, 27.2.5.4, 27.2.5.5, 27.2.5.10, 27.2.5.11, 27.2.5.14, 27.2.5.16 and 27.2.6.1 are achieved.

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## 27.9.5 Restricted Discretionary Activity - Subdivision Activities within National Grid Corridor

In considering whether or not to grant consent or impose conditions in respect to subdivision activities under Rules 27.5.10, the Council shall have regard to, but not be limited by, the following assessment criteria:

### 27.9.5.1 Assessment Matters in relation to Rule 27.5.10. (National Grid Corridor)

- a. whether the allotments are intended to be used for residential or commercial activity;
- b. the need to identify a building platform to ensure future buildings are located outside the National Grid Yard;
- c. the ability of future development to comply with NZECP34:2001;
- d. potential effects of the location and planting of vegetation on the National Grid;
- e. whether the operation, maintenance and upgrade of the National Grid is restricted;
- f. the extent to which Policy 27.2.2.8 is achieved.

## 27.9.6 Controlled Subdivision Activities – Structure Plan

In considering whether or not to impose conditions in respect to subdivision activities undertaken in accordance with a structure plan under Rules 27.7.1 and 27.7.2.1, the Council shall have regard to, but not be limited by, the following assessment criteria:

### 27.9.6.1 Assessment Matters in relation to Rule 27.7.1

- a. consistency with the relevant location specific objectives and policies in part 27.3;
- b. the extent and effect of any minor inconsistency or variation from the relevant structure plan.

### 27.9.6.2 Assessment Matters in relation to Rule 27.7.2.1 (Kirimoko)

- a. the assessment criteria identified under Rule 27.7.1;
- b. the appropriateness of any earthworks required to create any road, vehicle accesses, of building platforms or modify the natural landform;
- c. the appropriateness of the design of the subdivision including lot configuration and roading patterns and design (including footpaths and walkways);
- d. whether provision is made for creation and planting of road reserves
- e. whether walkways and the green network are provided and located as illustrated on the Structure Plan for the Kirimoko Block in part 27.13;
- f. whether native species are protected as identified on the Structure Plan as green network;
- g. The extent to which Policies 27.3.2.1 to 27.3.2.10 are achieved.

## 27.9.7 Restricted Discretionary Activity-Subdivision Activities within the Jacks Point Zone

In considering whether or not to grant consent or impose conditions in respect to subdivision activities under Rule 27.7.5.2, the Council shall have regard to, but not be limited by, the following assessment criteria:

### 27.9.7.1 Assessment Matters in relation to Rule 27.7.5.2 (Jacks Point)

- a. the assessment criteria identified under Rule 27.7.1 as it applies to the Jacks Point Zone;
- b. the visibility of future development from State Highway 6 and Lake Wakatipu;
- c. the appropriateness of the number, location and design of access points;
- d. the extent to which nature conservation values are maintained or enhanced;
- e. the adequacy of provision for creation of open space and infrastructure;
- f. the extent to which Policy 27.3.7.1 is achieved;
- g. the extent to which sites are configured:

- i. with good street frontage;
    - ii. to enable sunlight to existing and future residential units;
    - iii. to achieve an appropriate level of privacy between homes.
  - h. the extent to which parking, access and landscaping are configured in a manner which:
    - i. minimises the dominance of driveways at the street edge;
    - ii. provides for efficient use of the land;
    - iii. maximises pedestrian and vehicular safety;
    - iv. addresses nuisance effects such as from vehicle lights.
  - i. the extent to which subdivision design satisfies:
    - i. public and private spaces are clearly demarcated, and ownership and management arrangements are proposed to appropriately manage spaces in common ownership.
  - j. whether design parameters are required to be secured through an appropriate legal mechanism. These are height, building mass, window sizes and locations, building setbacks, fence heights, locations and transparency, building materials and landscaping.

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## 27.9.8 Controlled Activity-Subdivision Activities on West Meadows Drive

In considering whether or not to impose conditions in respect to subdivision activities under Rule 27.7.8.1, the Council shall have regard to, but not be limited by, the following assessment criteria:

### 27.9.8.1 Assessment Matters in relation to Rule 27.7.8.1

- a. the assessment criteria identified under Rule 27.7.1 as they apply to the West Meadows Drive area.
- b. the extent to which the roading layout integrates with the operation of West Meadows Drive as a through-road.

## 27.10

# Rules - Non-Notification of Applications

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Applications for all controlled and restricted discretionary activities shall not require the written approval of other persons and shall not be notified or limited notified except:

- a. where the site adjoins or has access onto a State Highway;
- b. where the Council is required to undertake statutory consultation with iwi;
- c. where the application falls within the ambit of Rule 27.5.4;
- d. where the application falls within the ambit of Rule 27.5.10 and the written approval of Transpower New Zealand Limited has not been obtained to the application.

## 27.11

# Advice Notes

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### 27.11.1 State Highways

**27.11.1.1** Attention is drawn to the need to obtain a Section 93 notice from the New Zealand Transport Agency for all subdivisions with access onto state highways that are declared Limited Access Roads (LAR). Refer to the Designations Chapter of the District Plan for sections of state highways that are LAR as at August 2015. Where a subdivision will change the use, intensity or location of the access onto the state highway, subdividers should consult with the New Zealand Transport Agency.

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### 27.11.2 Esplanades

**27.11.2.1** The opportunities for the creation of esplanades are outlined in objective and policies 27.2.7. Unless otherwise stated, section 230 of the Act applies to the standards and process for creation of esplanade reserves and strips.

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### 27.11.3 New Zealand Electrical Code of Practice for Electrical Safe Distances

**27.11.3.1** Compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distances (“NZECP34:2001”) is mandatory under the Electricity Act 1992. All activities regulated by NZECP34, including any activities that are otherwise permitted by the District Plan must comply with this legislation.

## 27.12

# Financial Contributions

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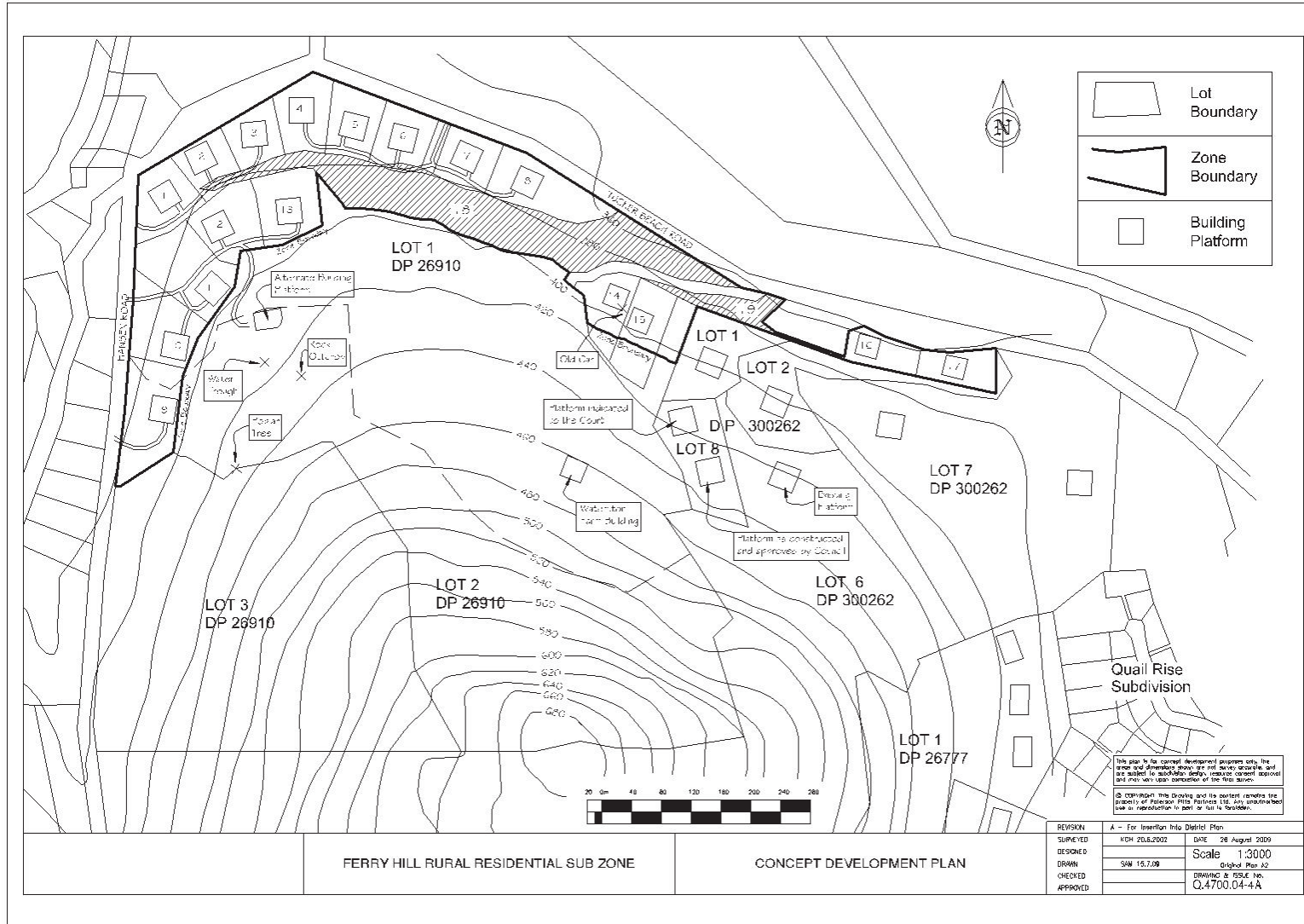
The Local Government Act 2002 provides the Council with an avenue to recover growth related capital expenditure from subdivision and development through development contributions. The Council forms a development contribution policy as part of its 10 Year Plan and actively imposes development contributions via this process.

The Council acknowledges that Millbrook Country Club has already paid financial contributions for water and sewerage for demand up to a peak of 5000 people. The 5000 people is made up of hotel guests, day staff, visitors and residents. Should demand exceed this then further development contributions will be levied under the Local Government Act 2002.

# 27.13

# Structure Plans

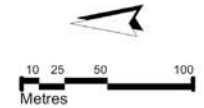
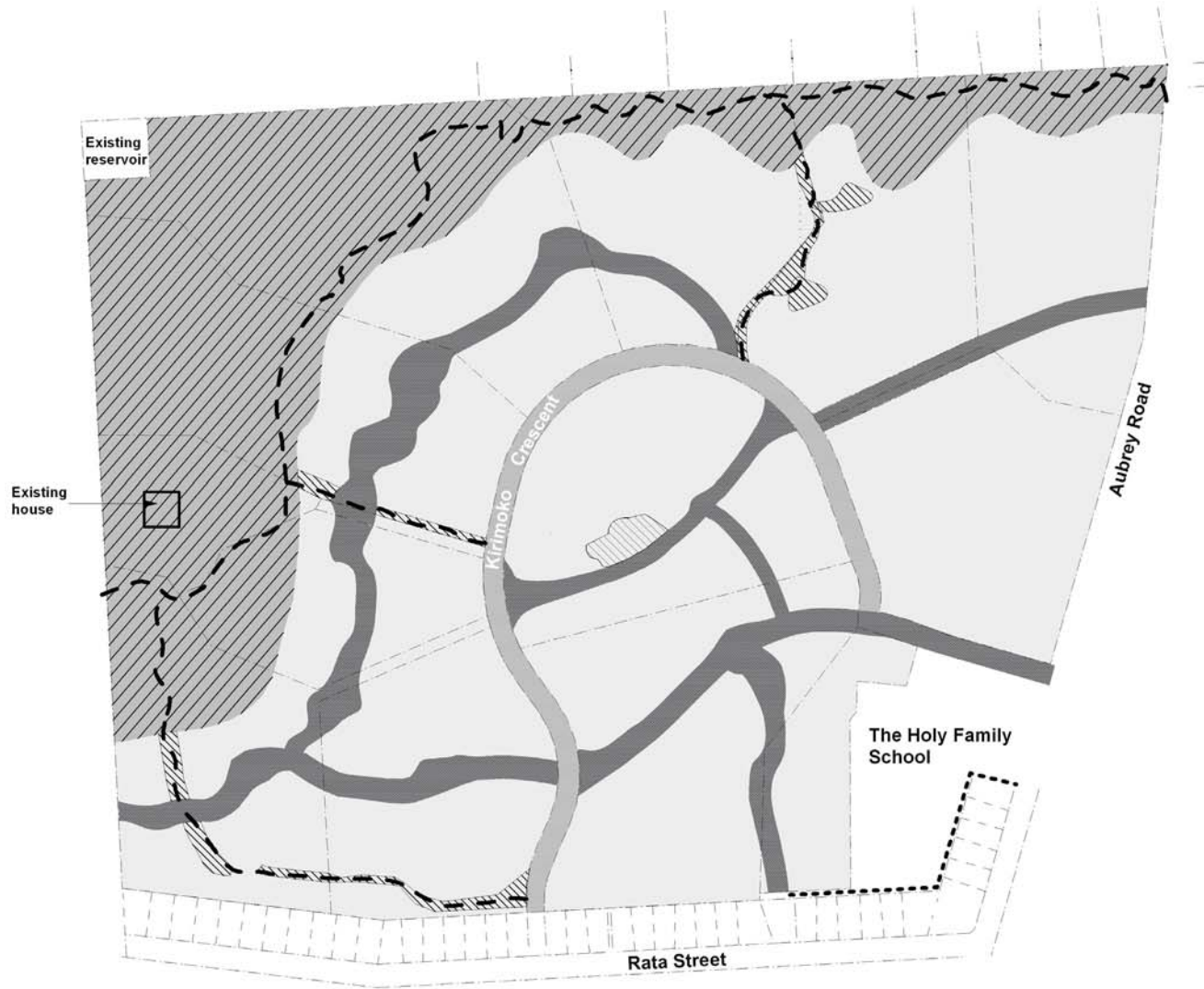
## Ferry Hill Rural Residential Subzone<sup>6</sup>



<sup>6</sup> Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

## 27.13.1 Kirimoko Structure Plan

# Kirimoko Block - Wanaka - Structure Plan



1:3500 @ A3 - 1:5000 @ A4

Key	
<b>Zones</b>	
	Low Density Residential
	Rural General Zoning
	Road Reserves
	Green Network
	Building restriction area
	Designated Walkway Corridor (The Holy Family School)
	Walkways
	Cadastral Boundaries

October 2007 Revision C  
(Following submissions to QLDC)



# Jacks Point Resort Zone Structure Plan

## LEGEND

-  Outstanding Natural Landscape Line
-  Activity Area
-  Public Access Route (location indicative)
-  Secondary Road Access (location indicative)
-  Primary Road Access (location indicative)
-  Key Road Connections (location indicative)
-  State Highway Mitigation

## OVERLAYS

-  Highway Landscape Protection Area
-  Peninsula Hill Landscape Protection Area
-  Lake Shore Landscape Protection Area
-  Tablelands Landscape Protection Area

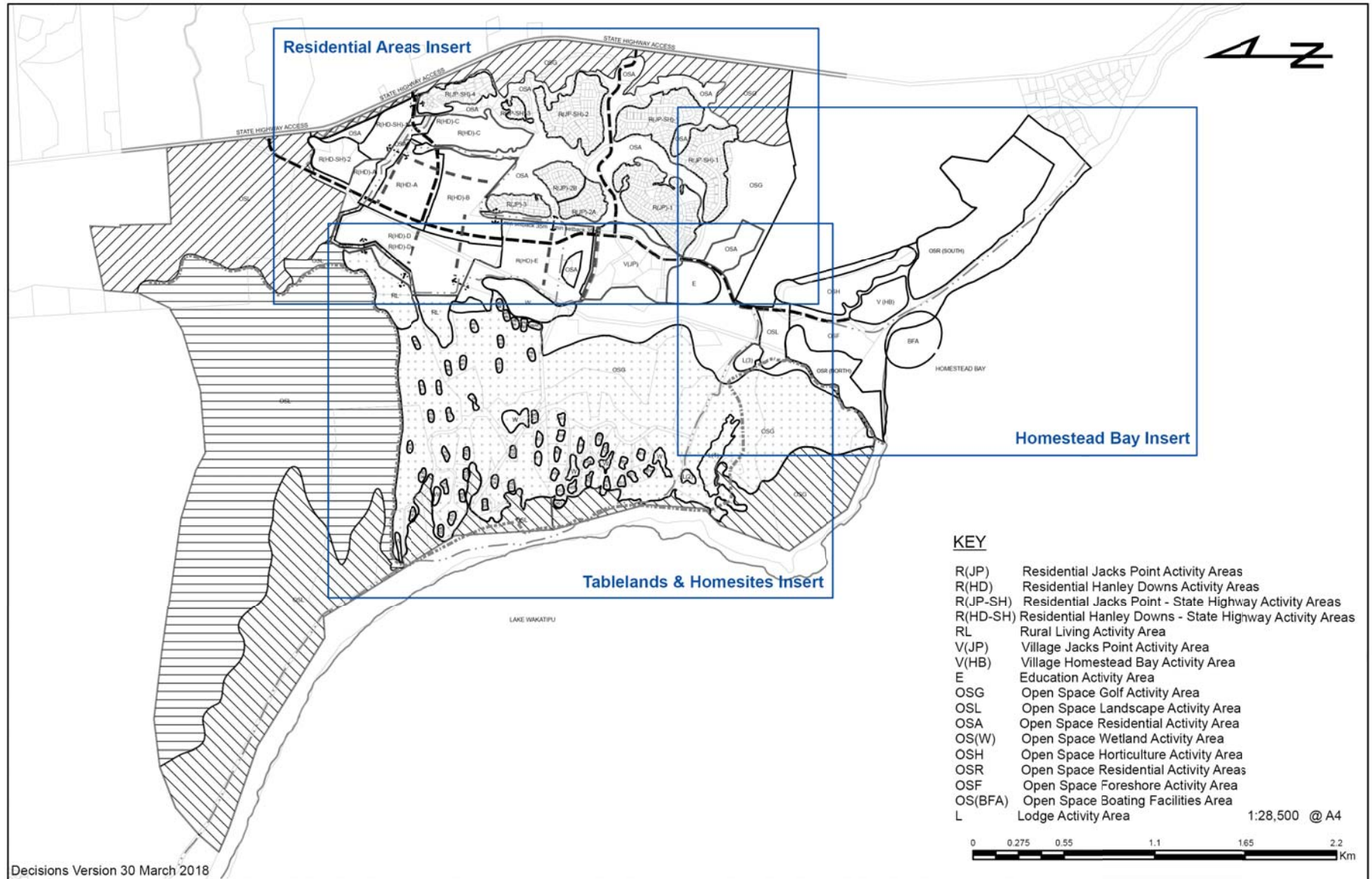
## KEY

- R(JP) Residential Jacks Point Activity Areas
- R(HD) Residential Hanley Downs Activity Areas
- R(JP-SH) Residential Jacks Point - State Highway Activity Areas
- R(HD-SH) Residential Hanley Downs - State Highway Activity Areas
- RL Rural Living Activity Area
- V(JP) Village Jacks Point Activity Area
- V(HB) Village Homestead Bay Activity Area
- E Education Activity Area
- OSG Open Space Golf Activity Area
- OSL Open Space Landscape Activity Area
- OSA Open Space Residential Activity Area
- OS(W) Open Space Wetland Activity Area
- OSH Open Space Horticulture Activity Area
- OSR Open Space Residential Activity Areas
- OSF Open Space Foreshore Activity Area
- OS(BFA) Open Space Boating Facilities Area
- L Lodge Activity Area

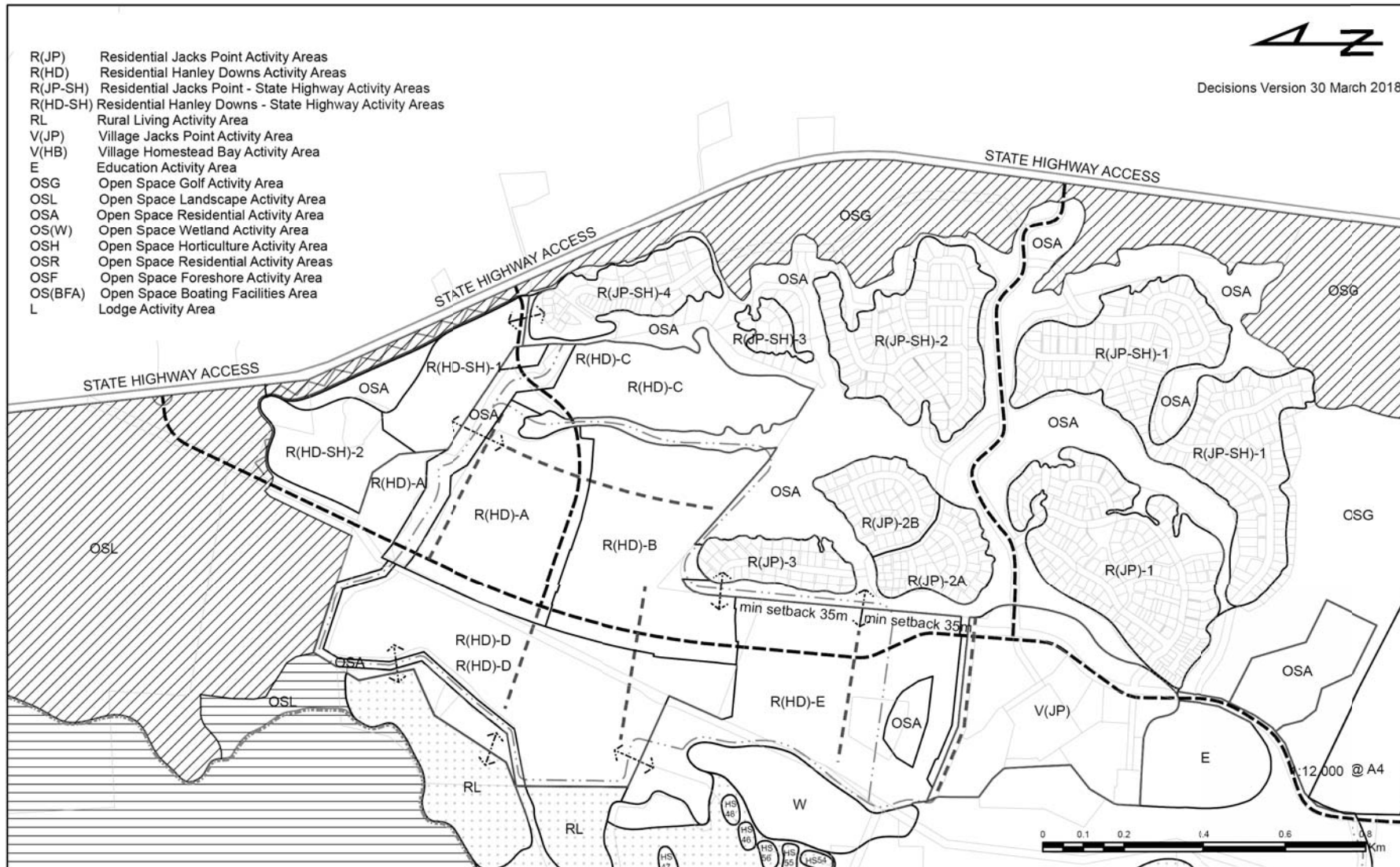
Decisions Version 30 March 2018



# Jacks Point Resort Zone Structure Plan



# Jacks Point Resort Zone Structure Plan Residential Areas Insert

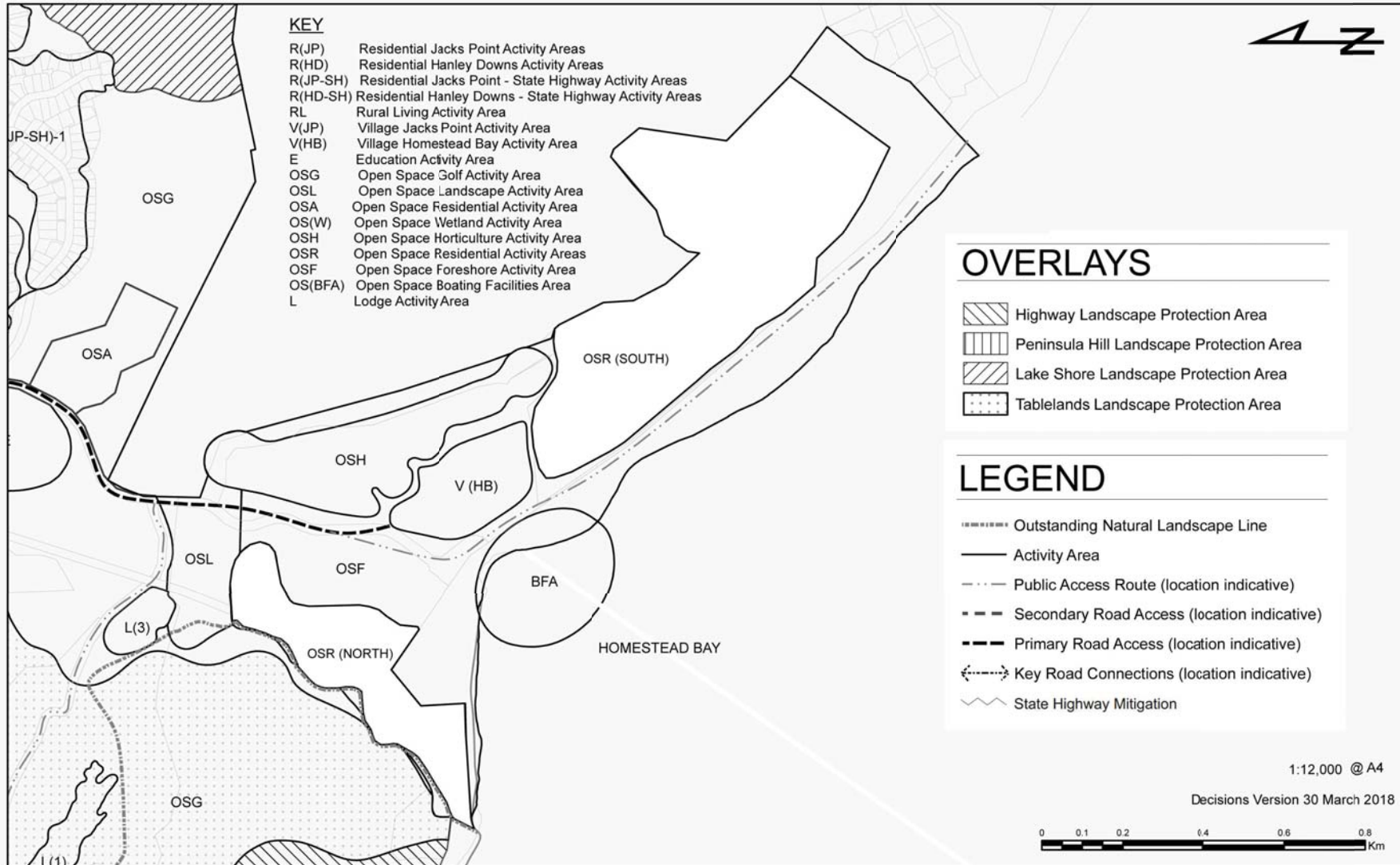




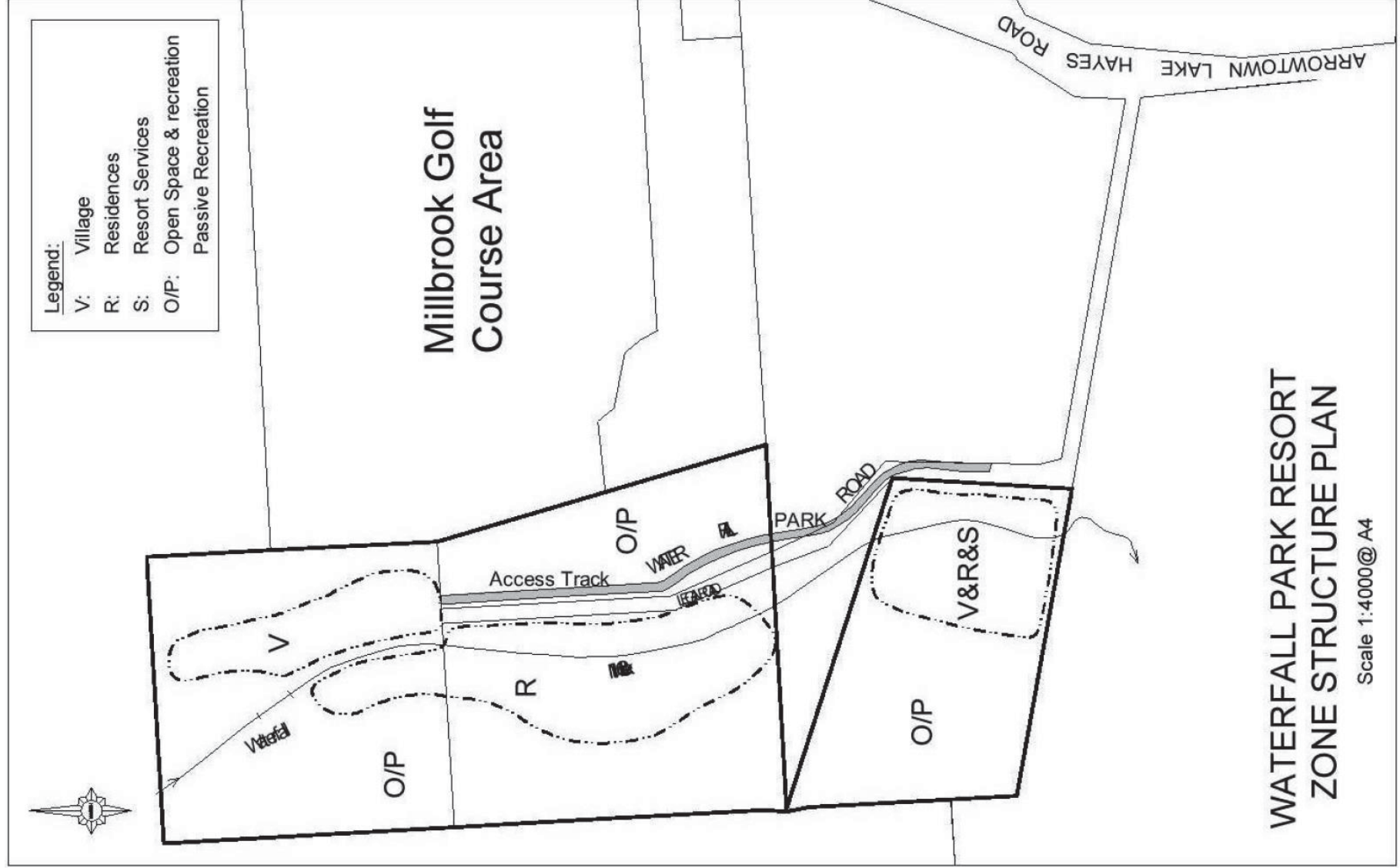


# Jacks Point Resort Zone Structure Plan

## Homestead Bay Insert

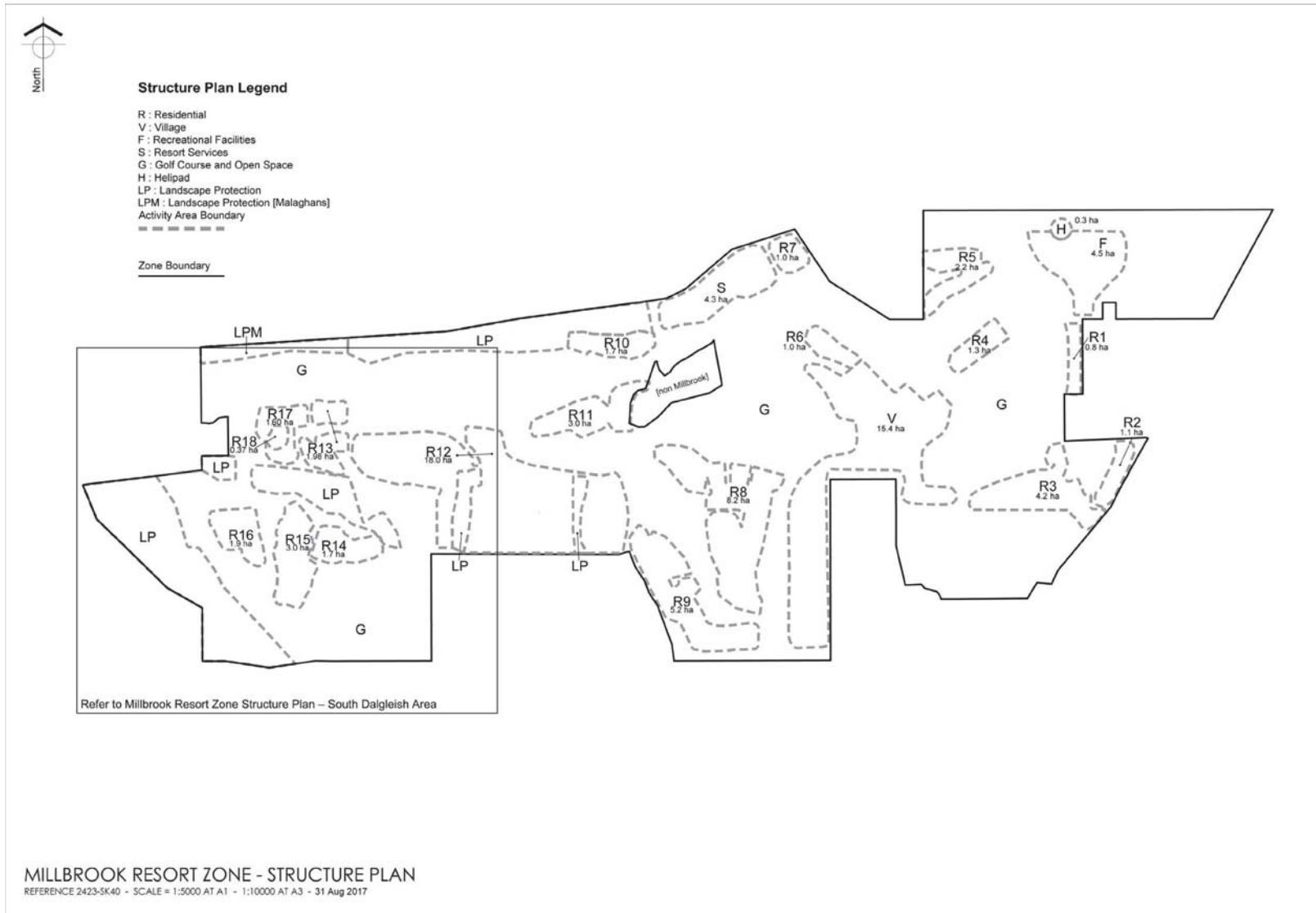


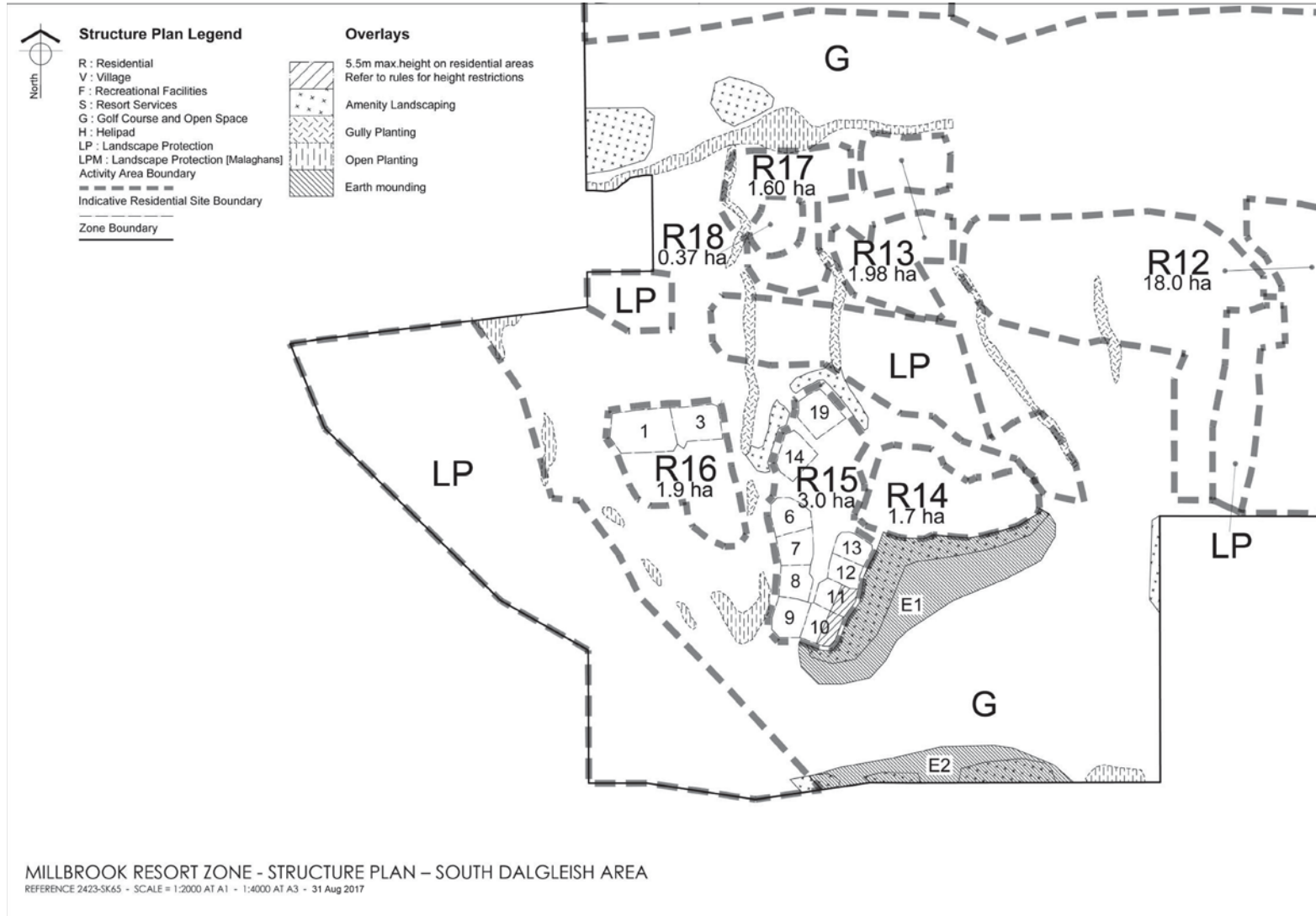
### 27.13.3 Waterfall Park Structure Plan





## 27.13.4 Millbrook Structure Plan

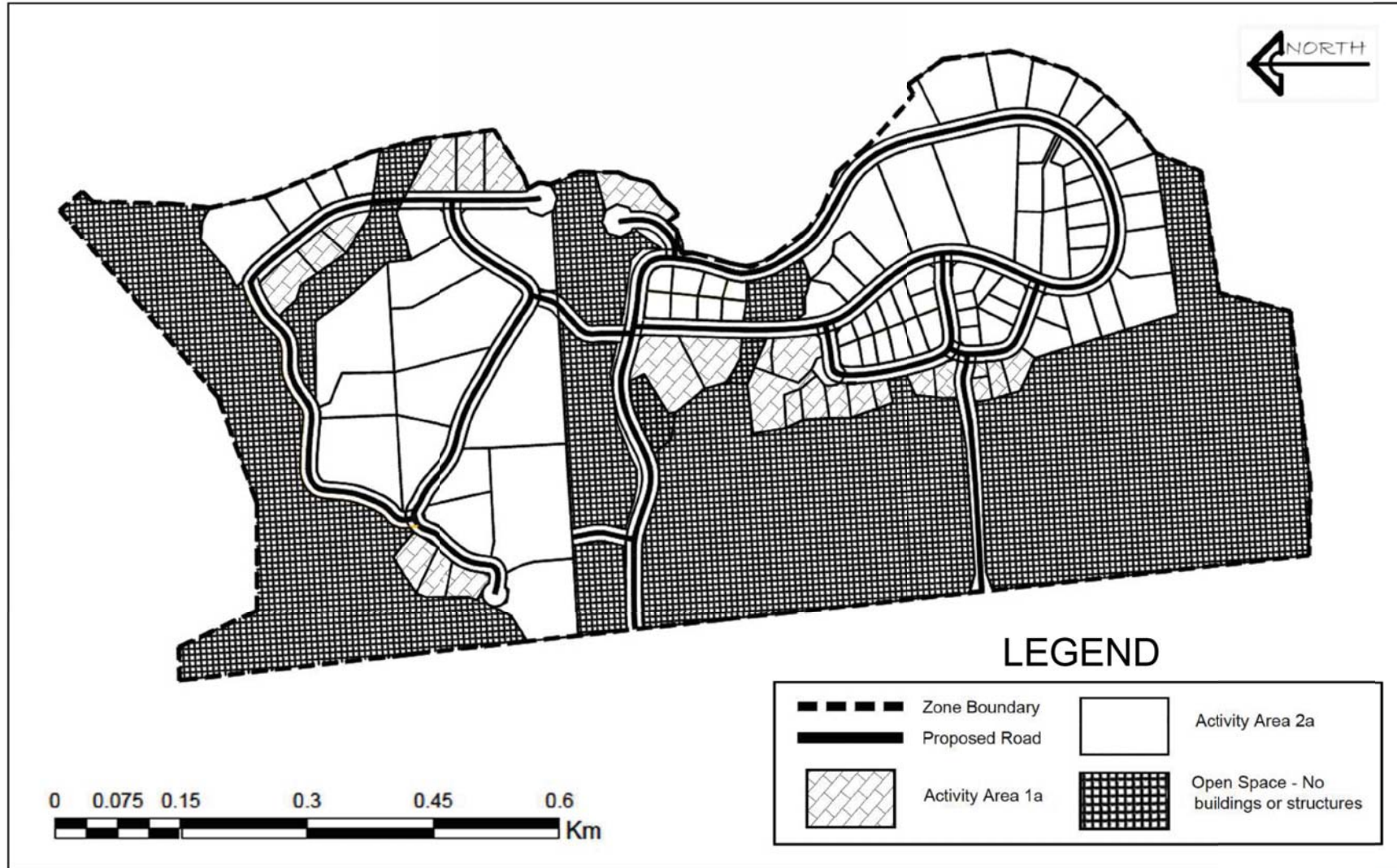




## 27.13.5 Coneburn Industrial Structure Plan

# Coneburn Structure Plan

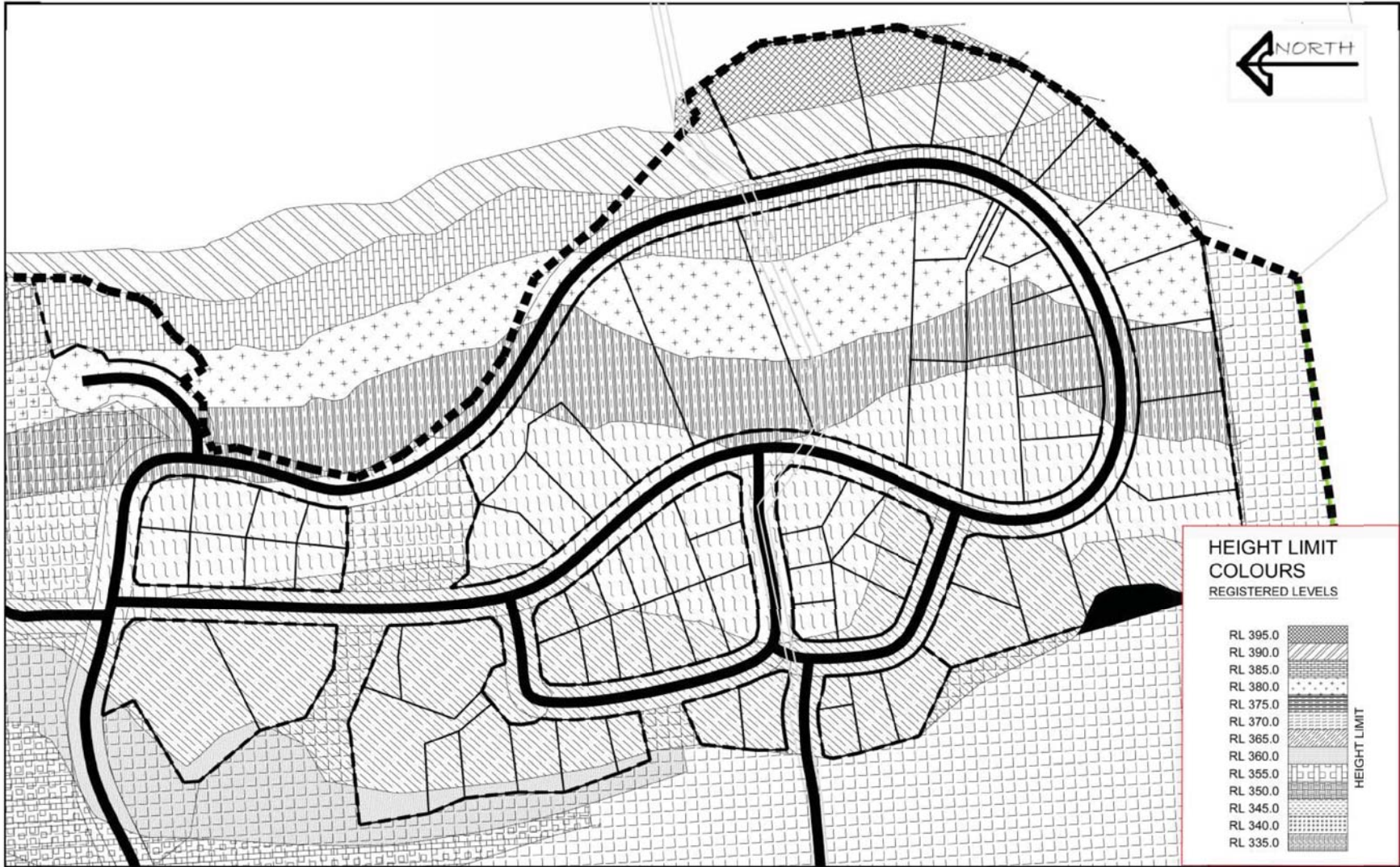
Layout of Activity Areas, Roads and Open Space





# Coneburn Structure Plan

## Building Height Limits: Part 1





# Coneburn Structure Plan

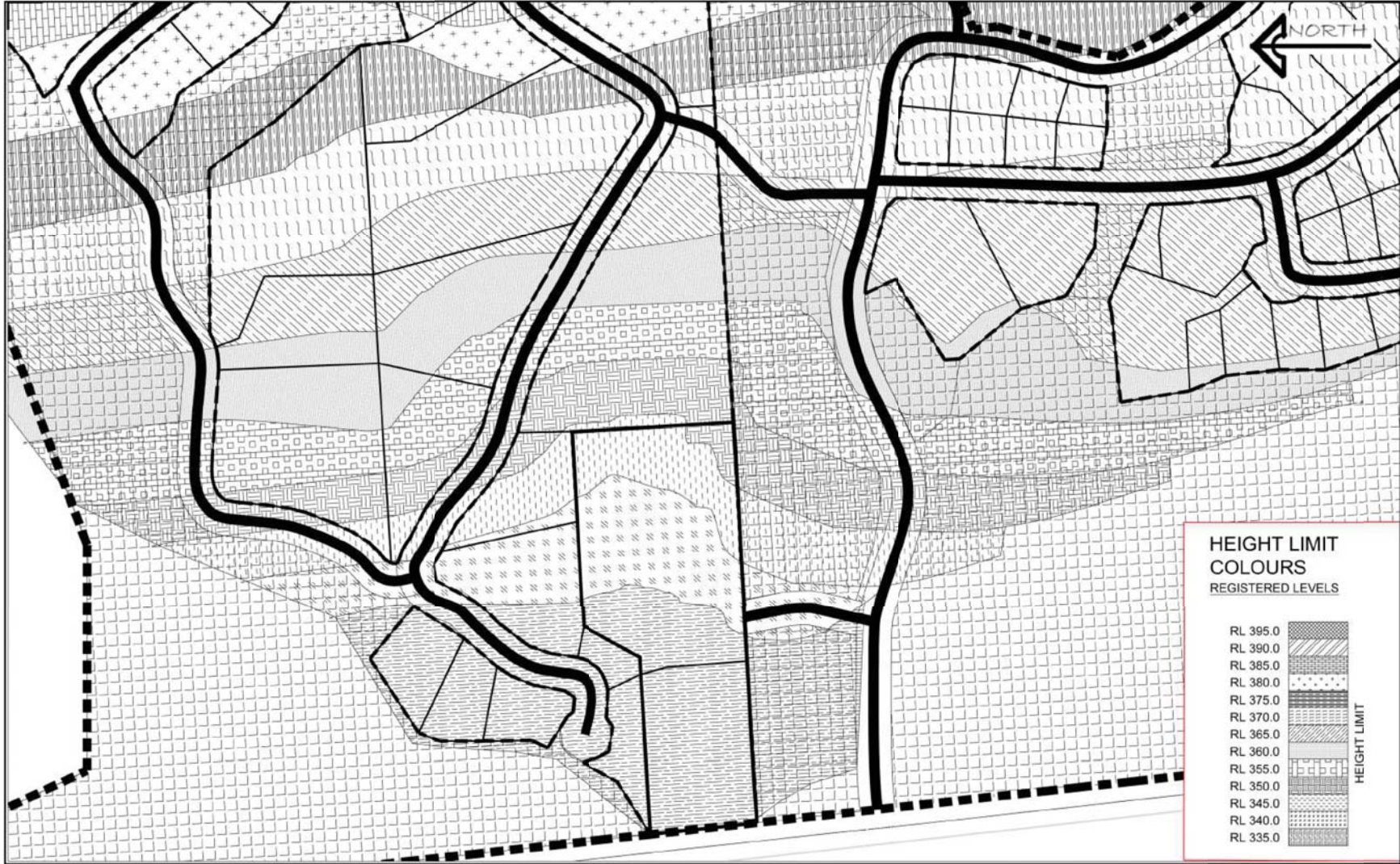
## Building Height Limits: Part 2





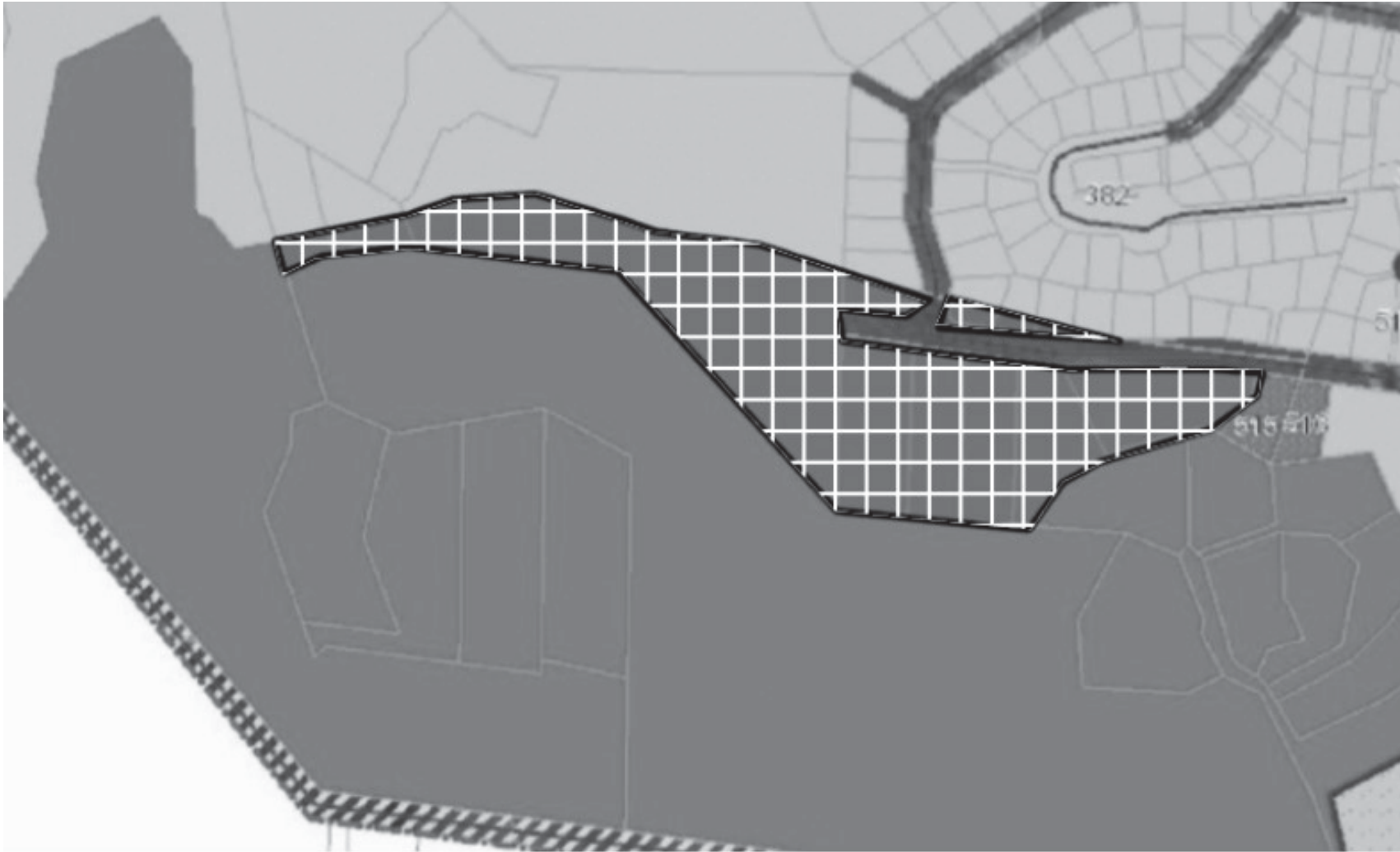
# Coneburn Structure Plan

## Building Height Limits: Part 3

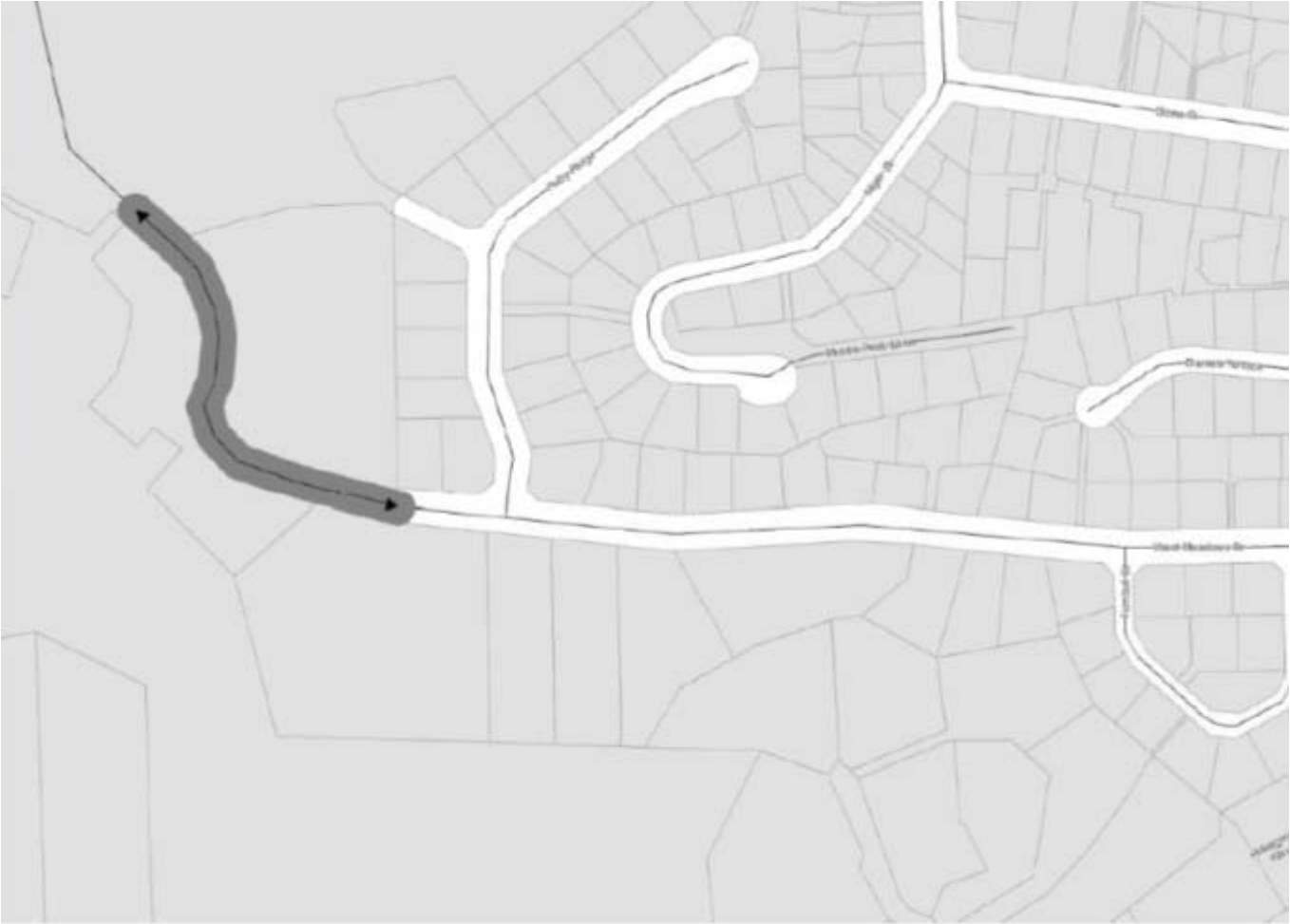


## 27.13.6 West Meadows Drive Structure Plan

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



West Meadows Drive Structure Plan



# QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 7

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

Commissioners  
Denis Nugent (Chair)  
Trevor Robinson  
Scott Stevens



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## 1. PRELIMINARY MATTERS

### 1.1 Terminology in this Report

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

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

### 1.2 Topics Considered

2. The subject matter of this hearing was Chapter 27 of the PDP (Hearing Stream 4).
3. Chapter 27 sets out objectives, policies, rules and other provisions related to subdivision and development.
4. As notified, it was set out under the following major headings:
  - a. 27.1 – Purpose;
  - b. 27.2 – Objectives and Policies;
  - c. 27.3 – Other Provisions and Rules;

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

### 1.3 Hearing Arrangements

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

6. The parties we heard on Stream 4 were:

**Council:**

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

**Millbrook Country Club Limited<sup>1</sup> and RCL Queenstown Pty Limited<sup>2</sup>:**

- Daniel Wells

**Roland and Keri Lemaire-Sicre<sup>3</sup>:**

- Keri Lemaire-Sicre

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

- Warwick Goldsmith (Counsel)
- Alexander Reid

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

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

**New Zealand Transport Agency<sup>19</sup>:**

- Tony MacColl

**Darby Planning LP<sup>20</sup>, Soho Ski Area Limited<sup>21</sup>, Treble Cone Investments Limited<sup>22</sup>, Lake Hayes Limited<sup>23</sup>, Lake Hayes Cellar Limited<sup>24</sup>, Mt Christina Limited<sup>25</sup>, Jacks Point Residential No.2 Limited, Jacks Point Village Holdings Limited, Jacks Point Developments Limited, Jacks Point Land Limited, Jacks Point Land No.2 Limited, Jacks Point Management Limited, Henley Downs Land Holdings Limited, Henley Downs Farms Holdings Limited, Coneburn Preserve Holdings Limited, Willow Pond Farm Limited<sup>26</sup>, Glendhu Bay Trustees Limited<sup>27</sup>, Hansen Family Partnership<sup>28</sup>:**

- Maree Baker-Galloway (Counsel)
- Chris Ferguson
- Hamish McCrostie (17 August only)

**NZ Fire Service Commission<sup>29</sup> and Transpower New Zealand Limited<sup>30</sup>:**

- Ainsley McLeod
- Daniel Hamilton (Transpower only)

**Queenstown Park Limited<sup>31</sup> and Remarkables Park Limited<sup>32</sup>:**

- John Young (Counsel)

**UCES<sup>33</sup>:**

- Julian Haworth

**Federated Farmers of New Zealand<sup>34</sup>:**

- Kim Riley
- Phil Hunt

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

**Ros and Dennis Hughes<sup>35</sup>:**

- Ros Hughes
- Dennis Hughes

**QAC<sup>36</sup>:**

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

**Patterson Pitts Partners (Wanaka) Limited<sup>37</sup>**

- Duncan White
- Mike Botting

**Aurora Energy Limited<sup>38</sup>:**

- Bridget Irving (Counsel)
- Nick Wyatt

7. Evidence was also pre-circulated by Ulrich Glasner (for Council), Joanne Dowd (for Aurora Energy Limited<sup>39</sup>), Carey Vivian (for Cabo Limited<sup>40</sup>, Jim Veint<sup>41</sup>, Skipp Williamson<sup>42</sup>, David Broomfield<sup>43</sup>, Scott Conway<sup>44</sup>, Richard Hanson<sup>45</sup>, Brent Herdson and Joanne Phelan<sup>46</sup>), and Nick Geddes (for Clark Fortune McDonald & Associates Limited<sup>47</sup>).
  8. Mr Glasner was unable to attend the hearing and his evidence was adopted by David Wallace who appeared in his stead at the hearing.
  9. Ms Dowd was unable to travel to the hearing due to an unfortunate accident. In lieu of her attendance, we provided written questions for Ms Dowd, to which she responded in a Supplementary Statement of Evidence dated 5 August 2016.
  10. Messrs Vivian and Geddes were excused attendance at the hearing.
  11. Mr Jonathan Howard also provided a statement on behalf of Heritage New Zealand Pouhere Taonga<sup>48</sup> and requested that it be tabled.
- 1.4 Procedural Steps and Issues**
12. The hearing of Stream 4 proceeded based on the general pre-hearing directions made in the memoranda summarised in Report 1.

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

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

#### 1.5 Stage 2 Variations

14. On 23 November 2017, Council publicly notified the Stage 2 Variations. Relevantly to the preparation of this report, the Stage 2 Variations included changes to a number of provisions in Chapter 27.
15. Clause 16B(1) of the First Schedule to the Act provides that submissions on any provision the subject of variation are automatically carried over to hearing of the variation.
16. Accordingly, the provisions of Chapter 27 the subject of the Stage 2 Variations have been reproduced as notified, but 'greyed out' in the revised version of Chapter 27 attached as Appendix 1 to this report, in order to indicate that those provisions did not fall within our jurisdiction

#### 1.6 Statutory Considerations

17. The Hearing Panel's Report 1 contains a general discussion of the statutory framework within which submissions and further submissions on the PDP have to be considered, including matters that have to be taken into account, and the weight to be given to those matters. We have had regard to that report when approaching our consideration of submissions and further submissions on Chapter 27.
18. Some of the matters identified in Report 1 are either irrelevant or have only limited relevance to the objectives, policies and other provisions of Chapter 27. The National Policy Statement

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

<sup>50</sup> In the event, no such application was received

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

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

*Objective 5.4.1*

*To promote sustainable management of Otago's land resource, in order:*

- a. To maintain and enhance the primary production capacity and life-supporting capacity of land resources; and*
- b. To meet the present and reasonably foreseeable needs of Otago's people and communities;*

*Objective 5.4.2*

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

*Objective 5.4.3*

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

20. He also noted Objective 9.3.3 and 9.4.3 (Built environment) and the related policies as being relevant as seeking *"to avoid, remedy or mitigate the adverse effects of Otago's built environment on Otago's natural and physical resources, and promote the sustainable management of infrastructure."*
21. Mr Bryce also drew to our attention a number of provisions of the Proposed RPS (notified). By the time we came to consider our report, decisions had been made by Otago Regional Council on this document which superseded the provisions referred to us by Mr Bryce. We have accordingly had regard to the Proposed RPS provisions dated 1 October 2016.
22. We note, in particular, the following objectives of the Proposed RPS:

*Objective 1.1*

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

Objective 2.1

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

Objective 2.2

*Kai Tahu values, interests and customary resources are recognised and provided for.*

Objective 3.1

*The values of Otago's natural resources are recognised, maintained and enhanced.*

Objective 3.2

*Otago's significant and highly-valued natural resources are identified, and protected or enhanced.*

Objective 4.1

*Risk that natural hazards poised to Otago communities are minimised.*

Objective 4.2

*Otago's communities are prepared for and able to adapt to the effects of climate change.*

Objective 4.3

*Infrastructure is managed and developed in a sustainable way.*

Objective 4.4

*Energy supplies to Otago's communities are secure and sustainable.*

Objective 4.5

*Urban growth and development is well designed, reflects local character and integrates effectively with adjoining urban and rural environments.*

Objective 5.1

*Public access to areas of value to the community is maintained or enhanced.*

Objective 5.2

*Historic heritage resources are recognised and contribute to the region's character and sense of identity.*

Objective 5.3

*Sufficient land is managed and protected for economic production.*

Objective 5.4

*Adverse effects of using and enjoying Otago's natural and physical resources are minimised.*

23. For each of the above objectives, there are specified policies that also need to be taken into account. Some of the policies of the Proposed RPS are particularly relevant to subdivision and development. We note at this point:
- a. Policy 1.1.2 Economic wellbeing:  
*Provide for the economic wellbeing of Otago's people and communities by enabling the use and development of natural and physical resources only if the adverse effects of those*

*activities on the environment can be managed to give effect to the objectives and policies of the Regional Policy Statement;*

b. Policy 2.1.2 Treaty principles:

*Ensure that local authorities exercise their functions and powers, by:...*

*g) Ensuring that District and Regional Plans:*

- i. Give effect to the Nga Tahu Claims Settlement Act 1998;*
- ii. Recognise and provide for statutory acknowledgement areas in Schedule 2;*
- iii Provide for other areas in Otago that are recognised as significant to Kai Tahu....;*

c. Policy 2.2.2 Recognising sites of cultural significance:

*“Recognise and provide for wahi tupuna, as described in Schedule 1C by all of the following:*

- a. Avoiding significant adverse effects on those values which contribute to wahi tupuna being significant;*
- b. Avoiding, remedying, or mitigating other adverse effects on wahi tupuna;*
- c. Managing those landscapes and sites in a culturally appropriate manner.”*

d. Policy 3.1.7 Soil values:

*“Manage soils to achieve all of the following:....*

*f) Maintain or enhance soil resources for primary production.....”*

e. Policy 3.2.18 Managing significant soil:

*“Protect areas of significant soil, by all of the following:....*

- c) Recognising that urban expansion on significant soils may be appropriate due to location and proximity to existing urban development and infrastructure....”*

f. Policy 4.1.5 Natural hazard risk:

*“Manage natural hazard risk to people and communities, with particular regard to all of the following:*

- a. The risk posed, considering the likelihood and consequences of natural hazard events;*
- b. The implications of residual risk, including the risk remaining after implementing or undertaking risk reduction and hazard mitigation measures;*
- c. The community’s tolerance of that risk, now and in the future, including the community’s ability and willingness to prepare for and adapt to that risk, and to respond to an event;*
- d. The changing nature of tolerance to risk;*
- e. Sensitivity of activities to risk;*

g. Policy 4.3.2 Nationally and regionally significant infrastructure:

*“Recognise the national and regional significance of all of the following infrastructure:*



- a. *Renewable electricity generation activities, where they supply the National Electricity Grid and local distribution network;*
  - b. *Electricity transmission infrastructure;*
  - c. *Telecommunication and radiocommunication facilities;*
  - d. *Roads classified as being of national or regional importance;*
  - e. *Ports and airports and associated navigation infrastructure;*
  - f. *Defence facilities;*
  - g. *Structures for transport by rail.”*
- h. Policy 4.3.4 Protecting nationally and regionally significant infrastructure:
- “Protect the infrastructure of national or regional significance, by all the following:*
- a. *Restricting the establishment of activities that may result in reverse sensitivity effects;*
  - b. *Avoiding significant adverse effects on the functional needs of such infrastructure;*
  - c. *Avoiding, remedying or mitigating other adverse effects on the functional needs of such infrastructure;*
  - d. *Protecting infrastructure corridors from sensitive activities, now and for the future.”*
- i. Policy 4.4.5 Electricity distribution infrastructure:
- “Protect electricity distribution infrastructure, by all the following:*
- a. *Recognise the functional needs of electricity distribution activities;*
  - b. *Restricting the establishment of activities that may result in reverse sensitivity effects;*
  - c. *Avoiding, remedying or mitigating adverse effects from other activities on the functional needs of that infrastructure;*
  - d. *Protecting existing distribution corridors for infrastructure needs, now and for the future;*
- j. Policy 4.5.1 Managing for urban growth and development
- “Manage urban growth and development in a strategic and co-ordinated way, by all of the following.....*
- c. *Identifying future growth areas and managing subdivision, use and development of rural land outside these areas to achieve all of the following:*
    - i. *Minimise adverse effects on rural activities and significant soils;*
    - ii. *Minimise competing demands for natural resources;*
    - iii. *Maintain or enhance significant biological diversity, landscape or natural character values;*
    - iv. *Maintain important cultural historic heritage values;*
    - v. *Avoid land with significant risk from natural hazards;....*
  - e. *Ensuring efficient use of land...*
  - g. *Giving effect to the principles of good urban design in Schedule 5;*
  - h. *Restricting the location of activities that may result in reverse sensitivity effects on existing activities.”*
- k. Policy 4.5.3 Urban design:
- “Encourage the use of Schedule 5 good urban design principles in the subdivision and development of urban areas.”*
- l. Policy 4.5.4: Low impact design:

*“Encourage the use of low impact design techniques in subdivision and development to reduce demand on stormwater, water and wastewater infrastructure and reduce potential adverse environmental effects.”*

m. Policy 4.5.5: Warmer buildings:

*“Encourage the design of subdivision and development to reduce the adverse effects of the region’s colder climate, and higher demand and costs for energy, including maximising the passive solar gain.”*

n. Policy 5.3.1: Rural activities:

*“Manage activities in rural areas, to support the region’s economy in communities, by all of the following:*

- a. Minimising the loss of significant soils;*
- b. Restricting the establishment of activities in rural areas that may lead to reverse sensitivity effects;*
- c. Minimising the subdivision of productive rural land to smaller lots that may result in rural residential activities;*
- d. Providing for other activities that have a functional need to locate in rural areas, including tourism and recreational activities that are of a nature and scale compatible with rural activities.”*

24. The Proposed RPS is a substantial document. Noting the above policies does not mean that the other policies in the Proposed RPS are irrelevant. We have taken all objectives and policies of the Proposed RPS into account and discuss them further, when relevant to specific provisions.

25. Mr Bryce reminded us of the existence of the Iwi Management Plans noted in Report 1. He did not, however, draw our attention to any particular provision of any of those Plans as being relevant to the matters covered in Chapter 27 and no representatives of the Iwi appeared at the hearing.

26. Consideration of submissions and further submissions on Chapter 27 has also necessarily taken account of the Hearing Panel’s recommendations in Reports 2 and 3 as to appropriate amendments to the Strategic Chapters of the PDP (that is to say Chapters 3, 4, 5 and 6. We note in particular the following provisions:

Objective 3.2.2.1:

*“Urban Development occurs in a logical manner so as to:*

- a. promote a compact, well designed and integrated urban form;*
- b. build on historical urban settlement patterns;*
- c. achieve a built environment that provides desirable, healthy and safe places to work and play;*
- d. minimise the natural hazard risk taking into account the predicted effects of climate change;*
- e. protect the District’s rural landscapes from sporadic and sprawling development;*
- f. ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in;*
- g. contain a high quality network of open spaces and community facilities; and*

*h. be integrated with existing, and planned future, infrastructure.”*

Policy 3.3.24

*“Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character.”*

Policy 3.3.26

*“That subdivision and/or development be designed in accordance with best practice land use management so as to avoid or minimise adverse effects on the water quality of lakes, rivers and wetlands in the District.”*

27. The tests posed in section 32 form a key part of our review of the objectives, policies, rules and other provisions of Chapter 27 of the PDP. We refer to and adopt the discussion of section 32 in the Hearing Panel’s Report 3. In particular, for the same reasons as are set out in Report 3, we have incorporated our evaluation of changes to the notified Chapter 27 into the report that follows rather than provide a separate evaluation meeting the requirements of section 32AA.
28. We note that the material provided to us by the Council did not include a quantitative analysis of costs and benefits either of the notified Chapter 27, or of the subsequent changes Mr Bryce proposed to us. We queried counsel for the Council on this aspect when she opened the hearing and were told that Council did not have the information to undertake such an analysis. None of the submitters who appeared before us provided us with quantitative evidence of costs and benefits of the amendments they proposed either. When we discussed with Ms Baker-Galloway whether her clients would be able to provide us with such evidence, she advised that any information they could provide would necessarily be limited to their own sites and therefore too confined to be useful.
29. We have accordingly approached the application of section 32(2) on the basis that a quantitative evaluation of costs and benefits of the different alternatives put to us is not practicable.
- 1.7 **Scope Issue – Activity Status of Residential Subdivision and Development within ONLs and ONFs**
30. The submissions and evidence of Mr Julian Haworth at the hearing on behalf of UCES sought that residential subdivision and/or development within ONLs and ONFs should be ascribed non-complying activity status. We discussed with Mr Haworth during his appearance whether we had jurisdiction to entertain his request given the terms on which the submission filed by UCES on the PDP had been framed. Mr Haworth’s subsequent Memorandum of 18 August drew our attention to the potential relevance of a further submission made by UCES (on a submission by Darby Planning LP) to this issue.
31. In the legal submissions in reply on behalf of the Council, it was submitted that there was no scope for us to consider the UCES request in this regard.
32. Mr Haworth requested that we make a decision specifically on this point. In summary, we have concluded that counsel for the Council is correct and we have no jurisdiction to entertain Mr Haworth’s request on behalf of UCES. Our reasons follow.

33. The legal submissions on behalf of counsel for the Council in reply summarised the legal principles relevant to determining the scope of our inquiry<sup>51</sup>.
34. In summary, a two stage inquiry is required:
- a. What do submissions on the PDP provisions seek? and
  - b. Is what submissions on the PDP seek itself within the scope of the inquiry – put colloquially, are they “on” the PDP?
35. The second point arises in relation to proposed plans that are limited by subject matter or by geography. Here, there is no doubt that Chapter 27 provides rules that govern residential subdivision within ONLs and ONFs as defined by other provisions in the PDP and so, subject to possible issues arising from the interpretation of the High Court decision in *Palmerston North City Council v Motor Machinists Limited*<sup>52</sup>, the UCES request would not fail a jurisdictional inquiry on that ground.
36. The larger issue turns on what it is that are sought by submissions. In determining this question, the cases establish a series of interpretative principles summarised by counsel for the Council as follows:
- a. *The paramount test is whether or not amendments [sought to a Proposed Plan] are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the PDP. This would usually be a question of degree to be judged by the terms of the PDP and the content of submissions*<sup>53</sup>.
  - b. *Another way of considering the issue is whether the amendment can be said to be a “foreseeable consequence” of the relief sought in a submission; the scope to change a Plan is not limited by the words of the submission*<sup>54</sup>;
  - c. *Ultimately, it is a question of procedural fairness, and procedural fairness extends to the public as well as to the submitter*<sup>55</sup>.”
37. Thus far, we agree that counsel for the Council’s submissions accurately summarised the relevant legal principles. Those submissions, however, go on to discuss whether a submitter may rely on the relief sought by another submitter, on whose submission they have not made a further submission, in order to provide scope for their request. The Hearing Panel has previously received submissions on this point in both the Stream 1 and Stream 2 hearings from counsel for the Council. Counsel’s Stream 4 reply submissions cross referenced the legal submissions in reply in the Stream 2 hearing and submitted that:
- “To the extent that a submitter has not sought relief in their submission and/or has not made a further submission on specific relief, it is submitted that the submitter could not advance relief.”*
38. This is contrary to the position previously put to the Hearing Panel by counsel for the Council. Those previous submissions said that while a submitter cannot derive standing to appeal decisions on a Proposed Plan by virtue of the submissions of a third party that they have not

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<sup>51</sup> Refer Council Reply legal submissions at 13.2-13.4

<sup>52</sup> [2014] NZRMA 519

<sup>53</sup> *Countdown Properties (Northland) Limited v Dunedin City Council* [1994] NZRMA 145, and 166

<sup>54</sup> *Westfield (NZ) Ltd v Hamilton City Council* [2004] NZRMA 556, and 574-575

<sup>55</sup> *Ibid*, at 574

lodged a further submission on, if a submitter advances submissions and/or evidence before the Hearing Panel in relation to relief sought by a second submitter, the Hearing Panel can properly consider those submissions/evidence. This is based on the fact that the Hearing Panel's jurisdiction to make recommendations is circumscribed by the limits of all of the submissions that have been made on the Proposed Plan. In a subsequent hearing (on Stream 10), counsel for the Council confirmed that her position was correctly stated in the Stream 1 and 2 hearings.

39. It follows that if any submission, properly construed, would permit us to alter the status of residential subdivision and development within ONLs and ONFs to non-complying, we should consider Mr Haworth's submissions and evidence on that point, although we accept that if jurisdiction to consider the point depends on a submission other than that of UCES, and on which UCES made no further submission, that might go to the weight we ascribe to Mr Haworth's submissions and evidence (a related submission made by counsel for the Council).
40. As the Hearing Panel noted in its Report 3, we do not need to consider whether, if we conclude some third party's submission provides jurisdiction, UCES will have jurisdiction to appeal our decision on the point, that being a matter properly for the Environment Court, if and when the issue arises.
41. Focussing then on the provisions of the notified PDP as the starting point, the activity status of subdivisions was governed by Rules 27.4.1-27.4.3 inclusive.
42. Rule 27.4.1. was a catchall rule providing that all subdivision activities are discretionary activities, except otherwise as stated.
43. Rule 27.4.2 specified a number of subdivision activities that were non-complying activities. Residential subdivision within ONLs and ONFs may have been deemed to be non-complying under one of the subparts of Rule 27.4.2 (e.g. because it involved the subdivision of a building platform), but not generally so.
44. Rule 27.4.3 provided that subdivision undertaken in accordance with a structure plan or spatial layout plan identified in the District Plan had restricted discretionary activity status. The structure plans and special layout plans identified in the District Plan are of limited areas in the District. Clearly, they do not cover all of the ONLs and ONFs as mapped in the notified PDP.
45. It follows that as notified, residential subdivisions within ONLs and ONFs would usually fall within the default classification provided by Rule 27.4.1 and be considered as discretionary activities.
46. UCES did not make a submission seeking amendment to any of Rules 27.4.1-27.4.3 inclusive. The submission that Mr Haworth referred us to focusses on the section 32 reports supporting the PDP. Paraphrasing the reasons for the UCES submission in this regard, they noted:
  - a. The section 32 reports do not refer to non-complying status in relation to residential subdivision and development;
  - b. A March 2015 draft of the PDP proposed to make residential subdivision and development non-complying within ONLs and ONFs;
  - c. A 2009 monitoring report referred to non-complying status within ONLs and ONFs as an option;
  - d. Failure to discuss the issue is a critical flaw in the section 32 analysis.

47. The relief sought by UCES in relation to this submission was worded as follows:

*“The Society, seeks that the S.32 Landscape Evaluation Report be re-written containing discussion of the costs and benefits associated with the option of residential subdivision and development becoming non-complying versus the option of it being discretionary, as required by S.32 of the Act and especially S.32(2).*

*The S.32 Landscape Evaluation Report, once rewritten, should then be publicly notified. The Society seeks that the 40 working day submission period should apply to the rural part of the Proposed District Plan from the date of renotification of the rewritten S.32 Landscape Evaluation Report.”*

48. In the summary of submissions publicly notified by the Council, the UCES submission was listed as a submission on Rule 27.4.1. The summary of submission read:

*“Expresses concern regarding the Discretionary Activity status within Outstanding Natural Landscapes and Outstanding Natural Features; and the change from a proposed non-complying activity status which was indicated in the March 2015 Draft District Plan. The Society seeks that the s32 Landscape Evaluation Report be re-written containing discussion of the costs and benefits associated with the option of residential subdivision and development becoming non-complying versus discretionary. The s.32 Landscape Evaluation Report should then be publicly notified with a 40 working day submission period.”*

49. Against this background, counsel for the Council submitted that amendment to the activity status of subdivision in the manner sought by UCES was not a reasonably foreseeable consequence of the UCES submissions and relief. In particular, it was argued that other submitters could not have identified that non-complying status was a likely or even possible consequence of the relief and, as such, could be prejudiced by the outcome now sought by UCES.

50. Counsel did not, however, explain how her submission could be reconciled against the fact that there were two further submissions<sup>56</sup> that state the further submitters’ opposition to the UCES position that subdivision in ONLs and ONFs be non-complying. We note also that a third further submission<sup>57</sup> opposed the relief described within the summary of submissions, while stating that this was not part of the package of relief sought in UCES’s submission.

51. We think that the last further submission (from Darby Planning LP) made a valid point. The summary of submissions recorded a position being taken in the UCES submission that, at best, is implicit. The further submitters similarly seem to have read between the lines in the summary of submissions, inferring where the argument might go, rather than reading what the submission actually said. It should not be necessary for interested parties to guess where a submission might be taken. While submissions are not to be read literally or legalistically, the substance of what is sought should be reasonably clear.

52. Stepping back and looking at the submission, we think it was misconceived from the outset. While a submission may attack the way in which a section 32 evaluation has been carried out, as we observed to Mr Howarth at the hearing, this is only a means to an end. The reason for attacking the section 32 evaluation is to form the basis of a challenge to the objective, policy, rule or other method supposedly supported by the section 32 evaluation. The link between

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<sup>56</sup> Further Submissions 1029 and 1097

<sup>57</sup> Further Submission 1313

the two is illustrated by section 32A of the Act which states that a challenge to a plan provision on the basis that the section 32 evaluation is flawed may only be made in a submission **on the Plan**<sup>58</sup>. The section 32 analysis is not part of the PDP.

53. The solution to a flawed section 32 evaluation is to reassess the Plan provision sought to be changed, not to renotify the section 32 evaluation and to give the general public another opportunity to make submissions on the Plan.
54. Counsel for the Council also pointed out that the UCES submission referred only to the potential that on such renotification, submissions would be invited on the rural provisions of the Plan. While technically correct, we do not think that that is decisive.
55. The point that we are more concerned about is that on a fair and reasonable reading of the UCES submission (and indeed the summary of that submission), the public would have thought that at worst there would be another opportunity to make submissions before the activity status of residential submissions in ONLs and ONFs was changed to be more restrictive.
56. Given the advice we have received on the extent of the District currently mapped as ONL or ONF (nearly 97%), the relief now sought by UCES is a highly significant change. There is in our view considerable potential that interested parties would not have been as assiduous in reading 'between the lines' of the UCES submission as the further submitters referred to above and would be prejudiced by our embarking on a consideration of the merits of non-complying status applying to subdivision and development for residential purposes within ONLs and ONFs.
57. We have considered Mr Howarth's alternative point, made in his 18 August memorandum, which relies on a UCES further submission on Darby Planning LP's submission in relation to Rule 27.4.1.
58. The Darby Planning submission sought that Rule 27.4.1 be amended so that the default status for subdivisions is a controlled status unless otherwise stated. The submission suggested a number of areas of control as consequential changes to the proposed change of status.
59. The UCES further submission stated in relation to aspects of the Darby Planning submission related to subdivision and development:

*"The Society opposes the entire submission in paragraphs 23-29, and in particular the request that rural subdivisions and development become a controlled activity. The Society seeks that this part of the submission is entirely disallowed."*
60. The further submission went on, however, to note the potential significance of proposed legislative changes which, if adopted, would have the result that discretionary activity subdivisions would not be publicly notified<sup>59</sup>, and stated:

*"The Society is changing its position from that in its Primary Submission and it now seeks that all rural zone subdivision and development becomes non-complying."*
61. The first thing to note is that UCES viewed this as a change from its primary submission. Clearly, the Society did not regard its submission as already raising this relief.

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<sup>58</sup> See clause 6 of the First Schedule to the Act. Emphasis added.

<sup>59</sup> The provision in question was Clause 125 of the Resource Legislation Amendment Bill 2015

62. Addressing the ability of a further submission to provide a jurisdictional basis for the relief sought, a further submission is not an appropriate vehicle to advise of substantive changes of position. This point is considered in greater detail in the Hearing Panel's Report 3, but in summary, clause 8(2) of the First Schedule to the Act states that a further submission must be limited to a matter in support of or in opposition to the relevant submission.
63. Clearly this particular further submission was in opposition to the relevant submission. It sought that the relevant submission be disallowed. If the Darby Planning LP submission was disallowed, the end result would be that Rule 27.4.1 would remain as notified, that is to say that unless otherwise stated, subdivision activities in ONLs and ONFs would be discretionary activities. A further submission cannot found jurisdiction in the manner that Mr Haworth sought.
64. We have considered, given the discussion above, whether any other submissions might provide jurisdiction for the relief now sought by UCES. There were a very large number of submissions seeking that Rule 27.4.1 be amended. The vast majority of those submissions sought, like Darby Planning LP, that the default status for subdivisions in the District be controlled activity status. Clearly those submissions do not provide jurisdiction for the relief UCES sought. They sought to move the rule in the opposite direction to that which UCES sought.
65. There are a number of more general submissions that sought that the entire Chapter 27 of the PDP be deleted and replaced with Chapter 15 of the ODP<sup>60</sup>. Under Chapter 15 of the ODP, the only non-complying subdivision activities are those falling within Rule 15.2.3.4. That rule related to a series of specific situations and does not support the UCES relief either.
66. Having reviewed all of the submissions on these Rules, none that we can identify provide jurisdictional support for the relief now sought by UCES.
67. We have therefore concluded that the altered relief now sought by UCES is outside the scope of any submission and cannot be considered further as the basis for any recommendation we might make on the final form of Chapter 27.
68. Before leaving the point, we should observe that had we identified any jurisdictional basis for Mr Haworth's submissions, there is considerable merit in the point he sought to make.
69. The Hearing Panel's Report 3 canvassed the material relevant to the strategic objectives and policies governing activities within and affecting ONLs and ONFs and concluded that the appropriate response would provide a high level of protection to those landscapes and features.
70. Against that background, discretionary activity status for subdivision and development associated with new residential activities being established in ONL's and ONFs appears somewhat incongruous. The Environment Court identified in relation to the ODP that discretionary activity status was an issue and sought to make it clear that that status had been applied in that context to activities in ONLs and ONFs because those activities are

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<sup>60</sup> E.g. Submissions 497, 512, 513, 515, 520, 522, 523, 525, 527, 529, 530, 531, 532, 534, 535, 536, 537, 608



inappropriate in almost all locations within the zone<sup>61</sup>. As the Court noted<sup>62</sup>, it was necessary to displace the inferences that would otherwise follow from discretionary activity status. The Court also observed that if it had not been able to make clear that discretionary activity status was being used in that manner, non-complying status would have been appropriate.

71. In our view, it would be more consistent with the policy framework we have recommended, and arguably more transparent, if subdivision and development for the purposes of residential activities in ONLs and ONFs was a non-complying activity. Had we had jurisdiction, we would likely have recommended non-complying status for residential subdivision and development in ONLs and ONFs for this reason.
72. Mr Haworth drew our attention to another reason why, in our view, Council should consider this issue further.
73. At the time of our hearing, Parliament had before it the Resource Legislation Amendment Bill 2015. Among the amendments proposed was a change to the notification provisions that, as Mr Haworth observed, would mean that other than in special circumstances applications for subdivision consents would not be publicly notified unless they were non-complying activities. Mr Haworth expressed concern that this result would apply to residential development within the ONLs and ONFs. As noted above, this foreshadowed legislative change prompted a change in position from UCES.
74. The Resource Legislation Amendment Bill was enacted<sup>63</sup> in April 2017. As we read them, the notification provisions would have the same effect as those of the Bill that Mr Haworth drew to our attention.
75. We infer that this legislative change reflects the usual implications to be drawn from discretionary activity status discussed by the Environment Court in its 2001 decision, rather than the special meaning in the ODP, which has effectively been rolled over into the PDP.
76. We do not regard it as satisfactory that other than in exceptional circumstances, residential subdivision and development in ONLs and ONFs is considered on a non-notified basis given the national interest<sup>64</sup> in their protection and the intent underlying discretionary activity status in this situation. We recommend that Council initiate a variation to the PDP to alter the rule status of this activity to non-complying.

## 1.8 General Matters

77. There are a number of general submissions that we should consider at the outset. The first are the submissions that sought that Chapter 27 be deleted and replaced with Chapter 15 of the ODP. We have already noted the submissions in question in the context of our discussion of the UCES scope issue.
78. The equivalent rule to rule 27.4.1 in the ODP is Rule 15.2.8.1 which provides that the default status for subdivision is controlled activity status. This was at the heart of the huge bulk of submissions that we have considered on Chapter 27 and, indeed, much of the evidence and submissions we heard; namely that the default status under the ODP should not be changed.

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<sup>61</sup> ODP 1.5.3(iii)(iii)

<sup>62</sup> Lakes District Landowners Society Inc v QLDC C75/2001 at [43-46]

<sup>63</sup> As the Resource Legislation Amendment Act 2017

<sup>64</sup> Section 6, of course, identifies it as being a matter of national interest

79. The broad relief sought in a number of submissions (that Chapter 27 revert to Chapter 15 of the ODP) necessarily includes the narrower point (as to the default status of subdivision activities). We will consider the broad point first, and address the narrower point in the next section.
80. The other set of general submissions that we should address at the outset are those that sought that the structure of the Chapter 27 be amended so it is consistent with other zones, including using tables, and ensuring that all objectives and policies are located at the beginning of the section<sup>65</sup>.
81. Other general submissions worthy of note are submissions 693 and 702, which suggested that the objectives and policies in Chapter 27 be reordered to make it clear which are solely applicable to urban areas, and submission 696, which sought that that the number of objectives and policies in Chapter 27 be reduced.
82. Submission 817 sought that objectives D1 and D4 of the National Policy Statement for Freshwater Management 2014 be implemented in Chapter 27.
83. Lastly Submission115 sought general but more substantive relief – related to provision for cycleways and pathways, and reserves.
84. Looking first at the question as to whether Chapter 27 should simply be deleted and Chapter 15 of the ODP substituted, the evidential foundation for this submission is contained in the evidence of Messrs Brown, Ferguson and Farrell. Mr Goldsmith summarised their evidence as being that the “ODP CA [standing for Controlled Activity] regime is not complex and works well.”
85. That might be contrasted with the view set out in the section 32 report underpinning Chapter 27 which stated<sup>66</sup> that the ODP subdivision chapter is complicated and unwieldy. Mr Bryce, who gave planning evidence for the Council, noted the section 32 analysis, but focused his evidence more on the substance of the ODP Chapter 15 provisions that we will come to shortly.
86. Mr Goldsmith likewise sought to distinguish between the format of Chapter 15 and the substance. He accepted that the format of Chapter 15 could be improved and described<sup>67</sup> that aspect of the matter as follows:

*“Format refers to the structure of the existing ODP Chapter 15 which follows the ‘sieve’ structure of the rest of the ODP. The ‘sieve’ structure is the approach which does not detail activity status in the likes of a Table, but requires activity status to be determined by reviewing a considerable number of plan provisions to see which layer of the multi-layered ‘sieve’ (each layer containing different size holes) catches the activity in question. This is a somewhat complex and counter-intuitive approach. It is acknowledged that the alternative PDP approach, classifying activities by reference to Tables, is clearer, more easily understood, and preferable. That is not challenged.”*

87. As against that somewhat negative viewpoint, Mr Goldsmith suggested to us<sup>68</sup> that one of the virtues of the ODP Chapter 15 is that *“it is easy to find and apply the relevant Chapter 15*

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<sup>65</sup> See Submissions 632, 636, 643, 688, 693, and 702. Submission 632 was the subject of a number of further submissions, but they do not appear to relate to this aspect of the submission.

<sup>66</sup> Section 32 Evaluation at page 8

<sup>67</sup> Legal submissions for GW Stalker Family Trust and others at page 3.

<sup>68</sup> Ibid at page 4

*objectives and policies. It is rarely necessary to have recourse outside Chapter 15 to the land use Residential, RR and RL Zones.”* At least in that regard, the broader structure of the PDP needs to be acknowledged. Unlike the ODP, the PDP seeks to provide strategic direction in its early chapters which guides the implementation of more detailed chapters of the PDP like Chapter 27. In Report 3, the Hearing Panel for that Stream recommended that submissions seeking that the strategic chapters be deleted and the PDP revert to the ODP approach be rejected.

88. The corollary of that recommendation is that Chapter 27 cannot operate as a code entirely separated from the balance of the PDP. Broader strategic objectives and policies need to be taken into account.
89. Further, if the subdivision chapter were to revert to the format of Chapter 15, that would be out of step with the chapters of the PDP governing specific zones which take a similar approach to Chapter 27 (indeed, some general submissions noted already seek that the format of Chapter 27 be moved even more closely into line with those other chapters).
90. Lastly, when considering the merits of the way in which Chapter 15 is constructed, we note that the final form of Chapter 15 was the subject of extensive negotiations as part of the resolution of the Environment Court appeals on the ODP. The Court confirmed the final form of Chapter 15 in a consent order, but commented<sup>69</sup>:

*“The amendments to Section 15 have been the subject of a somewhat circuitous process of assessment, reassessment and finally confirmation by the parties. Having considered the amended Section 15 now confirmed by the parties, I find that it achieves the aim of consistency with Section 5 of the plan in substance, even if its form still appears somewhat incongruous and unwieldy when compared with the rest of the Plan.”*

91. This is hardly a ringing endorsement, such as would prompt us to reconsider the wisdom of a different format to the PDP approach that the parties we heard from appeared to accept is clearer and more easily understood, as well as being more consistent with the way the balance of the PDP is structured.
92. In summary, we recommend that the general submissions that sought Chapter 15 of the ODP be substituted for Chapter 27 be rejected. We emphasise that that is not the same thing as rejecting the submissions that sought incorporation of key elements of the existing ODP approach (in particular the controlled activity status for subdivisions generally). As Mr Goldsmith aptly put it, this is an issue of substance that needs to be distinguished from the format of the provisions.
93. Turning to the general submissions already noted, which sought that the structure of Chapter 27 be amended so that it has all objectives and policies together and utilises tables, those submissions were a response to the notified Chapter 27 which exhibited the following features:
  - a. It separated general objectives and policies (in section 27.2) from location-specific objectives and policies (in section 27.7);
  - b. Consequential on that division, the standards for subdivision activities were separated in a similar manner, with general standards in section 27.5 and location-specific standards in section 27.8;
  - c. The general standards in section 27.5 are a mixture of text and tabulated standards.

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<sup>69</sup> *Wakatipu Environmental Society Inc & Others v Queenstown Lakes District Council* C89/2005 at [8]

94. In each of these respects, Chapter 27 is out of step with the detailed chapters in the balance of the PDP and Mr Bryce recommended that it be reformatted, as suggested by the submitters.
95. While consistency in formatting of the PDP is desirable, we also consider that the altered format suggested by Mr Bryce is both more logical and easier to follow. Accordingly, we agree with Mr Bryce and recommend that those submissions be accepted.
96. One consequence of such a significant reorganisation of the chapter is that it becomes difficult to track substantive changes sought in submissions, because of course, the submissions relate to the numbering in the notified chapter. In our discussion of submissions following, we will refer principally to the provision number in the submission (which in turn reflects the notified chapter), but provide in brackets the number of the comparable provision in our reformatted and revised version attached in Appendix 1.
97. The remaining general submissions noted above can be addressed more briefly.
98. As regards the submissions that sought that objectives and policies be reordered and labelled to make it clear which are solely applicable to urban areas, we formed the view during the course of the hearing that there is an undesirable degree of uncertainty as to when particular policies related just to the urban environment, given that this appeared to be the intention. We asked Mr Bryce to consider the merits of separating the district-wide objectives and policies into urban and rural sections<sup>70</sup>. Section 3 of Mr Bryce's reply evidence canvassed the point. Mr Bryce's opinion was that while there was some merit in a separation of objectives and policies into rural and urban sections, a number of the objectives and policies apply to both, making such separation problematic. We accept Mr Bryce's point, that a complete separation is not feasible, but we think that much more clarity is required for those objectives and policies that do not apply to both rural and urban environments, as to what it is that they do apply to.
99. In summary, therefore, we recommend acceptance in part of the general submissions we have noted. We do not think a further reordering is required or desirable, but we accept that a number of the objectives and policies need to be amended to remove the ambiguity that currently exists. We will discuss the exact amendments we propose as we work through the provisions of Chapter 27.
100. While we accept the desirability of keeping the number of objectives and policies to a minimum, the Millbrook submission seeking that the number be reduced is framed too generally to be of assistance. RCL Queenstown Pty Ltd<sup>71</sup> provided more targeted relief, listing the objectives and policies it thought should be deleted. However, Mr Wells, who gave evidence for both Millbrook and RCL, expressed broad satisfaction with the amendments Mr Bryce had recommended. While he expressed the views that further refinement might be made, he did not advance that point further, discussing specific provisions. It follows that while we have kept an eye on the potential for further culling of the objectives and policies beyond Mr Bryce's recommendations, so to minimise duplication, we have no evidential basis on which we could recommend a substantial reduction in the number of objectives and policies in Chapter 27.

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<sup>70</sup> Following the precedent set by the Independent Hearing Panel on the Proposed Auckland Unitary Plan Submission 632

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101. As regards Submission 817, the submission is non-specific as to what changes might appropriately be made to Chapter 27 and the submitter did not provide us with any evidence that would assist further. Mr Bryce recommended an amendment to Policy 27.2.5.12 to provide greater linkage between subdivision management and water quality in part to address this submission. We accept that suggested change. Having reviewed the point afresh, we have not identified any other respects in which the Chapter would be amended to properly give effect to the provisions of the National Policy Statement identified by the submitter.
102. Lastly, addressing Submission 115 Mr Bryce recommended its rejection. We concur. Provision for cycleways, pathways and reserves is a point of detail to be assessed on a case by case basis under the framework of the objectives and policies of Chapter 27.

## 2. DEFAULT ACTIVITY STATUS

### 2.1 Controlled Activity?

103. A logical analysis of the submissions on Chapter 27 would start with the objectives, move to the policies, and then consider the rules to implement those policies. In this case, however, the default activity status for subdivisions dominated the submissions and was almost the sole issue in contention at the hearing. Accordingly, although it may appear counter-intuitive, we have decided to address this issue first.
104. As already noted, Rule 27.4.1 of the notified subdivision chapter provided that all subdivision activities would be discretionary activities, except as otherwise stated.
105. Although Rules 27.4.2 and 27.4.3 provided for non-complying and restricted discretionary activities respectively, these rules addressed a series of specific situations that, with one exception, were likely to be a small subset of subdivision applications. The exception was the provision in Rule 27.4.2 that subdivision not complying with the standards in sections 27.5 and 27.8 should be non-complying (other than in the Jacks Point Zone).
106. It follows that on the basis of the PDP as notified, the overwhelming majority of subdivisions that met the Chapter 27 standards would be considered as discretionary activities. One submitter supported the notified provisions<sup>72</sup>. Two other submissions<sup>73</sup> supported discretionary activity status for subdivision in the low density residential zone. A very large number of submitters opposed Rule 27.4.1<sup>74</sup>. Most of those submitters sought that the default activity status be 'controlled'. Many submitters either proffered consequential changes such as suggested matters to which Council's control might be limited or sought consequential changes both to the rule and to the objectives and policies of Chapter 27 more generally.
107. Many submissions sought controlled activity status on a more targeted basis. Submission 591 sought controlled activity status for all subdivisions in the urban zones. Other submitters<sup>75</sup> sought controlled activity status in one or more of the urban zones. Another group of submissions focussed on the rural zones seeking that subdivision in the Rural Residential

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<sup>72</sup> Refer Submission 21

<sup>73</sup> Submissions 406 and 427: Opposed in FS1262

<sup>74</sup> The tabulated summary of the submissions and further submissions either on Rules 27.4.1-3 generally or specifically on Rule 27.4.1 occupied some 25 pages of Appendix 2 to Mr Bryce's Section 42A Report.

<sup>75</sup> E.g. Submissions 249, 336, 395,399, 485, 488: Supported in FS1029, FS1061 and FS1270

and/or Rural Lifestyle zones be controlled<sup>76</sup>. A number of submitters<sup>77</sup> nominated the Rural Zone as an exception to a general controlled activity position, suggesting subdivisions in that zone should remain as discretionary activities. Some submissions focussed on the special zones seeking that subdivision in the Millbrook<sup>78</sup> or Jacks Point<sup>79</sup> Zone should be controlled activities. Other variations were a submission that sought that subdivision within a proposed new subdivision at Coneburn be controlled<sup>80</sup> and a submission that sought that subdivisions for infill housing (one lot only) in all zones be controlled<sup>81</sup>. A group of infrastructure providers<sup>82</sup> sought that subdivision for utilities be a controlled activity.

108. Some submitters were less definitive in the relief sought. Submission 748 sought either controlled or restricted discretionary activity status for complying subdivisions. Submission 277 suggested an even more nuanced position with subdivision of land in the 'Rural General Zone' being discretionary and a mix of controlled and restricted discretionary activity subdivision rules "*for rural living areas and residential zones*".
109. Some submissions sought more confined relief in the alternative. Submission 610 for instance sought a new rule providing that subdivision within the Ski Area Sub-Zones should be controlled if its primary relief (controlled activity status for all subdivisions except as otherwise stated) was rejected<sup>83</sup>.
110. Many submitters did not consider the relevance of standards/conditions to activity status. Read literally, they would have the effect that all subdivisions, irrespective of subdivision design, would be controlled activities to which consent could not be refused. Many others referred to the need to comply with subdivision standards either explicitly (e.g. referring to minimum lot size requirements) or more generally. Many submitters also recognised the need for consequential amendments if the default activity status changed, in particular to the objectives and policies.
111. We have approached this issue as one of principle, considering first what the default activity status for subdivisions should be across all zones before considering (later in this report) whether particular zones (or sub-zones), or alternatively, particular types of subdivisions, need to be recognised as having characteristics warranting either more or less restrictive subdivision activity status as the case may be. Because of the breadth of the submissions on this point, a virtually infinite number of permutations would be within jurisdiction between the notified position (default discretionary status subject to specified exceptions) and all subdivisions being 'controlled' without any standards or other requirements. To keep our report within reasonable bounds, we have restricted our consideration of alternative options to those

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<sup>76</sup> Submissions 219,283, 345, 350, 360, 396, 401, 402, 403, 415, 416, 430, 467, 476, 500, 820: Supported in FS1097, FS1164 and FS1206; Opposed in FS1034, FS1050, FS1082, FS1084, FS1086, FS1087, FS1089, FS1099, FS1199, FS1133 and FS1146

<sup>77</sup> Submissions 336, 497, 512, 513, 515, 520, 522, 523, 525, 527, 529, 530, 531, 532, 534, 535, 537, 608: Supported in FS1029, FS1125, FS1164, FS1259, FS1260, FS1267, FS1286, FS1322 and FS1331; Opposed in FS1034, FS1068, FS1071, FS1092, FS1097, FS1117 and FS1120

<sup>78</sup> Submissions 234, 346, 541: Opposed in FS1266

<sup>79</sup> Submission 567

<sup>80</sup> Submission 361 – although the reasons for this submission appear to link it to a parallel submission on notified rule 27.5.2.1 because it refers to a house already being established, prior to subdivision- Supported in FS1118 and FS1229; Opposed in FS1296

<sup>81</sup> Submission 169

<sup>82</sup> Submissions 179, 191, 421 and 781: Supported in FS1121

<sup>83</sup> Supported in FS1125

specifically the subject of submissions or which were canvassed during the course of the hearing.

112. The rationale for default discretionary status was set out in the Section 32 Evaluation accompanying the notified PDP. The key points made in the Section 32 Evaluation were that, in the view of the authors, the ODP contains insufficient emphasis on good subdivision and development design, that the ODP subdivision chapter is ineffective in encouraging good subdivision design, and that discretionary activity status would help focus on the importance of good quality subdivision design<sup>84</sup>.
113. Mr Bryce reviewed the arguments as to the appropriate default subdivision status in his
114. Section 42A Report, concluding that the section 32 analysis had not demonstrated that a discretionary activity regime was necessarily the best mechanism to respond to subdivision in all zones. Specifically, Mr Bryce recorded his opinion that subdivisions in the Rural Residential and Rural Lifestyle Zones, and within the District's urban areas do not require the broad assessment that would follow from discretionary activity status<sup>85</sup>.
115. Equally, however, Mr Bryce was of the opinion that a default controlled activity rule, as sought by a large number of submitters, would be not be particularly effective in responding to subdivision development within the District<sup>86</sup>.
116. Mr Bryce saw subdivision and development within areas the subject of structure plans or spatial layout plans as being in a category of their own, justifying controlled activity status. Likewise, he recommended a controlled activity rule covering boundary adjustments. At the other end of the range, Mr Bryce recommended that subdivision and development within the Rural Zone should be a discretionary activity because of the range of potential issues in those areas. The recommendation in his Section 42A Report was, however, that the default activity status for both urban subdivision and development, and subdivision and development within the Rural Residential and Rural Lifestyle Zones, should be Restricted Discretionary (but with separate rules for each to recognise the differences between them)<sup>87</sup>. Consequent on his recommendation, Mr Bryce suggested revised rule provisions specifying the areas within which discretion was retained, based on the areas of control sought in submissions seeking controlled activity status.
117. The argument presented for submitters at the hearing, principally by Mr Goldsmith and Ms Baker-Galloway, supported by expert planning evidence, rested on a number of related considerations, including:
  - a. The ODP regime based on a default controlled activity status had worked reasonably well.
  - b. The ODP regime provided certainty for developers. By contrast, the PDP regime created significant uncertainty.
  - c. While restricted discretionary activity status was an improvement on full discretionary status, the ambit of the matters for discretion was such that it was not materially different to a full discretionary activity status. In particular, retention of discretion over subdivision lot sizes was of particular concern because lot sizes ultimately determined the economic return from an investment in a subdivision.

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<sup>84</sup> Refer section 32 evaluation at pages 10 and 33

<sup>85</sup> Section 42 Report at 10.28

<sup>86</sup> Section 42 Report at 10.30

<sup>87</sup> Noting that Mr Bryce recommended other targeted Restricted Discretionary rules

- d. The Council's reliance on urban design assessments was flawed. To the extent that analysis indicated poor urban design, that was for reasons that had little or nothing to do with the subdivision activity rule status.
  - e. Further, to the extent that issues of poor urban design in the past had been identified, those issues could be addressed within a controlled activity framework.
  - f. The concern expressed by Mr Wallace in his evidence for Council regarding the need to retain control over road widths could be addressed under section 106 of the Act.
  - g. The statistics presented by Mr Bryce as to the percentage of subdivision applications in fact considered as 'controlled' under the ODP were misleading.
118. Other views that we received included evidence on behalf of two leading survey consultancies in the District. Mr Geddes on behalf of Clark Fortune McDonald and Co indicated that the recommendations of Mr Bryce's Section 42A Report largely resolved that submitter's concerns. Mr Duncan White, giving evidence for Patterson Pitts likewise supported a restricted discretionary activity rule.
119. Mr Vivian, giving evidence on behalf of a number of submitters, also generally supported Mr Bryce's recommendations. We note, in particular, Mr Vivian's observation that while it is easy to critique urban design of historic subdivisions, it is a lot harder to ascertain if those subdivisions could have been improved had a different class of rule been applied to them at the time they were consented. Notwithstanding that qualification, Mr Vivian saw merit in a restricted discretionary activity regime, certainly for urban subdivisions, although he recommended some alterations to the proposed matters for discretion in a restricted discretionary activity rule applying to Rural Residential and Rural Lifestyle subdivisions.
120. We did not hear evidence from infrastructure providers seeking to support controlled activity status specifically for utilities.
121. At the opening of the hearing, counsel for the Council advised that Mr Bryce had reflected on the evidence which had been pre-circulated and had formed the view that discretion over lot sizes, averages and dimensions should be deleted from his proposed restricted discretionary activity rule.
122. Mr Goldsmith frankly acknowledged that if this revised recommendation were accepted, then he would accept a restricted discretionary activity rule on behalf of his clients. Ms Baker-Galloway, however, maintained an objection in principle to the restricted discretionary activity rule proposed on behalf of the submitters she represented.
123. As the hearing proceeded, the matters in dispute were progressively narrowed. We would like to express our thanks, in particular, to Mr Bryce for his readiness to consider ways in which his recommendations might be refined to meet the concerns of submitters, while still achieving the policy objectives that underpinned the notified subdivision provisions.
124. Stepping back from the issues in contention, the evidence of Mr Falconer suggests to us that, for whatever reason, the ODP provisions have not been successful in driving high quality urban design. In Mr Falconer's words, while there is some variability between subdivision, generally they are very mediocre. He thought it was particularly concerning that there were no very good examples of urban design. Against the background where, as Mr Brown noted in his evidence, the PDP has a much greater urban design flavour, especially when coupled with the strategic direction provided in Chapters 3 and 4, this suggests to us a need for something to change.



125. While there is an issue (as counsel argued) whether previous mediocre urban design is the product of subdivision activity status, we have considerable difficulty with the argument put to us by both Mr Goldsmith and Ms Baker-Galloway that good design might be enforced within a controlled activity framework. Ms Baker-Galloway cited case law to us suggesting that conditions on subdivisions might produce different lot sizes and subdivisions that look different from what is proposed<sup>88</sup>. However, when we discussed the point with Ms Baker-Galloway, she agreed that the ambit of valid conditions is ultimately an issue of degree, which will determine whether particular issues are able to be controlled by a condition.
126. Accordingly, while counsel are correct, and the case law gives the consent authority considerable latitude to impose conditions on a resource consent application, so long as the conditions do not effectively prevent the activity taking place<sup>89</sup>, in our view, the efficacy of those powers depends on the quality of what it is that one starts with. If the starting product is a reasonable quality design, then there will probably be scope to improve that design through discussion between the applicant and Council staff, and imposition of conditions as required to 'tweak' the design. By contrast, if the starting point is a poor quality subdivision design from a consent applicant who refuses to proffer a significantly changed (and improved) design, then in our view, it is neither practically nor legally possible for the Council to redesign a subdivision application by condition.
127. The clearest example of a need for discretion over subdivision design where the Council might need to require potentially significant changes to an applicant's design appeared to be in the width and location of internal roading networks. Mr Wallace summarised his evidence, when we discussed it with him, as being that there is no single formula to identify suitable roadworks based solely on the size of the subdivision.
128. As regards the specific issue of road widths and access issues, both Mr Goldsmith and Ms Baker-Galloway argued that this could be addressed under section 106(1)(c). That provision provides the Council with jurisdiction to refuse a subdivision consent application irrespective of the activity status of the subdivision in circumstances, among other things, where "*sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision*". Ms Baker-Galloway however could not point us to a case which has held that section 106 extends as far as road widths, as opposed to the existence of a practicable legal access.
129. She also accepted that section 106 would not answer a point that we discussed both with a number of the planning witnesses and with counsel who appeared before us that arises when the most efficient (in some cases the only practicable) access to adjacent subdividable land is via the road network of the subdivision. This situation has arisen in the past in the District<sup>90</sup>.
130. Ultimately, though, we see the potential application of section 106 as something of a red herring. If section 106 confers the power to refuse a subdivision consent application, there is no practical difference if the District Plan similarly provides a discretion to refuse the consent on the same grounds, and good reason why it should do so – so applicants are more aware of that possibility. As Mr Goldsmith frankly acknowledged, the concern on the part of submitters

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<sup>88</sup> She relied in particular on *Dudin v Whangarei District Council* A022/07 and *Mygind v Thames-Coromandel District Council* [2010] NZ EnvC 34

<sup>89</sup> Refer *Aqua King Limited v Marlborough District Council* (1998) 4ELRNZ 385 at [23]

<sup>90</sup> In Subdivision Consent RM130588 (Larchmont)

is that that position is not 'leveraged' to carve out a greater ambit for subdivision consents to be rejected than section 106 would provide.

131. Mr Goldsmith called valuation evidence from Mr Alexander Reid to support his submission that an excessively wide discretion (certainly the full discretionary status in the notified PDP provisions) would have a chilling effect on the economics of subdivision in the District by reason of the inability to obtain land valuations on which banks and other financiers might rely.
132. Mr Reid's evidence was helpful because he confirmed that uncertainty in consent outcomes is ultimately an issue of degree. If there is some, but not great, uncertainty, then valuers (and banks) will accept that.
133. We discussed with Mr Reid specifically the statistics that Mr Bryce had provided to us which suggested that under the ODP, approximately half the applications for subdivision consent in residential zones, and the Rural Residential Zone (and substantially more than half of the applications in the Rural Lifestyle Zone and deferred Rural Lifestyle Zone) were actually considered on the basis that they were either discretionary or non-complying. Mr Reid's evidence was that he had never regarded there being a great risk of subdivision not occurring in those zones and thus it had not been an issue to value the land<sup>91</sup>.
134. We discussed with Mr Jeff Brown and Mr Chris Ferguson whether the difference between controlled activity status and restricted discretionary activity status would have cost implications for applicants. Mr Brown's view was that costs would generally not vary, provided the points of control and discretion were the same. Mr Ferguson pointed out the potential, if the ability to decline under a restricted discretionary rule were used to force an outcome, for transaction costs to increase. He also identified the potential for a different outcome to have cost implications.
135. We had difficulty reconciling Mr Ferguson's reasoning with the legal submissions we heard from both Mr Goldsmith and Ms Baker-Galloway that the same outcomes could be achieved under a controlled activity regime as with a restricted discretionary activity regime, unless the outcome Mr Ferguson was referring to was that consent applications would be declined.
136. Perhaps more importantly, Mr Ferguson agreed that the time and cost for compiling a high quality application would likely not vary greatly either way.
137. Taking these matters into consideration, we have formed the following views.
138. First, we agree with Mr Bryce's recommendation that the full discretionary default subdivision rule in the notified Chapter 27 is not the most appropriate way in which to achieve the objectives of the PDP or (to the extent that those objectives might envisage that status) the most appropriate way to achieve the purpose of the Act. For zones in which development is envisaged, with the scale of development the subject of minimum standards, the increase in uncertainty for subdivision applicants is, in our view, not justified by the potential environmental issues that a subdivision that complies with those minimum standards might raise.

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<sup>91</sup> A view supported by the updated information provided in Mr Bryce's reply indicating that in the 6 years between 2009 and 2015 one subdivision consent application only had been declined after the exercise of the right of appeal, where applicable.

139. We also regard full discretionary status as being inconsistent with the strategic direction contained in Part Two of the Plan which seeks to enable urban development within defined Urban Growth Boundaries (recommended Policy 3.3.14) and to recognise the Rural Lifestyle and Rural Residential Zones as the appropriate planning mechanism to provide for new Rural Lifestyle and Rural Residential developments (recommended Policy 6.3.0).
140. Secondly, we agree with Mr Bryce’s recommendation that there are a number of exceptions to that general position, where retention of full discretionary activity status is justified, most obviously in the Rural and Gibbston Character Zones<sup>92</sup>. Those zones have no minimum lot sizes and rely on the exercise of a broad discretion to ensure that subdivision and development is consistent with the objectives and policies applying to those areas. Submitters advanced the case at the hearing that the Ski Area Sub-Zones needed to be considered separately from the balance of the Rural Zone, having characteristics justifying controlled activity status for subdivisions. We will discuss that point separately. We also discuss the other exceptions later in this report.
141. Thirdly, we agree with Mr Bryce’s recommendation that while controlled activity status may be appropriate in some specific situations, the most appropriate way to achieve the objectives of the PDP is to provide that the default activity status for subdivisions in both Urban Zones and the Rural Residential and Rural Lifestyle Zones should be restricted discretionary activity. We did not hear evidence justifying a different approach to Rural Residential and Rural Lifestyle Zones compared to urban residential zones, or indeed to distinguishing between different residential zones. The evidence we heard, as summarised above, is that the relative costs (between restricted discretionary and controlled activity status) are only likely to be material in the case of poor quality applications. In our view, the need for Council to be able to demand high quality outcomes, and to not have to accept poor applications, are key reasons for restricted discretionary activity status.
142. We do not regard utilities as one of the situations where controlled activity status would be appropriate. While subdivisions will on occasion solely relate to utilities, provision for utilities is an essential component of all subdivisions and in our view, the discretion to refuse consent (where applicable) needs to extend to the utility component. The important point (as Submission 179 notes as justification for controlled activity status) is that subdivisions for utilities are not subject to the minimum lot sizes specified for other subdivisions and this is achieved in our recommended Rules 27.6.2 and 27.7.11.
143. Fourthly, particular attention needs to be paid to limiting the matters in respect of which discretion is reserved to minimise the uncertainty for subdivision consent applicants, while providing the framework to best ensure good quality subdivision design outcomes.
144. As already noted, Mr Bryce recommended two restricted discretionary activity rules in his reply evidence to replace Rule 27.4.1 as notified. The first (now numbered 27.5.7 in our recommended version of Chapter 27) was recommended to read as follows:

*“All urban subdivision activities, unless otherwise stated, within the following zones:*

1. *Low Density Residential Zones;*
2. *Medium Density Residential Zones;*

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<sup>92</sup> Noting our previous finding that in those parts of the Rural Zone classified as ONL or ONF, residential subdivision and development might appropriately be classified as a non-complying activity and recommending Council consider initiating a variation to achieve that result.

3. *High Density Residential Zones;*
4. *Town Centre Zones;*
5. *Arrowsmith Residential Historic Management Zone;*
6. *Large Lot Residential Zones;*
7. *Local Shopping Centres;*
8. *Business Mixed Use Zones;*
9. *Queenstown Airport Mixed Use Zone.*

*Discretion is restricted to the following:*

- *Lot sizes and dimensions in respect of internal roading design and provision, relating to access and service easements for future subdivision on adjoining land;*
- *Subdivision design and layout of lots;*
- *Property access and roading;*
- *Esplanade provision;*
- *On site measures to address the risk of natural and other hazards on land within the subdivision;*
- *Fire fighting water supply;*
- *Water supply;*
- *Stormwater design and disposal;*
- *Sewage treatment and disposal;*
- *Energy supply and telecommunications;*
- *Open space and recreation; and*
- *Ecological and natural values;*
- *Historic heritage;*
- *Easements; and*
- *Bird strike and navigational safety.*

*For the avoidance of doubt, where a site is governed by a Structure Plan, spatial layout plan or concept development plan that is identified in the District Plan, subdivision activity should be assessed in accordance with Rule 27.7.1.”*

145. The second rule recommended by Mr Bryce in his reply (now numbered 27.5.8) would read as follows:

*“All subdivision activities in the District’s Rural Residential and Rural Lifestyle Zones.”*

*Discretion is restricted to all of the following:*

- *In the Rural Lifestyle Zone the location of building platforms;*
- *Lot sizes and dimensions in respect of internal roading design and provision,*
- *relating to access and service easements for future subdivision on adjoining land;*
- *Subdivision design and lot layout;*
- *Property access and roading;*
- *Esplanade provision;*
- *On site measures to address the risk of natural and other hazards on land within the subdivision;*
- *Fire fighting water supply;*
- *Water supply;*
- *Stormwater disposal;*
- *Sewage treatment and disposal;*
- *Energy supply and telecommunications;*

- *Open space and recreation;*
- *Ecological and natural values;*
- *Historic heritage;*
- *Easements; and*
- *Bird strike and navigational safety.”*

146. These two suggested rules are virtually identical – the only difference in the matters to which discretion is reserved is recognition of the need to consider the location of building platforms in the Rural Lifestyle Zone – but like Mr Bryce, we think there is value in separating the rules related to subdivision in Urban Zones from those applying in the Rural Residential and Rural Lifestyle Zones, if only for clarity of coverage to lay readers of the Plan.
147. Looking first at the proposed urban subdivision rule, we recommend a minor change to the introductory wording to refer to activities otherwise “*provided for*” rather than otherwise “*stated*”. The latter suggests a more explicit reference than may always be the case.
148. Consequential changes are also required arising from recommended changes to the names of different zones in other reports to the Lower Density Suburban Residential Zone and the Airport Zone – Queenstown respectively.
149. In terms of the matters in respect of which discretion is restricted, as Mr Bryce indicated, the list of matters is largely drawn from the submissions that suggested matters for control, in the context of a proposed controlled activity rule. As Mr Goldsmith acknowledged to us at the hearing, most of these are a standard list of matters that have to be considered on any subdivision application.
150. We therefore propose to discuss on an exceptions basis, the matters where Mr Bryce proposed amended wording, inserted additional considerations, or the one point that he proposed be deleted from the rule.
151. As above, much of the discussion at the hearing focussed on the first proposed matter of discretion. Having initially (at the opening of the Council case) formed the view that this matter might be entirely deleted, Mr Bryce came around to the view that limited provision for a discretion over lot sizes and dimensions was appropriate, to address the specific issue discussed during the course of the hearing of the need for access to adjoining subdivisible land.
152. We think that the debate at the hearing got a little side-tracked by the concerns of submitters about the ambit of any discretion over lot sizes. While important, the principal consideration justifying reservation of discretion is the need to promote quality subdivision design. We propose that should be the first matter listed.
153. As above, Mr Bryce’s suggested matter of discretion is “*subdivision design and layout of lots*”. We regard the layout of lots as an aspect of subdivision design rather than a discrete issue in its own right. If the subdivision design changes, for whatever reason, the layout of lots, and indeed lot sizes (in m<sup>2</sup>) and dimensions (i.e. shape) will change correspondingly. Mr Goldsmith had no problem with that in principle. The concern he was expressing was of an explicit and separate discretion over lot sizes.
154. To put that beyond doubt, we think it would be helpful to reframe this first and primary matter of discretion as follows:

*“subdivision design and any consequential effects on the layout of lots, and on lot sizes and dimensions.”*

155. Like Mr Bryce, we consider that the potential need to require access to adjoining subdivisible land is a discrete issue that needs specific discretion to enable it to be properly considered. Mr Bryce’s suggested drafting focussing on lot sizes and dimensions, whereas, to us, this is the consequence of a discretion over internal roading design and provision. As well as being more logical, putting it that way round assists in meeting the concerns expressed for submitters. We also think it would also be helpful if the same consequential flow-on effect on lot layouts were identified as with subdivision design.
156. In summary, we recommend that the relevant point of discretion be amended to read:

*“internal roading design and provision relating to access to and service easements for future subdivision on adjoining land, and any consequential effects on the layout of lots, and on lot sizes and dimensions.”*
157. The submissions we received focussed only on property access. Like Mr Bryce, we think that the focus might more explicitly be on roading as the primary means of property access.
158. The submissions likewise focussed solely on “natural hazards”. We agree with Mr Bryce’s recommendation that in the context of restricted discretionary activity, the ambit of potential action required should be stated more clearly – it is about onsite measures to address the risk of both natural and other hazards on land within the subdivision rather than, for instance, attempts to address natural hazards at source. It is both unreasonable and impracticable to contemplate a subdivision applicant having responsibility, for instance, for mitigating the causes of flooding that is the result of natural processes occurring offsite.
159. In our view, it also needs to be made clear that it is not just a choice of what on-site measures are taken to mitigate natural hazard risk. In some cases, precisely because it is beyond the control of any subdivision applicant to control natural hazards at source, all available mitigation steps would still be insufficient to enable subdivision and development of the scale and in the manner proposed to proceed. We therefore recommend that the point of discretion should refer to *“the adequacy”* of on-site measures to address natural hazard risk.
160. The submissions we received suggested *“stormwater disposal”* as a matter of control. We agree with Mr Bryce’s recommendation that discretion needs to be retained over the design of stormwater management, not just its disposal.
161. Mr Bryce recommended two new matters of discretion, being *“ecological and natural values”* and *“historic heritage”*. Given the identification of those values and the objectives and policies of the Plan (not to mention the provisions of the Proposed RPS quoted above that sit behind them, they are obvious additions.
162. Lastly, Mr Bryce recommended addition of *“bird strike and navigational safety”*.
163. This addition reflected submissions we heard from QAC seeking recognition of the potential for the development associated with subdivision to cause a potential safety issue at Queenstown Airport (principally) due to bird strike. QAC both made legal submissions and called planning evidence on the need for PDP provisions to discourage activities attracting birds that might give rise to a bird strike risk.

164. We had some difficulty with QAC's case in this regard. Ms Kirsty O'Sullivan, giving expert planning evidence for QAC, advised us that the essential issue was with stormwater ponds that might form part of a subdivision design attracting birds that roost in the Shotover Delta.
165. At the hearing, we sought to explore with QAC's representatives the extent to which bird strike is already an issue given the location of the municipal wastewater facilities in close proximity to the eastern end of the runway, on the opposite side of the runway to Shotover Delta. The initial advice we received from Ms O'Sullivan was that bird strike was not an issue at present because QAC knows about current flight paths. Subsequently, however, after we sought input on where subdivision-related development might pose a risk of bird strike, we were advised that most reported bird strikes had been on the airfield, but that there have been reports of near misses further afield. We were also advised that the highest recorded bird strike was at 30,000 feet and that it was difficult to define the relevant area in a spatial sense.
166. We found this unhelpful to say the least. QAC were seeking examination of potential bird strike issues as a discrete matter of discretion on all urban subdivisions, so as to enable a case by case assessment. My Bryce also recommended that this be a matter of discretion in both urban areas and in the Rural Lifestyle and Rural Residential Zones.
167. The only way in which a subdivision consent applicant could address that issue would be by obtaining expert ornithological evidence as to the potential impact of the proposed subdivision and development on the existing pattern of bird flights and expert aviation evidence on the potential risk to aircraft within the District where they might intersect with the predicted flight-paths of birds. The collective costs involved, given that this would need to be considered on every subdivision application in urban areas and in the Rural Lifestyle and Rural Residential Zone if Mr Bryce's recommendation were accepted, might well be substantial, but we were not provided with any quantification of those costs<sup>93</sup>.
168. While any threat to aircraft safety is of course a matter for considerable concern, we regard it as incumbent on QAC to provide us with expert evidence that would enable us to evaluate whether the risks that subdivision and development might pose to aircraft movements justified the imposition of those costs. At the very least, we would have expected QAC to produce expert evidence on where birds currently roost, the current flight-paths of birds to and from those roosting areas, and the nature and scale of future subdivision and development sufficient to materially alter those flight-paths in a manner with the potential to create a risk to aircraft. Demonstrably, Ms O'Sullivan was not equipped to provide evidence on these matters. And to be fair to her, she did not suggest she could do so other than at a very general level.
169. We inquired of QAC whether it had taken a position on the recently reviewed earthworks provisions of the ODP, given our understanding that birds are attracted by newly excavated earthworks. We were advised that QAC had made submissions on those provisions, but those submissions were not accepted and QAC did not pursue the matter.
170. Had QAC provided us with the evidential basis to do so, we might well have recommended a focus on effects on bird strike and navigational safety within some defined distance from the

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<sup>93</sup> Mr Bryce identified that the addition of new matters of discretion would add costs in the s32AA evaluation attached to his reply evidence, but did not comment on the potential quantum of such costs. Ms O'Sullivan did not comment on the cost implications for applicants of the relief she supported.

flight paths into and out of Queenstown Airport, recognising a potentially greater risk in such areas (QAC told us existing spray irrigation at the end of the runway at Wanaka had not created an issue at Wanaka Airport and provided no information as to the position at the smaller facilities). As it was, QAC did not provide us with an adequate evidential foundation either for the planning relief sought, or for some more targeted response.

171. In summary, we do not agree with Mr Bryce’s recommendation that the default rules contain a recognition of potential bird strike risk as a separate area of discretion.
172. Submissions seeking a controlled activity rule suggested that “*the nature, scale, and adequacy of environmental protection measures associated with earthworks*” be an additional matter of control. Mr Bryce did not recommend that earthworks be a matter for discretion. Rather, his recommendation was that a cross reference be inserted to provisions of the earthworks chapter of the ODP. We think there are good reasons to treat earthworks as a separate issue under the rules. We will revert to that point when we address Mr Bryce’s recommendations in that regard.
173. We do, however, consider that there is a case for an additional matter of discretion based on the submissions and evidence we heard for Aurora Energy Ltd<sup>94</sup>. We explore the issues raised in much greater detail in the context of the policies related to subdivision and development affecting electricity distribution lines<sup>95</sup>. Mr Bryce recommended a new rule governing subdivision and development in close proximity to ‘sub-transmission’ lines. We discuss that recommendation later in this report also. In summary, we do not regard it as either necessary or efficient to have a standalone rule, but we do consider it necessary to preserve a discretion on subdivision applications that might be exercised in accordance with recommended Policy 27.2.2.8.
174. Having identified the desirability of an additional point of discretion, we then considered whether it should be limited to effects on electricity distribution lines. Mr Bryce’s draft rule considers “*Energy supply and telecommunications*” together. While the rationale for that discretion is (we think) related to the adequacy of the infrastructural arrangements, the same logic would apply to reverse sensitivity effects on telecommunication networks as on energy networks – both are essential local infrastructure.
175. Accordingly, we recommend that the relevant matter of discretion be amended to read:
- “energy supply and telecommunications, including adverse effects on energy supply and telecommunication networks.”*
176. The suggested rule is stated to apply within the Low Density Residential Zone and the Queenstown Airport Mixed Use Zone. The Stream 6 Hearing Panel has recommended that the name of the Low Density Residential Zone be changed to the Lower Density Suburban Residential Zone. The Stream 8 Panel has recommended the Queenstown Airport Mixed Use Zone, as the term is used in Chapter 27, be changed to the Airport Zone - Queenstown. We therefore recommend use of those titles for those zones here, and elsewhere in Chapter 27 where they are referred to.
177. Lastly, we recommend that the language introducing the matters of discretion be tightened in this and the other Restricted Discretionary rules in Chapter 27 and that the specified matters

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<sup>94</sup> Submission 71

<sup>95</sup> Refer the discussion of our recommended Policy 27.2.2.8



be individually identified using an alphanumeric list for ease of subsequent reference. Again, this is a recommended general change. We also recommend that generally listing of sub-parts of policies or rules be identified by alphanumeric lists.

178. Turning to the parallel rule (now numbered 27.5.8), providing for subdivision in the Rural Residential and Rural Lifestyle Zones, the opening words, describing the ambit of the rule, need to provide for the operation of other rules in the rule package in the same way as Mr Bryce's recommended urban subdivision rule; that is to say, it needs the words "*unless otherwise provided for*" inserted into it.
179. As above, the only additional point of discretion Mr Bryce recommended in this rule was reference to building platforms in the Rural Lifestyle Zone. At the hearing, we discussed with both Mr Bryce and Mr Jeff Brown whether the size of building platforms might be an issue. Currently the zone standards for the Rural, Gibbston and Rural Lifestyle Zones<sup>96</sup> require identification of one building platform between 70m<sup>2</sup> in area and 1000m<sup>2</sup> in area per lot where allotments are created for the purposes of containing residential activity.
180. Mr Brown confirmed that in principle, both the location and size of building platforms are the issue in the Rural Lifestyle Zone, but he could not recall any consent holder trying to fill out building platforms to the full 1000m<sup>2</sup>. Mr Goldsmith drew our attention to the fact that this issue was canvassed in the hearings on the rural chapters (the Stream 2 hearing). In that hearing, Mr Paddy Baxter, an expert landscape architect, suggested to the Hearing Panel that design controls might be appropriate for larger sized houses.
181. Relevant design controls in this context are those contributing to the visibility and external appearance of buildings constructed within approved building platforms since it is these matters that affect the ability of the landscape to absorb new or altered buildings.
182. We also note that Rule 22.4.2 provides that where a building is constructed or altered outside an approved building platform in the Rural Lifestyle Zone the Council retains discretion over external appearance, visibility from public places, landscape character and visual amenity. Logically, these matters should be equally relevant to the decision whether to approve building platforms (within which buildings might be constructed or altered as permitted activities).
183. Accordingly, we recommend that the relevant point of discretion be expanded to read:

*"in the Rural Lifestyle Zone, the location and size of building platforms and in respect of any buildings within those building platforms:*

  - a. *external appearance;*
  - b. *visibility from public places;*
  - c. *landscape character; and*
  - d. *visual amenity.*
184. In all other respects, the same conclusions about the matters in respect of which discretion is reserved follow as for subdivision in the urban zones.

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<sup>96</sup> Rule 27.5.1.1 of the notified Chapter and 27.7.12.1 of our recommended revised Chapter

185. As already noted, a number of submissions identified the need for the objectives and policies of Chapter 27 to be amended to reflect any changes to the default rules related to subdivision. Accordingly, it is appropriate that we move now to address first the introductory statement of the purpose of Chapter 27 (in Section 27.1) and then the objectives and policies, before returning to the package of rules.

### 3. PURPOSE

#### 3.1 Section 27.1 - Purpose

186. Section 27.1, as its title suggests, is designed to set out the purpose of Chapter 27. Submissions on it sought variously:
- a. Addition of reference to the protection of areas and features of significance and to passive solar design of dwellings<sup>97</sup>;
  - b. Deletion of reference to subdivision being discretionary, to be replaced with a statement that subdivision in zoned areas is controlled<sup>98</sup>;
  - c. Deletion of reference to logic<sup>99</sup>;
  - d. Deletion of reference to the Land Development and Subdivision Code of Practice and Subdivision Design Guidelines<sup>100</sup>;
  - e. Clarification that Chapter 27 does not apply to the Remarkables Park Zone and the proposed Queenstown Park Special Zone<sup>101</sup>;
  - f. Drawing attention to the relationship between subdivision and land use, softening the description of the relationship between subdivision and desirable community outcomes, deletion of specific reference to management of natural hazards and insertion of identification of the role of subdivision in provision of services<sup>102</sup>.
187. Mr Bryce recommended the following changes to the notified version of Section 27.1:
- a. Consequential on his recommendation that the default status of subdivisions be restricted discretionary activity, the reference to all subdivision requiring resource consent as a discretionary activity should be amended;
  - b. Deletion of reference to subdivision design being underpinned by logic;
  - c. Separation of reference to the Subdivision Design Guidelines from the Land Development and Subdivision Code of Practice, recognising the focus of the Subdivision Design Guidelines on urban design and pitching the role of the Code of Practice as providing a best practice guideline;
  - d. Deletion of reference to provisions in other chapters governing assessment of subdivision;
  - e. Insertion of reference to the Council's development contributions policy.
188. We do not consider that the opening words of Section 27.1 need to place greater emphasis on the inter-relationship between subdivision and land use. In our view, the opening paragraph already draws that connection.
189. The reference in Section 27.1 to all subdivision requiring resource consent as a discretionary activity was problematic even on the basis of the notified Chapter 27, given that Rule 27.4.2

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<sup>97</sup> Submission 117

<sup>98</sup> Submissions 288, 442, 806: Supported in FS1097

<sup>99</sup> Submission 383

<sup>100</sup> Submissions 567 and 806

<sup>101</sup> Submission 806

<sup>102</sup> Submission 806

provided for non-complying activities and Rule 27.4.3 provided for restricted discretionary activities. We have already addressed the appropriate default rule activity status, recommending that it be restricted discretionary. It follows that the existing text of Section 27.1 requires amendment. We agree with Mr Bryce's suggestion that the statement should read that "*all subdivision requires resource consent unless specified as a permitted activity*".

190. We also agree with Mr Bryce's recommendation that reference to logic in the second paragraph might appropriately be deleted. Without amplification as to what a logical subdivision design might involve, such as is contained in proposed Objective 3.2.2.1, this is likely to be unhelpful.
191. We do not, however, consider that the entire sentence in which that reference is made need be deleted. Given the overlap with recommended Objective 3.2.2.1, stating that good subdivision design is underpinned by an objective of creating healthy, attractive and safe places is a suitable comment. We do agree, however, that some qualification of the reference to management of natural hazards is required since as currently framed, the text provides no indication of how natural hazards should be managed. The Proposed RPS contains a comprehensive suite of provisions around natural hazard management. In the context of a general introduction to the subdivision and development section, it would be difficult to capture all of the nuances of the Proposed RPS position. We recommend therefore that the introduction talk about "*appropriate*" management of natural hazards.
192. We agree with the suggestion in Submission 806 that the opening words to paragraph 3 should state that good subdivision "*can help to create*" desirable outcomes. It is unduly ambitious to think that good subdivision will necessarily achieve these matters on its own.
193. We do not consider that reference to passive solar design of dwellings is required given the existing reference in the third paragraph to maximising access to sunlight. Similarly, in relation to the relief sought in Submission 117, reference to protection of areas and features of significance is an unnecessary level of detail. These matters are covered more appropriately in the objectives and policies following.
194. As regards the degree to which the Subdivision Design Guidelines and the Land Development and Subdivision Code of Practice are referenced, this matter overlaps with how they are addressed in the balance of the chapter.
195. Counsel for the Council noted that both of these documents had been incorporated by reference under Part 3 of Schedule 1 of the Act. As counsel noted, the advantage of incorporating documents by reference in this way is that they can then be referenced in the PDP without needing to be annexed to it. As counsel also pointed out, however, the downside of such referencing is that the document cannot thereafter be changed without the reference to it also being changed through the mechanism of a Plan Change.
196. Mr Wallace produced a copy of the current Code of Practice for us. It is both a lengthy and highly detailed document and Mr Wallace highlighted the fact that it is a "*live, ever evolving document*" and that he anticipated that it would be amended and readopted by Council before the close of 2016. Nor would this be the only amendment. In his words, "*there will be an ongoing process of updating the Code of Practice to ensure evolving best practice is captured in the document*"<sup>103</sup>.

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<sup>103</sup> D Wallace, Evidence at 4.2

197. Against this background, the recommendation of Mr Bryce was that specific reference to the Code of Practice should be removed from the relevant policy (27.2.1.1).
198. This recommendation produced a degree of puzzlement from the representatives of submitters who appeared before us, given that the Code of Practice is referred to in the ODP generically and, as far as the submitters could ascertain, this has never been seen as posing a legal issue in the past notwithstanding that the Code of Practice has been updated from time to time.
199. Mr Goldsmith did not seek to contradict counsel for the Council's submissions. Rather his approach was to query why reference to the Code of Practice is a problem now if it has never previously been a problem. Ms Baker-Galloway noted that in the litigation on the Horizons One-Plan, the High Court had no difficulty with a generic reference to the OVERSEER nutrient model in the One-Plan, notwithstanding that new versions of the model would be produced<sup>104</sup>.
200. As we understand the argument for the Council, it is the additional step of incorporating the Code of Practice by reference that has created the legal issue.
201. The High Court decision referred to us quoted a section of the Environment Court's decision on the One-Plan querying whether a model like OVERSEER is written material within the meaning of clause 30 of the First Schedule (so as to be able to be incorporated by reference). It appears to us also that the High Court's decision turned on the fact that the One-Plan did not require use of OVERSEER. Rather it was mentioned as one means by which the Plan's provisions might be complied with.
202. We do not, therefore, regard the High Court's decision as supporting an explicit policy reference to the Code of Practice as something that is required to be complied with (as notified Policy 27.2.1.1 currently does), given the Council's intention that the Code of Practice will change.
203. Mr Duncan White gave evidence for Paterson Pitts noting that submitter's concern with the notified provisions given the lack of external input into the content of the Code of Practice. We agree that this is problematic, even if the legal concerns expressed by counsel for the Council could be overcome.
204. Mr Goldsmith drew our attention to a possible concern that removing reference to the Code of Practice, when in practice the Council will rely on the current version of the document. In his submission, this might mislead readers of the PDP who are not as a result aware that there is a large and very detailed document sitting outside the PDP which has, in Mr Goldsmith's words, "*a very significant influence on the subdivision design consent process*".
205. Ultimately though, Mr Goldsmith expressed himself as being ambivalent as to where the Code of Practice is referenced as long as it is referenced somewhere in the PDP. He took the pragmatic view that any rules and policies referring to the adequacy or appropriateness of infrastructure and service provision would then enable the Code of Practice to be referenced during the processing of a subdivision application.
206. We discussed the concern Mr Goldsmith had identified with counsel for the Council who agreed that the Code of Practice might appropriately be referred to in the introductory sections, provided it has not been incorporated by reference. We think that is the best solution, but it faces the problem that, of course, the Council has already resolved to

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<sup>104</sup> Discussed in *Horticulture New Zealand v Manawatu-Wanganui Regional Council* [2013] NZHC 2492 at [106]-[115]

incorporate the Code of Practice (2015) version by reference. We recommend that Council resolve that that document should cease to be incorporated by reference.

207. Assuming the Council does so resolve, we further recommend that the existence of a Code of Practice be highlighted in Section 27.1, but in a separate paragraph to the discussion of the Subdivision Design Guidelines that we will come to shortly. Mr Bryce drafted a sentence to insert on the end of the fourth paragraph of section 27.1 reading:

*“The purpose of the QLDC Land Development and Subdivision Code of Practice is to provide a best practice guideline for subdivision and development infrastructure in the District.”*

208. Mr Bryce’s suggestion did not capture what we had in mind because it assumed an understanding of what the Code of Practice was and failed to convey the critical point, which is that subdivision applicants need to consult the document.

209. Accordingly, we recommend that a new paragraph be inserted following the existing paragraph 4 reading:

*“The QLDC Land Development and Subdivision Code of Practice provides assistance in the design of subdivision and development infrastructure in the District and should also be considered by subdivision applicants.”*

210. Consequential deletions of reference to the Code of Practice in the existing text of the fourth paragraph will be required.

211. The Subdivision Design Guidelines did not attract the same concern regarding the need for ongoing change. While Mr Goldsmith critiqued the Subdivision Guidelines, the thrust of his point seemed to be that they were a little trite and overlapped with the existing policies. As against that view, Mr Falconer gave evidence for the Council indicating his view that the Design Guidelines are well founded, helpful and provide a concise checklist for the layout and broad scale design of subdivisions<sup>105</sup>. To the extent that Mr Dan Wells critiqued the illustrated design contained in the Subdivision Design Guidelines, Mr Falconer described those criticisms to us as matters of detail, not raising major issues.

212. Mr Falconer did, however, accept that the Subdivision Design Guidelines would benefit from being extended in scope.

213. Given Mr Falconer’s undoubted expertise and experience in the field of subdivision and urban design, we accept his opinion as to the value of the Subdivision Design Guidelines, and are satisfied that Section 27.1 should acknowledge their role. The only amendments we recommend to the text suggested by Mr Bryce are to make it a little clearer that the Guidelines are principally focused on development in urban areas, but that some aspects may be relevant to rural subdivisions.

214. We do not think it is helpful to state on a piecemeal basis that Chapter 27 does not apply to the Remarkables Park Zone and the requested Queenstown Park Special Zone as Queenstown Park Limited proposes. We discussed with counsel from the Council how Chapter 27, once finalised, will interrelate with the ODP subdivision provisions that will continue to apply in a number of zones (including the Remarkables Park Zone, which forms part of the ODP). We will discuss this issue in greater detail in our consideration of the notified Section 27.3. For the same reason, however, we agree with Mr Bryce’s recommendation that what was the first part

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<sup>105</sup> G Falconer, Evidence at paragraph 2.1

of the fifth paragraph of Section 27.1 should delete reference to provisions for assessment of subdivisions outside Chapter 27.

215. Lastly, Mr Bryce recommended that a paragraph be inserted on the end of Section 27.1 as a consequential change resulting from his recommendation that reference to the Development Contributions Policy be deleted from Policy 27.2.5.11 (same numbering in notified version), reading:

*“Infrastructure upgrades necessary to support subdivision in future development are to be undertaken and paid for by subdividers and developers in accordance with the Council’s 10 Year Plan Development Contribution Policy.”*

216. The difficulty we have with the suggested addition to Section 27.1 is that it assumes an understanding of the role of the Development Contributions Policy and records the current policy set under the Local Government Act, which may change during the lifetime of the PDP.

217. Accordingly, we recommend that Mr Bryce’s suggestion not be accepted, but rather that a new paragraph 6 be inserted in section 27.1 reading as follows:

*“The Council uses its Development Contributions Policy set out in its 10 Year Plan to fix the contributions payable by subdividers for infrastructure upgrades. That policy operates in parallel with the provisions of this chapter and should be referred to by subdivision consent applicants.”*

218. We have discussed each of the amendments we have recommended to Section 27.1 above. The end result, accepting the suggested changes, is that the introductory section of Chapter 27 related to its purpose would read as follows:

*“Subdivision and the resultant development enables the creation of new housing and land use opportunities, and is a key driver of the District’s economy. The council will support subdivision that is well designed, is located in the appropriate locations anticipated by the District Plan with the appropriate capacity for servicing and integrated transportation.*

*All subdivision requires resource consent unless specified as a permitted activity. It is recognised that subdivisions will have a variable nature and scale with different issues to address. Good subdivision design, servicing and the appropriate management of natural hazards are underpinned by a shared objective to create healthy, attractive and safe places.*

*Good subdivision can help to create neighbourhoods and places that people want to live or work within, and should also result in more environmentally responsive development that reduces car use, encourages walking and cycling, and maximises access to sunlight.*

*Good subdivision design will be encouraged by the use of the QLDC Subdivision Design Guidelines 2015. The Subdivision Design Guidelines includes subdivision and urban design principles and outcomes that give effect to the objectives and policies of the Subdivision and Strategic Directions Chapters, in both designing and assessing subdivision proposals in urban areas. Proposals at odds with this document are not likely to be consistent with the policies of the Subdivision and Strategic Directions chapters, and therefore, may not achieve the purpose of the RMA. Some aspects of the Subdivision Design Guidelines may be relevant to rural subdivisions.*

*The QLDC Land Development and Subdivision Code of Practice provides assistance in the design of subdivision and development infrastructure in the District and should also be considered by subdivision applicants.*

*The Council uses its Development Contributions Policy set out in its 10 Year Plan to fix the contributions payable by subdividers for infrastructure upgrades. That policy operates in parallel with the provisions of this chapter and should be referred to by subdivision consent applicants.*

*The subdivision chapter is the primary method to ensure that the District's neighbourhoods are quality environments that take into account the character of local places and communities."*

219. We are satisfied that as amended, this introductory statement is the most appropriate way to achieve the objectives of Chapter 27 that we are about to discuss, given the alternatives open to us.

#### 4. SECTION 27.2 – OBJECTIVES AND POLICIES

##### 4.1 General

220. We have already discussed the general submissions seeking that the objectives and policies more clearly identify where they are limited in scope either to urban or rural environments. The only other general submission that we need to discuss at the outset of our consideration of the objectives and policies in Chapter 27 is that of Transpower New Zealand Limited<sup>106</sup> that sought a new objective related to reverse sensitivity effects on the national grid.
221. Mr Bryce recommended that the suggested objective not be inserted into Chapter 27, on the basis that Transpower's relief would more appropriately be addressed by a new policy seeking to achieve existing Objective 27.2.2.
222. The relief sought by Transpower was in fact framed as a course of action (i.e. as a policy) rather than as an environmental outcome (i.e. as an objective) and Ms Ainsley McLeod, giving planning evidence for Transpower, accepted that this was the appropriate way for Transpower's concern to be addressed. We concur.
223. Before considering the first objective and the policies related to it, we should note that the existing objectives and policies were supported by a number of submitters, either as is, or generally, but subject to specific points of concern<sup>107</sup>.

##### 4.2 Objective 27.2.1 and Policies Following

224. Turning to Objective 27.2.1, as notified, it read:

*"Subdivision will create quality environments that ensure the District is a desirable place to live, visit, work and play."*

225. Submissions seeking changes to Objective 27.2.1 sought variously:

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<sup>106</sup> Submission 805: Supported in FS1121 and FS1211

<sup>107</sup> See submissions 453, 586, 775 and 803: Supported in FS1117

- a. Reference be made to “high” quality environments<sup>108</sup>;
- b. Rewording to read:

*“The formative role of subdivision creating quality environments is recognised through attention to design and servicing needs.”<sup>109</sup>*

- c. Soften the wording so it states that subdivision will “help to” create quality environments<sup>110</sup>.
226. By his reply evidence, Mr Bryce had come to the view that the objective might appropriately be amended in line with the thinking underlying the third of the submissions only – substituting “enable” for “create”.
227. We largely agree. We do not think it is necessary to add a second adjective. Referring to quality environments already conveys the message that Submission 238 sought.
228. We consider that the more comprehensive amendment sought in Submission 632 would obscure rather than clarify the outcome sought in this objective. Accordingly, we do not recommend that that be accepted.
229. As we have noted in our discussion of Section 27.1, however, the PDP needs to be realistic as to what subdivision can deliver in terms of desirable outcomes. Ultimately, it is one of a number of contributing factors that create quality environments. Accordingly, we agree with Mr Bryce’s suggested amendment and recommend the objective be retained with only a minor grammatical change, as follows:
- “Subdivision that will enable quality environments to ensure the District is a desirable place to live, visit, work and play.”*
230. Given the range of alternatives open to us, we consider that this objective aligns well with recommended Objective 3.2.2.1 and is accordingly the most appropriate way in which to achieve the purpose of the Act in this context.
231. Policy 27.2.1.1 as notified read:
- “Require subdivision to be consistent with the QLDC Land Development and Subdivision Code of Practice, while recognising opportunities for innovative design.”*
232. A number of submissions on it sought its deletion<sup>111</sup>. Some of these submissions focussed on the fact that the Code of Practice can be changed without consultation<sup>112</sup>. A number of other submissions focussed on the interrelationship between this and other policies, and the default discretionary rule status<sup>113</sup>.

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<sup>108</sup> Submission 238: Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

<sup>109</sup> Submission 632: Supported in FS1097; Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>110</sup> Submission 806

<sup>111</sup> Submissions 248, 453, 567, 632 and 806: Supported in FS1097; Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>112</sup> See in particular Submission 453: Supported in FS1097

<sup>113</sup> E.g. Submissions 248 and 567: Supported in FS1097 and FS1117



233. Mr Bryce recommended that reference to the Code of Practice be deleted, largely for the reasons discussed above in the context of Section 27.1, and that the policy require subdivision infrastructure (the subject of the Code of Practice) be designed so as to be fit for purpose.
234. We concur. It is not efficient to have a policy that refers to a document that is likely to be superseded a number of times during the life of the PDP. That will only necessitate a series of future plan changes.
235. The addition we have recommended that Section 27.1 address the sole substantive concern expressed to us, that readers of the PDP might not appreciate the role of the Code of Practice.
236. Accordingly, we recommend that Mr Bryce's suggested amendments to Policy 27.2.1.1 be accepted, subject only to minor grammatical changes, so that it would read:
- "Require subdivision infrastructure to be constructed and designed so that it is fit for purpose, while recognising opportunities for innovative design."*
237. Policy 27.2.1.2 as notified read:
- "Support subdivision that is consistent with the QLDC Subdivision Design Guidelines, recognising that good subdivision design responds to the neighbourhood context and the opportunities and constraints of the application site."*
238. This policy attracted opposition from the same submitters and for largely the same reasons as are summarised above in relation to Policy 27.2.1.1.
239. Mr Bryce distinguished this policy from the previous one on the basis that it was unlikely that the subdivision guidelines would need to be updated as regularly as the Code of Practice. Based on the evidence of Mr Falconer summarised earlier, we agree that the Subdivision Design Guidelines play a valuable role that should be recognised in the policies of Chapter 27. The concern expressed in Submission 453 is addressed by the fact that, having been incorporated by reference, the Subdivision Design Guidelines can effectively only now be changed by means of a publicly notified Plan Change.
240. Mr Bryce recommended in his reply evidence two amendments to the notified policy: the first to clarify what *"support"* means in this context and the second to be clear that the document referenced is the 2015 version of the Subdivision Design Guidelines. We agree with those amendments. The only further amendments we would recommend are a minor grammatical change and insertion of reference to urban subdivision, to make it clear, as sought by the general submissions already noted, that this is one of the policies that is specific to urban subdivision.
241. Accordingly, we recommend that Policy 27.2.1.2 read as follows:
- "Enable urban subdivision that is consistent with the QLDC Subdivision Design Guidelines 2015, recognising that good subdivision design responds to the neighbourhood context and the opportunities and constraints of the application site."*
242. Policy 27.2.1.3 as notified read:

*“Require that allotments are a suitable size and shape, and are able to be serviced and developed to the anticipated land use of the applicable zone.”*

243. Two submissions sought changes to this policy, one to delete reference to development and to make consequential changes<sup>114</sup> and the other to delete the opening words “require that”<sup>115</sup>.

244. Mr Bryce did not recommend any change to this policy. We agree with his reasoning. The ability to develop an allotment for the anticipated land use will be one of the key factors that determines whether an allotment is a suitable size and shape. Deleting the opening words would mean that the policy ceases to be a course of action and would rather state an outcome (i.e. objective). We recommend only minor grammatical changes, so that the policy would read:

*“Require that allotments are a suitable size and shape, and are able to be serviced and developed for the anticipated land use under the applicable zone provisions.”*

245. Notified policy 27.2.1.4 reads:

*“Where minimum allotment sizes are not proposed, the extent any adverse effects are mitigated or compensated by achieving:*

- a. *Desirable urban design outcomes;*
- b. *Greater efficiency in development and use of the land resource;*
- c. *Affordable or community housing.”*

246. One submission sought it be deleted<sup>116</sup>. Another submission queried whether the word “proposed” should be replaced with “achieved”<sup>117</sup>. A third submission<sup>118</sup> suggested that the opening words should read, “where small lot sizes are proposed, the extent...”.

247. Mr Bryce agreed with the submitters seeking amendments that the policy is unclear and requires clarification. What it is actually seeking to address, as Submission 453 surmised, is the position where the minimum allotment sizes are not achieved. We agree with Mr Bryce that the initial point that needs to be made is that failure to comply with minimum allotment sizes is not a desirable state of affairs. In some circumstances in the urban environment (and we think it needs to be made clear that it is the urban environment), that may nevertheless be acceptable based on the criteria identified in the policy.

248. In summary, we recommend acceptance of Mr Bryce’s suggested amended policy wording with one addition (to focus the second part of the policy on urban environments) and minor reformatting changes. It would therefore read as follows:

*“Discourage non-compliance with minimum allotment sizes. However, where minimum allotment sizes are not achieved in urban areas, consideration will be given to whether any adverse effects are mitigated or compensated by providing:*

- a. *desirable urban design outcomes.*

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<sup>114</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>115</sup> Submission 806

<sup>116</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>117</sup> Submission 453

<sup>118</sup> Submission 806

b. *greater efficiency in the development and use of the land resource.*

c. *affordable or community housing.*”

249. Policy 27.2.1.5 as notified, read:

*“The Council recognises that there is an expectation by future landowners that the effects and resources required of anticipated land uses will have been resolved through the subdivision approval process.”*

250. Submission 453 sought a minor grammatical change so that the policy would refer to effects and resources required “by” anticipated land uses. Submissions 632<sup>119</sup> and 806 sought deletion of this policy. The latter submission suggested that it was not framed as a policy.

251. Mr Bryce recommended that the minor grammatical change sought by Submission 453 be accepted but otherwise that the policy remain unamended.

252. For our part, we think that Submission 806 made a valid point. The policy needs to start with a verb to express a course of action.

253. We also have a concern that subdivision consent processes will not necessarily resolve all effects of anticipated land uses. That is what land use consent applications are for.

254. To state more clearly what course of action the policy envisages being undertaken, it should start with the words “recognise that”. That might be considered to rather beg the question as to how that recognition might be implemented. We think the answer to that rhetorical question is that it will be implemented through the subdivision approval process considering these matters. The end result we have in mind sits between the outcome sought by submitters and the status quo.

255. In summary, therefore, we recommend that Policy 27.2.1.5 be amended to read:

*“Recognise that there is an expectation by future landowners that the key effects of and resources required by anticipated land uses will have been resolved through the subdivision approval process.”*

256. Policy 27.2.1.6, as notified, read:

*“Ensure the requirements of other relevant agencies are fully integrated into the subdivision development process.”*

257. The only submission seeking change to this policy sought its deletion<sup>120</sup>. Mr Bryce acknowledged that it might be argued that this policy is not necessary to give effect to the notified Objective 27.2.1, but considered that it was still helpful in guiding PDP users. We concur and note that Mr Wells, who gave evidence for submitter 632, did not provide any reasons why this particular policy should be deleted.

258. Accordingly, we recommend that Policy 27.2.1.6 be retained without amendment.

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<sup>119</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>120</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

259. Policy 27.2.1.7, as notified, read:

*“Recognise there will be certain subdivision activities, such as boundary adjustments, that are undertaken only for ownership purposes and will not require the provision of services.”*

260. The sole submission seeking a change to this policy<sup>121</sup> sought that it be amended to ensure that boundary adjustments are not subject to the discretionary activity rule [i.e. notified Rule 27.4.1] and are exempt from the policies relating to provision of services.

261. Mr Bryce did not recommend any change to this policy specifically in response to the concern expressed in Submission 806. Mr Bryce drew our attention to his separate discussion of rules related to boundary adjustments, but in summary, took the view that the policy already states that some subdivision activities and in particular boundary adjustments, will not require the provision of services. We agree. The only amendment we recommend is one suggested by Mr Bryce in his reply evidence, following a discussion we had with him, that reference to *“ownership purposes”* should be deleted. We are not at all sure what that means and we think that there might be a number of purposes that would justify a boundary adjustment. We do not regard that as a substantive change since the motivation of the applicant is not material to the course of action the policy identifies.

262. Accordingly, we recommend that Policy 27.2.1.7 be amended to read:

*“Recognise there will be certain subdivision activities, such as boundary adjustments, that will not require the provision of services.”*

263. Mr Bryce recommended two new policies for this objective, the first relating to subdivision of a residential flat from a residential unit, and the second relating to subdivision of land resulting in division of a residential building platform. As Mr Bryce explained in his reply evidence, these suggested new policies (27.2.1.8 and 27.2.1.9) arose from a discussion we had with him regarding the apparent lack of any policy support for non-complying activity rules governing these activities. Mr Bryce confirmed our concern that there is something of a policy vacuum as regards these activities and, as such, non-complying rule status is somewhat illusory – if there are no directly applicable objectives and policies, it is difficult to imagine that an application would ever not pass through the second statutory gateway in section 104D(1)(b). Put simply, if there are no objectives and policies that the application could be contrary to, the conclusion would inevitably be that the statutory precondition is satisfied. This is an unsatisfactory position in the structuring of Chapter 27 which ought to be filled and we agree with Mr Bryce that the corollary of a non-complying activity is a policy indicating that generally, these activities should be avoided.

264. However, the fact that there is a policy vacuum is not a sufficient justification for new policies to be inserted into the chapter, certainly where they would have a substantive effect on the implementation of the PDP’s provisions, in the absence of a submission seeking that relief.

265. In this case, there does not appear to be any submission seeking policies along the lines suggested by Mr Bryce and there is only one submission on the relevant rules<sup>122</sup> related to Rule 27.4.2(d) as notified (Rule 27.5.19 in our revised chapter). That submission, however, sought only that the rule be clarified. While we have approached the issue on the basis that a

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<sup>121</sup> Submission 806

<sup>122</sup> Submission 453

submission on a rule could provide a jurisdictional basis for consequential changes to objectives and policies if such changes can be said to be fairly and reasonably raised in the submission<sup>123</sup>, the submission in this case was associated with more general relief seeking that subdivisions around existing buildings should be controlled activities. We do not consider that the submission gives any jurisdiction for firming up on the non-complying status of the activity through a supporting policy.

266. Accordingly, we have concluded that while worthwhile, we do not have jurisdiction to accept Mr Bryce's recommendations in this regard.

267. For these reasons, the Chair recommended to the Council that policies be introduced by way of variation to address this policy gap in his Minute dated 22 May 2017. Having reviewed the policies recommended as above, we have concluded that they are the most appropriate way to achieve Objective 27.2.1, given the alternatives open to us, and the jurisdictional limitations we have discussed.

#### 4.3 Objective 27.2.2 and Policies Following

268. Objective 27.2.2. as notified read:

*"Subdivision design achieves benefits for the subdivider, future residents and the community."*

269. One submitter<sup>124</sup> sought that this objective be deleted. The evidence presented by the submitter did not seek to support this submission with detailed reasons. Given that the only other submissions on the objective sought its retention, we agree with Mr Bryce's recommendation that it should remain as notified. As Mr Bryce recorded<sup>125</sup>, the objective gives effect to the Proposed RPS (see in particular Objective 4.5) and the strategic direction of the PDP (see in particular recommended Objective 3.2.2.1). We therefore conclude that Objective 27.2.2 in its notified form is the most appropriate way to achieve the purpose of the Act in this context.

270. Policy 27.2.2.1, as notified read:

*"Ensure subdivision design provides a high level of amenity for future residents by aligning roads and allotments to maximise sunlight access."*

271. The only submission seeking to change this policy<sup>126</sup> sought that it be reworded to read:

*"Encourage roads and allotments to align in a manner that maximises sunlight access."*

272. Mr Bryce did not recommend that the suggested amendment be made. As he observed, it would weaken the outcome sought. That does not necessarily mean that it is not the most appropriate way to achieve the objective, but in this case, the evidence the submitter called did not support the relief sought. Indeed, Mr Wells pronounced himself broadly satisfied with the amendments Mr Bryce had recommended, and his reasons for his recommendations.

273. Accordingly, we likewise recommend no change to the suggested policy.

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<sup>123</sup> Refer the Legal advice received by the Hearing Panel from Meredith Connell dated 9 August 2016

<sup>124</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>125</sup> Updated Section 42A Report at 18.48

<sup>126</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277 and FS1283 and FS1316

274. Policy 27.2.2 as notified, read:
- “Ensure subdivision design maximises the opportunity for buildings to front the road.”*
275. There were no submissions on this policy and Mr Bryce recommended that it remain as notified.
276. For our part, we think amendment is required in line with the general submissions already noted, to make it clear that this policy applies to urban subdivisions, but otherwise agree that no change to it is required.
277. Accordingly, we recommend that the policy be amended to read:
- “Ensure subdivision design maximises the opportunity for buildings in urban areas to front the road.”*
278. Policy 27.2.2.3 as notified read:
- “Open spaces and reserves are located in appropriate locations having regard to topography, accessibility, use and ease of maintenance, and are a practicable size for their intended use.”*
279. Submission 632<sup>127</sup> sought that this policy be reworded to be more direct, starting with the verb “locate”.
280. The Council’s corporate submission<sup>128</sup> sought that reference to “use” and “practicable size” be deleted from the policy.
281. Mr Bryce supported the relief sought by Submission 632 in substance, while suggesting a grammatical change to better express the intent, having regard to the altered wording. Mr Bryce did not support the Council’s submission on the basis that size is relevant to future use.
282. We agree with Mr Bryce’s recommendation for the reasons that he set out in his evidence<sup>129</sup>. The stance advocated in the Council’s submission might in our view also be considered inconsistent with Policy 27.2.1.3. Accordingly, we recommend that Policy 27.2.2.3 be reworded to read:
- “Locate open spaces and reserves having regard to topography, accessibility, use and ease of maintenance, while ensuring these areas are a practicable size for their intended use.”*
283. Policy 27.2.2.4 as notified read:
- “Subdivision will have good and integrated connections and accessibility to existing and planned areas of employment, community facilities, services, trails, public transport in adjoining neighbourhoods.”*
284. Submission 524 sought that reference to community activities be inserted into this policy. Submission 632<sup>130</sup> sought a more comprehensive amendment so that the policy would read:

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<sup>127</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>128</sup> Submission 809

<sup>129</sup> Updated Section 42A Report at 18.50 and 18.52

<sup>130</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

*“Design subdivisions to achieve connectivity between employment locations, community facilities, services, recreation facilities and adjoining neighbourhoods.”*

285. Mr Bryce recommended acceptance of the suggestion in Submission 524 and rejection of the more comprehensive amendment sought in Submission 632 on the basis that the latter would weaken the outcomes sought in the policy. He did accept, however, that the policy needed to be expressed as a course of action rather than as an outcome, which we considered was a positive feature of that submission.
286. Mr Bryce also recommended expansion of the reference to adjoining neighbourhoods to make it clear that the neighbourhoods in question might be planned neighbourhoods, and that they might be either within the subdivision area or adjoining it. Having initially recommended that reference to trail connections be inserted<sup>131</sup>, after discussion with us at the hearing, Mr Bryce came around to the view that this was unnecessary given the initial reference to connections at the start of the policy. We agree with his position on both points, and with the reformatting Mr Bryce suggested, to have a numbered list of the matters being connected (subject in the latter case to some minor reformatting to standardise the style of the sub-policies with the balance of the Chapters).
287. We therefore largely accept Mr Bryce’s recommendations. It follows that we do not consider additional changes are required to address submissions 625 and 671<sup>132</sup>. We also do not agree that reference needs to be made to community activities rather than community facilities. The point being made in Submission 524 is that the current definition of “*community facilities*” is anomalous and needs to be corrected, among other things to include educational facilities. We agree with the underlying point (which has already been discussed in the Hearing Panel’s Report 3). There are two ways in which the issue can be addressed. The definition of “*community facilities*” could be revised and expanded. Alternatively, and more simply, the existing definition could simply be deleted. We prefer the latter approach. The existing definition serves no purpose (there is no community facility subzone in the PDP) and in its ordinary natural meaning, community facilities would include recreational facilities, which would address another point made in Submission 632. Accordingly, we recommend to the Hearing Panel on Stream 10 that the definition of “*community facilities*” be deleted.
288. Lastly, this is another policy that is specific to the urban environment, and this also needs to be made clear.
289. In summary, therefore, we recommend that Policy 27.2.2.4 be reworded to read:

*“Urban subdivision shall seek to provide for good and integrated connections and accessibility to:*

- a. existing and planned areas of employment;*
- b. community facilities;*
- c. services;*
- d. trails;*
- e. public transport; and*
- f. existing and planned neighbourhoods both within and adjoining the subdivision area.”*

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<sup>131</sup> Mr Bryce thought that this would address the relief sought in submissions 625 and 671 (seeking recognition in a policy for the need for trails as part of the subdivision process)

<sup>132</sup> We therefore recommended acceptance of Further Submission 1347

290. Policy 27.2.2.5 as notified read:

*“Subdivision design will provide for safe walking and cycling connections that reduce vehicle dependence within the subdivision.”*

291. The only submission seeking to amend this policy was Submission 632<sup>133</sup>, which sought that it be reworded to read:

*“Encourage walking and cycling and discourage vehicle dependence through safe connections between and within neighbourhoods.”*

292. We think that consideration of this policy needs to occur in tandem with consideration of the following Policy (27.2.2.6) which read as notified:

*“Subdivision design will integrate neighbourhoods by creating and utilising connections that are easy and safe to use for pedestrians and cyclists.”*

293. Submission 632 sought that that policy be deleted<sup>134</sup>. When we discussed these two policies with Mr Bryce, he agreed with our initial view that there is a significant degree of duplication between them. Mr Bryce recommended that they be combined into one policy in his reply evidence. We concur.

294. To that extent, we agree also with the thinking underlying Submission 632.

295. We agree, however, with Mr Bryce that the wording proposed in Submission 632 would soften the policy too much, and thus would not be the most appropriate way to achieve the objective.

296. We therefore agree with Mr Bryce’s suggested rewording save that this is another urban focussed policy. We therefore recommend an amendment to make that clear.

297. In summary, we recommend that policies 27.2.2.5 and 27.2.2.6 be combined as new Policy 27.2.2.5 reading as follows:

*“Urban subdivision design will integrate neighbourhoods by creating and utilising connections that are easy and safe to use for pedestrians and cyclists, and that reduce vehicle dependence within the subdivision.”*

298. Policy 27.2.2.7 as notified read:

*“Encourage innovative subdivision design that responds to the local context, climate, land forms and opportunities for views or shelter.”*

299. The only submission seeking to amend this policy<sup>135</sup> sought deletion of the word “innovative”.

300. Mr Bryce did not recommend that that submission be accepted, and the submitter did not pursue the point when they appeared at the hearing. When we discussed the matter with Mr Bryce, he agreed that reference to innovative design was not necessary in the policy, but he felt that innovation was something to be encouraged. We agree and, accordingly, we

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<sup>133</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>134</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>135</sup> Submission 453



recommend that the policy remain without change (other than by being renumbered 27.2.2.6).

301. Policy 27.2.2.8 as notified, read:

*“Encourage informal surveillance of streets and the public realm for safety by requiring that the minority of allotments within a subdivision are fronting, or have primary access to, cul-de-sacs and private lanes.”*

302. Submission 632<sup>136</sup> sought that this policy be deleted. Mr Bryce did not recommend any amendment to it.

303. In our view, this policy needs to be considered in tandem with the following policy (27.2.2.9) which as notified, read:

*“Encourage informal surveillance for safety by ensuring open spaces and transport corridors are visible and overlooked by adjacent sites and dwellings.”*

304. Submission 632 was again the only submission seeking substantive change to Policy 27.2.2.9, so that it would read:

*“Promote safety through overlooking of open spaces and transport corridors from adjacent sites and dwellings and effective lighting.”*

305. Mr Bryce supported this relief in part. The exception was that he thought that retaining specific reference to ‘*informal surveillance*’ provided greater clarity.

306. Stepping back from these policies, we think there is substantial duplication between them. Streets in the public realm are open spaces (as well as being transport corridors). We agree with Mr Bryce that the concept of information surveillance is a helpful one. However, we also think that there is a case for informal surveillance of cul-de-sacs and private lanes on safety grounds.

307. Lastly, this is another policy that is specific to urban areas and this should be made clear.

308. In summary, therefore, we recommend acceptance of Submission 632 by deletion of notified Policy 27.2.2.8 and acceptance in part of that submitter’s relief in relation to the following policy, so that the end result is one policy, renumbered 27.2.2.7, reading:

*“Promote informal surveillance for safety in urban areas through overlooking of open spaces and transport corridors from adjacent sites and dwellings and by effective lighting.”*

309. In his Section 42A Report, Mr Bryce recommended inclusion of another policy addressing subdivision near electricity transmission corridors with reference to amenity and urban design outcomes and to minimising potential reverse sensitivity effects.

310. Mr Bryce’s recommendation reflected his consideration of a submission by Transpower New Zealand Limited<sup>137</sup> seeking a new objective of reverse sensitivity effects on the National Grid.

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<sup>136</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>137</sup> Submission 805: Supported in FS1211

As already discussed, Mr Bryce recommended that this matter be addressed through a new policy supporting objective 27.2.2. Also as above, we agreed with that recommendation.

311. Ms McLeod gave evidence for Transpower supporting, in principle, Mr Bryce's recommendation, but seeking amendments to the language that he had suggested. Specifically, Ms McLeod suggested that the policy be specific to the National Grid (she opposed, in particular, an amendment to expand it to cover the Aurora Line Network), broadening it to talk about potential direct effects on the National Grid, not just reverse sensitivity effects, and lastly amending it to require avoidance of such effects, rather than their minimisation. She was of the opinion that these amendments were necessary to better give effect to the NPSET 2008.

312. We also need to consider, in this context, the relief sought by Aurora Energy Limited<sup>138</sup>, which was addressed in the submissions of Ms Irving and the evidence of Ms Dowd. Aurora had already sought, in the Stream 1B hearing, recognition of what it described as critical electricity lines (66kV 33kV and 11Kv sub-transmission and distribution lines of strategic importance to its line network, and to its customers). Aurora sought a new policy that would read:

*"Avoid, remedy or mitigate reverse sensitivity effects on infrastructure."*

313. In his reply evidence, Mr Bryce agreed with the amendments suggested by Ms McLeod in her evidence and recommended that the policy be expanded to cater for sub-transmission lines, as sought by Aurora. Mr Bryce drew on recommendations which Mr Barr had made to the Hearing Panel considering Chapter 30 (Stream 5) of the PDP suggesting that the Aurora's sub-transmission lines needed to be specifically recognised through an amended policy and rule framework.

314. In its Report 3, the Hearing Panel recommended that the primary focus at a strategic level should be on regionally significant infrastructure. Further, that identification of what is regionally significant should primarily be a matter for the Regional Council. The Hearing Panel noted in this regard that the Proposed RPS deliberately excludes electricity transmission infrastructure that does not form part of the National Grid when identifying infrastructure that is regionally significant.

315. As Ms Irving put to us, however, the fact that the Regional Council has not chosen to class Aurora's line network (or components thereof) as being regionally significant, does not mean that the PDP should not provide for it at a more detailed level. Ms Irving also drew to our attention provisions of the Proposed RPS making provision for electricity distribution infrastructure. We note in particular Policy 4.4.5 of the Proposed RPS which states:

*"Protect electricity distribution infrastructure, by all of the following:*

*a. Recognising the functional needs of electricity distribution activities;*

*b. Restricting the establishment of activities that may result in reverse sensitivity effects;*

*c. Avoiding, remedying or mitigating adverse effects from other activities on the functional needs of that infrastructure;*

*d. Protecting existing distribution corridors for infrastructure needs, now and for the future."*

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<sup>138</sup> Submission 635: Supported in FS1211

316. Mr Bryce's recommendation in his reply evidence was that the appropriate policy to pick up on these issues should read:

*"Manage subdivision within or near to electricity transmission corridors and electricity sub-transmission lines to facilitate good amenity and urban design outcomes, while avoiding potential adverse effects (including reverse sensitivity effects) on the National Grid and electricity sub-transmission lines."*

317. We have a number of difficulties with that suggested policy wording. First, focussing on the National Grid and on what is required to implement the NPSET 2008, policy 10 of that document requires that *"decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised."*

318. As noted in the report of the Hearing Panel considering Chapter 4<sup>139</sup> inclusion of the qualifier *"to the extent reasonably possible"* means that this is not the same thing as requiring that all adverse effects be avoided, given the guidance we have from the Supreme Court in *King Salmon* as to what the latter means. The Hearing Panel's conclusion was that it was both consistent with the NPSET 2008 and appropriate that reverse sensitivity effects on regionally significant infrastructure be minimised. We take the same view in this context.

319. We do agree though with Ms McLeod and Mr Bryce that the focus should not solely be on reverse sensitivity effects. Certainly, with the National Grid, direct effects need to be managed so as to avoid compromising the operation, maintenance, upgrading and development of the National Grid *"to the extent reasonably possible"*.

320. Turning to the Aurora Network, while the Regional Council has confirmed that it is not regionally or nationally significant, it is clearly important to the health and wellbeing of the District's people and communities.

321. Neither the Proposed RPS nor Aurora's own submission would, however, support a policy of avoiding reverse sensitivity effects on the Aurora line network.

322. As above, the Proposed RPS talks in terms of avoiding, remedying or mitigating adverse effects from other activities *"on the functional needs"* of electricity distribution infrastructure. Aurora's submission, as above, seeks that reverse sensitivity effects be avoided, remedied or mitigated.

323. The other point to note is that the Proposed RPS addresses the requirements of electricity distribution infrastructure which it defines as *"lines and associated equipment used for the conveyance of electricity on lines other than lines that are part of the National Grid."*

324. In other words, it makes no distinction between different elements of line networks like those of Aurora. Accordingly, we take the view that introducing some subset of the Aurora Network (e.g. sub-transmission lines) is likely only to promote confusion, especially given that Aurora's own submission does not seek a higher level of protection from reverse sensitivity effects than the Proposed RPS would require for the entire distribution network. We note also that the Hearing Panel considering Chapter 30 (Report 8) has recommended that Aurora's submissions

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<sup>139</sup> Report 3 at [937]

(and the Staff Recommendation) that sub-transmission lines be recognised in separate objectives, policies and rules in that chapter not be accepted.

325. We also think that the reference to electricity transmission corridors needs to be clarified. Policy 11 of the NPSET 2008 requires identification of buffer corridors around elements of the National Grid and Ms McLeod agreed that the appropriate reference in the rules would be to the National Grid Corridor. We consider that this policy should likewise refer to the National Grid Corridor. Also, having defined a buffer corridor, the focus should be on activities within that corridor. It is only other electricity lines, where a corridor has not been defined, where nearby subdivision might be an issue.
326. In summary, we recommend that a new policy be inserted as 27.2.2.8 reading:
- “Manage subdivision within the National Grid Corridor or near to electricity distribution lines to facilitate good amenity and urban design outcomes, while minimising potential adverse effects (including reverse sensitivity effects) on the National Grid and avoiding, remedying or mitigating adverse effects (including reverse sensitivity effects) on electricity distribution lines.”*
327. Submission 632<sup>140</sup> sought a new policy in this section related to heritage values. Mr Bryce’s view was that that matters the policy would address were already adequately covered in existing policies. We concur – see in particular the policies related to Objective 27.2.4 that we will discuss shortly.
328. The other submission seeking a new policy in this part of the Chapter we should discuss at this time is that of Queenstown Airport Corporation<sup>141</sup> seeking a new policy that would discourage activities *“that encourage the congregation of birds within aircraft flight paths.”*
329. This is of course linked to the point we discussed in the context of the default subdivision rules, as to whether the potential bird strike should be a matter of discretion reserved for consideration.
330. While, as already noted, Mr Bryce recommended that provision should be made in the rules as sought by QAC, he did not reconsider the recommendation in his Section 42A Report that this was not an appropriate matter for a new policy.
331. For our part, the same reasoning that prompted us to reject the QAC submission in the context of a specific discretion of the rules leads us to the view that it should not be provided for in a policy either. Put simply, QAC did not provide us with the evidential foundation for a policy and having decided that it is not appropriate to leave it as a discretion within the rules, it would be inconsistent to insert a policy to the same effect.
332. Accordingly, we recommend that the QAC submission be rejected.
333. Having reviewed the policies discussed above and the alternatives open to us, we record our view that policies 27.2.1-27.2.8 recommended above are the most appropriate way in which to achieve Objective 27.2.2.

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<sup>140</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>141</sup> Submission 433: Opposed in FS1097 and FS1117

#### 4.4 Objective 27.2.3 and Policies Following

334. Objective 27.2.3 as notified read as follows:

*“Recognise the potential of small scale and infill subdivision while acknowledging that the opportunities to undertake comprehensive design are limited.”*

335. Submissions seeking to *amend* this objective sought either to soften the last phrase (to say that opportunities may be limited *“in some circumstances”*)<sup>142</sup> or to convert it into a policy with slightly amended wording<sup>143</sup>.

336. Mr Bryce considered that the notified objective does indeed read like a policy. Rather than converting it to a policy, however, as sought by Submission 632, he recommended amendments to reframe it as an outcome. Mr Bryce’s suggested rewording also addressed the point taken in Submission 208. While the Hearing Panel has had difficulty in other contexts with the language now recommended by Mr Bryce (recognise and provide for)<sup>144</sup>, the following policies flesh out how small-scale and infill subdivision might be recognised and provided for and thus, in this context, we regard it as acceptable. We do think that the focus of the objective is on the potential of small scale and infill subdivision in urban areas and that this should be made clear. Small scale subdivision in rural areas raises different, and not necessarily positive, issues. Otherwise, we recommend that Mr Bryce’s wording be accepted with only minor grammatical changes, with the result that the objective would read:

*“The potential of small scale and infill subdivision in urban areas is recognised and provided for while acknowledging their design limitations.”*

337. For the reasons set out above, and given the jurisdictional limitations on our choosing any alternative rewording, we consider that this objective is the most appropriate way to achieve the purpose of the Act as it relates to small scale and infill subdivision.

338. Policy 27.3.2.1, as notified, read as follows:

*“Acknowledge that small scale subdivision, (for example subdivision involving the creation of fewer than four allotments) and infill subdivision where the subdivision involves established buildings, might have limited opportunities to give effect to policies 27.2.2.4, 27.2.2.6 and 27.2.2.8.”*

339. There were no submissions seeking amendment to this policy and Mr Bryce recommended that the sole submission supporting it<sup>145</sup> be accepted on the basis that the policy provided clear guidance and was effective in guiding plan users as the intent of the objective. He therefore recommended that the policy be retained as notified, other than to revise the numbering of the policy cross references to reflect other recommendations.

340. We agree in substance with that position. As with the objective, we think that the policy is focussing on small scale subdivision in urban areas (that is the focus of the cross-referenced

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<sup>142</sup> Submission 208

<sup>143</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>144</sup> Refer Report 3 at Section 1.9

<sup>145</sup> Submission 691

policies). It should make that clear. The only other amendment we suggest is to clarify what “*acknowledgement*” means in this context. Logically, it must mean that the design limitations are accepted.

341. Accordingly, we recommend that the policy be slightly amended from Mr Bryce’s recommendation to read:

*“Accept that small scale subdivision in urban areas, (for example subdivision involving the creation of fewer than four allotments), and infill subdivision where the subdivision involves established buildings, might have limited opportunities to give effect to policies 27.2.2.4, 27.2.2.5 and 27.2.2.7.”*

342. Policy 27.2.3.2 as notified read:

*“While acknowledging potential limitations, encourage small scale and infill subdivision to:*

- *Ensure lots are shaped and sized to allow adequate sunlight to living in outdoor spaces, and provide adequate on-site amenity and privacy;*
- *Where possible, locate lots so that they over-look and front road and open spaces;*
- *Where possible, avoid the creation of multiple rear sites Where buildings are constructed with the intent of a future subdivision, encourage site and development design to maintain, create and enhance positive visual coherence of the development with the surrounding neighbourhood;*
- *Identify and create opportunities for connections to services and facilities in the neighbourhood.”*

343. The only submissions seeking amendment of this policy sought variously *qualification* of the third bullet point to insert a practicability test<sup>146</sup> or its deletion<sup>147</sup>.

344. Mr Bryce recommended that the substance of Submission 453 be accepted. He preferred, however, to delete all reference to *possibilities*. Mr Bryce also recommended reformatting so that, rather than setting subparagraphs as bullet points, numbered sub policies be used.

345. The evidence advanced by Submitter 632 did not support the relief sought on this policy and we thus have no evidential basis to consider its deletion.

346. We agree with Mr Bryce’s preference that the policy not speak in terms of what is possible, but rather in terms of what is practicable. We also agree that alphanumeric listing sub-policies, will assist future reference to them, subject to minor reformatting for consistency. As with the objective, however, the application of the policy should be related to urban subdivision.

347. Accordingly, we recommend that Policy 27.2.3.2 be reworded as follows:

*“While acknowledging potential limitations, encourage small scale and infill subdivision in urban areas to:*

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<sup>146</sup> Submission 453

<sup>147</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

- a. ensure lots are shaped and sized to allow adequate sunlight to living areas and outdoor spaces, and provide adequate on-site amenity and privacy;
- b. where possible, locate lots so that they over-look and front road and open spaces;
- c. avoid the creation of multiple rear sites, except where avoidance is not practicable;
- d. where buildings are constructed with the intent of a future subdivision, encourage site and development design to maintain, create and enhance positive visual coherence of the development with the surrounding neighbourhood;
- e. identify and create opportunities for connections to services and facilities in the neighbourhood.”

348. Having considered the alternatives open to us, we have concluded that Policies 27.2.3.1 and 27.2.3.2 as amended above, are the most appropriate way in which to achieve Objective 27.2.3.

#### 4.5 Objective 27.2.4 and Policies Following

349. Objective 27.2.4 as notified read:

*“Identify, incorporate and enhance natural features and heritage”.*

350. A number of submissions supported this objective<sup>148</sup>. One submission sought its deletion<sup>149</sup>. Another submission<sup>150</sup> sought that the objective be reworded to read:

*“Identify and where possible incorporate and enhance natural features and heritage values within subdivision design.”*

351. Mr Bryce recommended rejection of the submission seeking deletion of this objective, pointing to strategic objectives seeking to protect heritage values<sup>151</sup>. Mr Bryce, however, thought elements of the relief sought in Submission 806 should be accepted – to refer to heritage values and to reference subdivision design – and that the term *“natural features”* be clarified so as to remove the potential that it might be seen as restricted to ONFs. Mr Bryce noted in this regard that the policies seeking to achieve this objective focussed, among other things, on biodiversity values. Mr Bryce also recommended that the objective be restructured to be expressed as an outcome rather than a course of action.

352. Mr Bryce did not specifically discuss the request in Submission 806 that the objective be qualified by a reference to what is possible. We do not consider that the outcome sought needs to be softened in the manner suggested. While it is obviously correct that subdivision design cannot enhance, for instance, natural features in all cases, it does not mean that that should not be the aspiration of the PDP. It is for the policies to provide a more nuanced course of action.

353. Accordingly, we agree with Mr Bryce’s recommendations with the result that Objective 27.2.4 would be revised to read:

*“Natural features, indigenous biodiversity and heritage values are identified, incorporated and enhanced within subdivision design.”*

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<sup>148</sup> Submissions 117, 339, 426 and 706: Opposed in FS1162

<sup>149</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>150</sup> Submission 806

<sup>151</sup> Refer recommended Objective 3.2.3.2

354. We consider that this objective is the most appropriate way to achieve the purpose of the Act in this context having regard to the strategic objectives we have recommended in Chapter 3 and the alternatives available to us.

355. Policy 27.2.4.1 as notified read:

*“Enhance biodiversity, riparian and amenity values by incorporating existing and planned waterways and vegetation into the design of subdivision, transport corridors and open spaces.”*

356. Submissions seeking substantive amendment to this policy included a request that it commence *“where possible and practical enhance...”*<sup>152</sup>, seeking that the words *“and protecting”* be added<sup>153</sup>, and seeking its amendment to read:

*“Incorporate existing and planned waterways and vegetation into the design of subdivision, transport corridors and open spaces, as a means of mitigating effects and where possible enhancing biodiversity, riparian and amenity values.”*<sup>154</sup>

357. Mr Bryce did not recommend acceptance of a policy seeking to soften the focus on enhancement of relevant values. Addressing Submission 453 specifically, he felt that the relief sought would weaken the intent of the policy which, in his view, responded to the outcomes of the strategic directions in Chapter 3 and was consistent with sections 6(a) and 7(c) of the Act.

358. By the same token, however, Mr Bryce did not recommend acceptance of Submission 809 since that would be going further than the notified objective that the policy seeks to achieve.

359. While we understand and agree with Mr Bryce’s reasoning, in principle, we do not consider that he has addressed the fundamental issue posed by Submissions 453 and 806, namely that it will not always be possible to achieve enhancement of biodiversity, riparian and amenity values through subdivision design. Removal of existing vegetation may also, in some cases, be desirable as a means to enhance biodiversity values given that that term will encompass everything from pristine indigenous bush to wilding pines and gorse. Similarly, if an existing waterway is low in natural values, its incorporation into subdivision design may not be desirable.

360. The qualifications suggested in Submissions 806 (*“where possible”*) and 453 (*“where possible and practical”*) go too far, however, and, as Mr Bryce notes, would weaken the intent of the policy.

361. To address these points, we recommend that the policy be revised to read:

*“Incorporate existing and planned waterways and vegetation into the design of subdivision, transport corridors and open spaces where that will maintain or enhance biodiversity, riparian and amenity values.”*

362. Policy 27.2.4.2 as notified, read:

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<sup>152</sup> Submission 453

<sup>153</sup> Submission 809: Opposed in FS1097

<sup>154</sup> Submission 806



*“Ensure that subdivision and changes to the use of land that results from subdivision do not reduce the values of heritage items and protected features scheduled or identified in the District Plan.”*

363. Submissions on this policy either supported it<sup>155</sup> or sought its deletion<sup>156</sup>.
364. Mr Bryce noted the direct connection between the policy and the notified objective and accordingly recommended that the policy remain in its existing form.
365. We agree that the policy responds directly to the objective and should be retained. Consequent on the Hearing Panel’s recommendations in relation to management of heritage values<sup>157</sup> we recommend minor changes to be consistent with the recommended form of Chapter 26, as follows:

*“Ensure that subdivision and changes to the use of land that result from subdivision do not reduce the values of heritage features and other protected items scheduled or identified in the District Plan.”*

366. Policy 27.2.4.3 as notified read:  
*“The Council will support subdivision design that includes the joint use of stormwater and flood management networks with open spaces and pedestrian/cycling transport corridors and recreational opportunities where these opportunities arise.”*
367. Submissions on this policy ranged between support for it in its current form<sup>158</sup>, its deletion<sup>159</sup>, its amendment to address situations where joint use may not be appropriate because of resulting adverse effects on the environment<sup>160</sup>, and amendment to remove the focus on the Council’s actions, substituting *“encourage”* at the front of the policy<sup>161</sup>.
368. Mr Bryce supported the policy direction of this policy, but recommended that it be relocated to fall under Objective 27.2.5. Given that that objective relates to infrastructure and services, including stormwater and flood management, we agree. We will return to the point in that context. Accordingly, we accept Mr Bryce’s recommendation and recommend that the policy should be deleted from section 27.2.4.
369. Policy 27.2.4.4 as notified read:  
*“Encourage the protection of heritage and archaeological sites, and avoid the unacceptable loss of archaeological sites.”*
370. Submissions on this policy either sought its deletion<sup>162</sup> or clarification of what *“unacceptable loss”* means<sup>163</sup>.

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<sup>155</sup> Submissions 339, 706: Opposed in FS1162

<sup>156</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>157</sup> See Section 6.5 of Report 4

<sup>158</sup> Submissions 339 and 706: Opposed in FS1162

<sup>159</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>160</sup> Submission 117 – noting that the Summary of Submissions did not correctly record the relief sought in this submission.

<sup>161</sup> Submission 806

<sup>162</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>163</sup> Submission 806

371. Mr Bryce recommended that this policy be retained in his Section 42A Report while agreeing with Submission 806 that the term “*unacceptable loss*” was not easily defined. Mr Bryce drew attention, in particular, to the strength of the intention underlying the policy. When we discussed the point with him, he accepted that the term is problematic, but frankly acknowledged that he was having difficulty identifying an alternative form of words that was suitable. When he returned to the point in reply, Mr Bryce drew on the Council staff reply on Chapter 26 suggesting that the term “*unacceptable*” should be deleted and the policy amended to focus on avoidance in the first instance, and to mitigation proportionate to the level of significance of the feature where avoidance cannot reasonably be amended.
372. Mr Bryce also suggested that the opening words of the policy should be “*provide for*” rather than “*encourage*” on the basis that this would better align with the provisions of the Act.
373. While Mr Bryce’s suggested amendment to this policy does indeed provide the clarification which Submission 806 sought, we have a degree of unease regarding the extent to which this policy will have moved if we accept Mr Bryce’s recommendation on that relatively slender jurisdictional base. We note that Submission 806 suggested (in the reasons for the relief sought) that regard should be had to the relative significance of the archaeological site when determining what loss is unacceptable, but Mr Bryce suggests moving that concept some distance. We are also concerned about the proposed amendment to the start of the policy which would make it more restrictive without any submission having sought that end result.
374. Standing back from these concerns, we note that there is significant duplication between this policy and the notified Policies 27.2.4.2 (addressing retention of the values of heritage features) and 27.2.4.6 (regarding protection of archaeological sites). We have come to the view that rather than attempt to massage an unsatisfactory policy with limited assistance from submissions suggesting viable alternatives, the better course is to delete this policy and rely on the other policies just noted to address heritage and archaeological aspects of the relevant objective. We therefore recommend that notified Policy 27.2.4.4 be deleted (i.e. that Submission 632 be accepted).
375. Policy 27.2.4.5 as notified read:
- “Ensure opportunity for the input of the applicable agencies where the subdivision and resulting development could modify or destroy any archaeological sites.”*
376. The only submissions on this policy<sup>164</sup> sought its deletion.
377. Mr Bryce recommended that those submissions be accepted on the basis that the policy simply duplicates a process already entrenched in the Act and in other legislation. In particular, in his view, the Act would replicate the statutory requirements under the Heritage New Zealand Pouhere Taonga Act 2014.
378. We agree with Mr Bryce’s reasoning. As he notes, the proposed rules of Chapter 27 provide for consideration whether Heritage New Zealand is an affected party in any given case. Heritage New Zealand exercises control over modification or destruction of archaeological sites under its own Act and we do not think it is necessary to provide for its involvement in a policy of this kind. We also note that Heritage New Zealand was not among the further submitters opposing deletion of this policy.

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<sup>164</sup> Submissions 632 and 806: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

379. We therefore recommend deletion of notified Policy 27.2.4.5.

380. Policy 27.2.4.6 as notified, read:

*“Encourage subdivision design to protect and incorporate archaeological sites or cultural features, recognising these features can contribute to and create a sense of place. Where applicable, have regard to Maori culture and traditions in relation to ancestral lands, water, sites, wahi tapu and other taonga.”*

381. One submission sought deletion of this policy<sup>165</sup>. Another submission sought its amendment to refer to protection of archaeological sites or cultural features where possible<sup>166</sup>.

382. Mr Bryce did not recommend acceptance of either submission. In his view, the notified policy is effective in implementing the outcomes of the relevant objective. As regards the amendments sought in Submission 806, Mr Bryce suggested to us that they did not adequately respond to sections 6(e) and 6(f) of the Act.

383. We agree with Mr Bryce’s reasoning, while noting that he might also have drawn support for his position from the Proposed RPS. Given our recommendation, as above, that notified Policy 27.2.4.4 be deleted, it is important that the provision for protection of archaeological sites and cultural features in Policy 27.2.4.6 be retained. Indeed, were there jurisdiction to consider it, the provisions noted by Mr Bryce, along with the Proposed RPS, would have justified, if anything, a more directive policy stance. As regards the specific concern expressed in Submission 806 that provision for cultural features is problematic if they are not clearly identified, we understand this will be addressed in a subsequent stage of the District Plan review process.

384. Accordingly, we recommend that notified Policy 27.2.4.6 be retained unamended, other than to renumber it 27.2.4.3.

385. Notified Policy 27.2.4.7 read:

*“Encourage initiatives to protect and enhance landscape, vegetation and indigenous biodiversity by having regard to:*

- a. *Whether any landscape features or vegetation are of a sufficient value that they should be retained and the proposed means of protection;*
- b. *Where a reserve is to be set aside to provide protection to vegetation and landscape features, whether the value of the land so reserved should be off-set against the development contribution to be paid for open space and recreation purposes.”*

386. Submissions seeking change to this policy sought amendment to the wording of the second bullet point to make offsetting more certain<sup>167</sup>, amendment to the second bullet point to

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<sup>165</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>166</sup> Submission 806

<sup>167</sup> Submission 453

express it in a slightly different way<sup>168</sup> and extension of the policy to encourage initiatives for provision of public access to natural features and heritage<sup>169</sup>.

387. Mr Bryce did not support any of the suggested changes on the basis that none of them would make the notified policy any more effective.
388. We agree with that recommendation. The development contribution is imposed under the Local Government Act. Accordingly, it would be inappropriate for a policy in the PDP to purport to constrain how it should operate. Like Mr Bryce, we are unconvinced that the wording amendments suggested in Submission 809 improve the policy. Lastly, submitter 806 provided no evidence that would provide us with a basis for accepting the extent of the proposed extension to the policy.
389. In summary, we therefore recommend that notified Policy 27.2.4.7 be retained unamended other than to renumber it 27.2.4.4 and to convert the bullet points of the notified version to alphanumeric sub-paragraphs, together with minor reformatting.
390. Lastly under Objective 27.2.4, the Council's corporate submission<sup>170</sup> sought inclusion of a new policy to support the objective that would read:
- "Ensure that new subdivision and developments recognise, incorporate and where appropriate, enhance existing established protected vegetation and where practicable ensure that this activity does not adversely impact on protected vegetation."*
391. The suggested new policy is opposed on the basis that it is unnecessary.
392. In his Section 42A Report, Mr Bryce recommended acceptance of an amended version of the suggested new policy deleting the final clause commencing *"and where practicable"*. In Mr Bryce's view, such a policy would better give effect to what was the notified section 3.2.4 goal (and is now recommended Objective 3.2.4).
393. When we discussed the point with him, we expressed some concern that the policy lacked guidance as to the criteria for determining appropriateness. Mr Bryce agreed that this was a gap in the proposed wording. In his reply evidence, Mr Bryce recommended deleting the term *"where appropriate"*, substituting a reference to *"suitable measures to enhance existing established protected indigenous vegetation"* and inserting further guidance as to what suitable measures might include – such things as protective fencing, destocking, removal of existing wilding species and invasive weeds or active ecological restoration.
394. Mr Bryce's suggested addition to the policy rather tended to miss the point we were making, namely that the policy needed to identify when it would be appropriate to require enhancement measures.
395. Mr Bryce's suggested addition also takes the policy a significant distance further than the relief proposed in Submission 809.
396. Stepping back from the detail, Mr Bryce did not explain to us why, if indigenous vegetation was already protected, it was necessary to ensure its enhancement in this context. It seems

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<sup>168</sup> Submission 809

<sup>169</sup> Submission 806

<sup>170</sup> Submission 809: Opposed in FS1097

to us that these matters are better addressed in the policies establishing the protection of indigenous vegetation.

397. In summary, we do not agree that this policy, or some amendment thereof is the most appropriate way in which to achieve Objective 27.2.4. Accordingly, we do not recommend its inclusion.
398. Having reviewed the four policies we have recommended as above, we consider that collectively, having regard to the alternatives open to us, they represent the most appropriate way to achieve Objective 27.2.4.

#### 4.6 Objective 27.2.5 and Policies Following

399. Notified Objective 27.2.5 read:

*“Require infrastructure and services are provided to lots and developments in anticipation of the likely effects of land use activities on those lots and within overall developments.”*

400. A number of submissions supported this objective. Submissions seeking substantive change to it included those seeking its deletion<sup>171</sup>, a request to delete reference to likely effects<sup>172</sup> and a request to make that deletion combined with a statement that subdivision development not adversely affect the National Grid<sup>173</sup>.
401. Mr Bryce’s consideration of this objective started with the observation (that we agree with) that although supposedly an objective, it does not read like an outcome statement.
402. In addition, given the range of policies specified in this section of Chapter 27, we do not consider that reference to likely effects of land use activities accurately captures the intention underlying this provision (as evidenced by the policies seeking to achieve it).
403. It follows that, like Mr Bryce, we largely accept the relief sought in Submission 635.
404. While we accept the need to ensure that subdivision and development that might potentially affect the National Grid needs to be managed in accordance with the NPSET 2008, this objective (or the policies under it<sup>174</sup>) does not seem to be the correct vehicle for that management given that it focusses on infrastructure and services to lots and developments rather than the effects of subdivision and development. We note that Ms McLeod, giving evidence on behalf of Transpower New Zealand Ltd, agreed with Mr Bryce’s recommendation that the amendments sought in Submission 805 not be accepted.
405. Lastly, given that provision of infrastructure and services to new lots is a key aspect of the management of subdivision and development, it would clearly not be appropriate or consistent with the purpose of the Act to delete this objective.
406. Ideally the objective would give some guidance as to the nature and extent of infrastructure and services provided to new subdivisions and developments, but the requirements of subdivisions are so many and varied in this regard that a concise summary of the desired outcome is a challenge. Mr Bryce did not recommend that we go down that path and none of

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<sup>171</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>172</sup> Submission 635: Opposed in FS1097

<sup>173</sup> Submission 805

<sup>174</sup> Addressing the relief sought in Submissions 635 and 805, supported in FS1211 in this regard

the submissions seeking amendment to the objective provided any suggestions that we could adopt or adapt.

407. In summary, therefore, we accept Mr Bryce's recommendation that Objective 27.2.5 should be amended to state simply:

*"Infrastructure and services are provided to new subdivisions and developments."*

408. For the reasons set out above, given the alternatives open to us, we consider this objective the most appropriate way to achieve the purpose of the Act in this context.

409. The first group of five policies under Objective 27.2.5 relate to transport, access and roads.

410. Policy 27.2.5.1 as notified read:

*"Integrate subdivision roading with the existing road networks in an efficient manner that reflects expected traffic levels and the provision for safe and convenient walking and cycling."*

411. Submissions on it variously sought its retention<sup>175</sup>, and an amendment to refer to both safe and efficient integration of roading<sup>176</sup>.

412. We note also Submission 798<sup>177</sup>, requesting that in considering subdivisions and development, provisions require the inclusion of links and connections to public transport and infrastructure, not just walking and cycling linkages.

413. Mr Bryce recommended acceptance of the wording amendments sought in Submission 805. He noted that the relief sought in Submission 798 is provided for within Policy 27.2.5.3. Lastly, Mr Bryce recommended an amendment to refer to potential traffic levels rather than expected traffic levels – to reflect the fact that the Code of Practice states that development design *"shall ensure connectivity to properties and roads that have been developed, or that have the potential to be developed in the future."*

414. This recommendation prompted us to discuss with Mr Wallace how potential traffic levels might be ascertained. Mr Wallace's response was that, in his mind, it was linked to the PDP zoning, which sets out what is anticipated by the PDP.

415. In his reply evidence, Mr Bryce picked up on Mr Wallace's evidence and suggested a clarification be inserted to this effect.

416. We agree with Mr Bryce's recommendation that Submission 719 should be accepted and that Submission 798 is appropriately addressed in another policy. We do not think, however, that the suggested amendment substituting *'potential'* for *'expected'* is necessary, particularly if it implies a substantive change to the policy unsupported by a submission seeking that relief. Given Mr Wallace's clarification (which we think is helpful), the traffic levels of relevance are those that are expected into the future, having regard to the zoning of the area. We think a slight amendment is required of the suggested clarification because the PDP zoning does not itself anticipate or provide for traffic levels. Traffic levels are the result of the zone provisions being implemented. We regard this as a minor non-substantive change.

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<sup>175</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>176</sup> Submission 719

<sup>177</sup> Supported in FS1097

417. In summary, therefore, we recommend that Policy 27.2.5.1 be amended to read:

*“Integrate subdivision roading with the existing road networks in a safe and efficient manner that reflects expected traffic levels and the provision for safe and convenient walking and cycling.*

*For the purposes of this policy, reference to ‘expected traffic levels’ refers to those traffic levels anticipated as a result of the zoning of the area in the District Plan.”*

418. Notified Policy 27.2.5.2 read:

*“Ensure safe and efficient pedestrian, cycle and vehicular access is provided to all lots created by subdivision and to all developments.”*

419. The only substantive change sought to this policy<sup>178</sup> would specify that access is along roads and delete reference to developments.

420. Mr Bryce did not recommend acceptance of the suggested changes because he did not believe that they made the policy more effective.

421. We agree. Safe and efficient pedestrian and cycle access to lots might not necessarily be along roads and the evidence for Submitter 632 did not explain to us why reference to developments should be deleted.

422. Accordingly, we recommend retention of Policy 27.2.5.2 unamended.

423. Policy 27.2.5.3 as notified read:

*“Provide trail, walking, cycle and public transport linkages, where useful linkages can be developed.”*

424. The only submission seeking a material change to this policy was Submission 632, seeking its deletion<sup>179</sup>. Once again, the submitter did not seek to support this position in evidence. Mr Bryce did not recommend acceptance of that submission, but he did suggest that Submission 798 noted above might appropriately be addressed by a reordering of this policy to shift reference to public transport to the front of the policy. We agree with Mr Bryce’s view that with some minor grammatical amendments, the suggested revisions make the policy clearer. Accordingly, we recommend that Policy 27.2.5.3 be revised to read:

*“Provide linkages to public transport networks, and to trail, walking and cycling networks, where useful linkages can be developed.”*

425. Policy 27.2.5.4 as notified read:

*“The design of subdivision and roading networks to recognise topographical features to ensure the physical and visual effects of subdivision and roading are minimised.”*

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<sup>178</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>179</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

426. The policy is the subject of two substantive submissions. The first<sup>180</sup> opposed the policy as being too open to differing interpretations. The second<sup>181</sup> suggested that it be revised to read:

*“Encourage the design of subdivision and roading networks to recognise and accommodate pre-existing topographical features where this will not compromise design outcomes and the efficient use of land.”*

427. Mr Bryce recommended revision of the policy to the format suggested in Submission 632, but did not accept the substantive shift from ensuring to encouraging, or the deletion of reference to minimising effects.

428. We agree with Mr Bryce’s recommendation with only a minor grammatical change. Given the policy already focuses on minimising effects, in our view, it provides sufficient flexibility for subdividers.

429. In summary, therefore, we recommend that Policy 27.2.5.4 be revised to read:

*“Ensure the physical and visual effects of subdivision and roading are minimised by utilising existing topographical features.”*

430. Policy 27.2.5.5 as notified read:

*“Ensure appropriate design and amenity associated with roading, vehicle accessways, trails, walkways and cycle ways within subdivisions by having regard to:*

- a. Location, alignment, gradients and pattern of roading, vehicle parking, service lanes, access to lots, trails, walkways and cycle ways, and their safety and efficiency;*
- b. The number, location, provision and gradients accessways and crossings from roads to lots for vehicles, cycles and pedestrians, and their safety and efficiency;*
- c. The standard of construction and formation of roads, private accessways, vehicle crossings, service lanes, walkways, cycle ways and trails;*
- d. The provision and vesting of corner splays or rounding at road intersections;*
- e. The provision for and standard of street lighting, having particular regard to the avoidance of upward light spill;*
- f. The provision of appropriate tree planting within roads;*
- g. Any requirements for widening, formation or upgrading of existing roads;*
- h. Any provisions relating to access for future subdivision on adjoining land;*
- i. The provision of public transport routes and bus shelters.”*

431. Submissions on this policy seeking changes to it sought variously:

- a. Consideration be given in subdivision design to other species<sup>182</sup>;
- b. Amendment to require old and replacement lighting to be downward facing using energy efficient lightbulbs<sup>183</sup>;
- c. Amendment of the final bullet point to add a cross reference to Council transport strategies<sup>184</sup>;

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<sup>180</sup> Submission 453

<sup>181</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>182</sup> Submission 117

<sup>183</sup> Submission 289

<sup>184</sup> Submission 453



- d. Deletion of the policy<sup>185</sup>;
  - e. Addition of reference to links and connections to public transport services and infrastructure<sup>186</sup>.
432. Mr Bryce did not recommend additional reference to Council transport strategies, noting that the transport section of the PDP will be reviewed as part of a subsequent stage of the District Plan review process. He was also of the view that the amendment recommended to the notified Policy 27.2.5.3 would address the Otago Regional Council's submission noted above<sup>187</sup>. He did, however, recommend an amendment to the final bullet point to reference linkages to public transport routes to address this submission.
433. As regards Submission 289, Mr Bryce was of the view that the outcome sought by the submitter is both impractical and would constitute a significant policy shift that would in turn require significantly more detailed Section 32 evaluation before adoption. Mr Bryce did, however, recommend that reference be added to siting and location of lighting and to the night sky.
434. Mr Bryce also drew our attention to a new policy sought in Submission 632, overlapping with and effectively amending the fifth bullet point in Policy 27.2.5.5, so that it would refer to the inter-relationship between lighting and public safety and substitute the word '*reduce*' for '*avoidance*'. Mr Bryce recommended acceptance of the former but not the latter.
435. Mr Bryce did not specifically address the relief sought in Submission 117. For our part, we think that Objective 27.2.4 and the recommended revisions to the policies supporting that objective already address the substance of the submission.
436. We largely agree with Mr Bryce's recommendations regarding the balance of submissions on the policy. So far as provision for lighting is concerned, Mr and Mrs Hughes appeared at the hearing to address their submissions on steps required to protect the District's night sky. Most of their evidence and submissions in fact related to Chapters 3 and 6 and will be considered by the Hearing Panel in that context. They supported the existing lighting provisions in Chapter 27.
437. We agree with Mr Bryce's view that more analysis would be required of costs and benefits before Submission 289 could be accepted in its entirety. We agree, however, that with minor grammatical amendments, reference to siting and location, and to public safety are desirable improvements to this sub-policy.
438. Like Mr Bryce, we do not accept the suggestion in Submission 632 that the focus should be on reduction of upward light spill. Rather, we recommend that the policy should be more effects-based. In Report 3, the Hearing Panel has recommended that provisions related to the night sky focus on views of the night sky<sup>188</sup>. We recommend a similar focus in this context.
439. We do not accept Mr Bryce's suggestion as to how Submission 798 might be incorporated into the ninth bullet point. The submission sought inclusion of links and connections to public transport services and infrastructure as a matter for consideration in relation to subdivision and development, not just walking and cycling linkages. For most subdivisions, it is the location

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<sup>185</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>186</sup> Submission 798

<sup>187</sup> Ibid

<sup>188</sup> Report 3 at Section 8.5

of public transport routes which will determine the ability to link/connect to public transport. We recommend that that be the focus of amendment to the ninth bullet point.

440. Mr Bryce also recommended that reference be made to trail connections to address Submissions 625 and 671 that we have already discussed, and that the words “*are provided for*” are inserted to provide clarity as to how having regard to the listed matters will ensure the outcomes desired. We agree with Mr Bryce’s recommendation in this regard, and with his suggested formatting change to convert the bullet points to a numbered list. We also recommend minor reformatting for consistency.
441. Focusing on the areas of substantive change to the policy, we therefore recommend that it read:
- “Ensure appropriate design and amenity associated with roading, vehicle accessways, trails and trail connections, walkways and cycle ways within subdivisions are provided for by having regard to:...*
- e. the provision for and standard of street lighting, having particular regard to siting and location, the provision for public safety, and the avoidance of upward light spill adversely affecting views of the night sky...*
- i. the provision and location of public transport routes and bus shelters”*
442. Before leaving access issues, we should note Submission 275 that sought a policy providing for reduced access widths in the High Density Residential Zone. Mr Bryce did not specifically address this submission and the submitter did not provide evidence to support its submission, which appeared counter-intuitive to us. Be that as it may, we do not have an evidential basis to recommend acceptance of the relief sought.
443. The next group of policies in this section of the chapter relate to water supply, stormwater and wastewater (referred to as the ‘three waters’ in Mr Wallace’s evidence). The format of the policies is that Policy 27.2.5.6 deals with the three waters collectively. Then follow discrete policies on each of “water”, “stormwater” and “wastewater”.
444. Policy 27.2.5.6 as notified read:
445. *“All new lots shall be provided with connections to a reticulated water supply, stormwater disposal and/or sewage treatment and disposal system, where such systems are available or should be provided for.”*
446. This submission is supported in one submission<sup>189</sup>. A second submission<sup>190</sup> queried the position if systems aren’t available, asking whose responsibility it is to provide those systems in that situation.
447. Mr Bryce did not recommend any change to this policy. We agree with this recommendation. The answer to the question posed in Submission 117 is that the more specific policies following address the point.
448. Submission 632 sought a new policy on a related point – providing that when connected to Council infrastructure, capacity in the system should be ensured or necessary upgrades

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<sup>189</sup> Submission 438

<sup>190</sup> Submission 117

reasonably expected to occur. Mr Bryce did not discuss it specifically, and the submitter's evidence did not address it. It seems to us, however, that the capacity of the Council's infrastructure is considered at an earlier point than subdivision. In general, land should not be zoned for development if infrastructure capacity is not available (or likely to be available) to service it. Accordingly, we do not consider the suggested policy is necessary, particularly in the absence of evidence setting out its costs and benefits.

449. Accordingly, we recommend that Policy 27.2.5.6 be retained unamended.
450. Addressing the policies specifically related to water, the first policy is 27.2.5.7 which, as notified, read:
- “Ensure water supplies are of a sufficient capacity, including firefighting requirements, and of a potable standard, for the anticipated land uses on each lot or development.”*
451. The only submissions on this policy<sup>191</sup> sought its retention. Mr Bryce did not recommend any change to the policy and we agree with that recommendation.
452. Accordingly, we recommend that Policy 27.2.5.7 be retained unamended.
453. Policy 27.2.5.8 as notified, read:
- “Encourage the efficient and sustainable use of potable water by acknowledging that the Council's reticulated potable water supply may be restricted to provide primarily for households' living and sanitation needs and that water supply for activities such as irrigation and gardening may be expected to be obtained from other sources.”*
454. Submission 117 agreed with this policy but suggested that the rules of the PDP needed to be consistent with it ensuring, for instance, that height requirements on water collection tanks not effectively prohibit collection of rainwater.
455. Submission 289<sup>192</sup> also supported the policy but suggested that existing houses could be encouraged to install water tanks.
456. Submission 632<sup>193</sup> sought the deletion of the policy.
457. Mr Bryce did not recommend any change to the policy. We agree. The point made in Submission 117 is relevant, but needs to be considered in the context of the rules of the PDP.
458. The relief sought in Submission 289 is beyond the scope of provisions addressing subdivision and development.
459. Lastly, Submission 632 was not supported by the evidence we heard on behalf of the submitter and we have no basis on which to recommend deletion of the policy.
460. Accordingly, we recommend that Policy 27.2.5.8 be retained unamended.
461. Policy 27.2.5.9 as notified, read:

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<sup>191</sup> Submissions 438 and 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>192</sup> Supported in FS1125

<sup>193</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

*“Encourage initiatives to reduce water demand and water use, such as roof rain water capture and use and greywater recycling.”*

462. Submissions on it opposed the policy on the basis variously that the issue is better addressed as part of the building process rather than through controls on subdivision<sup>194</sup>, sought to introduce a practicality qualification<sup>195</sup> and sought that a similar provision be applied to existing houses<sup>196</sup>.
463. Mr Bryce did not recommend acceptance of either Submission 453 or Submission 632. Mr Bryce noted in particular that in some circumstances, particularly where subdivisions are undertaken at locations not connected to a reticulated water supply, it would be appropriate to address water conservation at the subdivision stage. He also observed that the policy seeks to encourage the outcome rather than require it. We agree with Mr Bryce. The policy enables consideration of water conservation. If it is premature or impractical in a particular case, the policy accommodates that. As with the submission made on the previous policy, the relief sought in Submission 289 does not relate to subdivision and development.
464. Accordingly, we recommend that Policy 27.2.5.9 be retained unamended.
465. Policy 27.2.5.10 as notified read:
- “Ensure appropriate water supply, design and installation by having regard to:*
- a. The availability, quantity, quality and security of the supply of water to the lots being created;*
  - b. Water supplies for firefighting purposes;*
  - c. The standard of water supply systems installed in subdivisions, and the adequacy of existing supply systems outside the subdivision;*
  - d. Any initiatives proposed to reduce water demand and water use.”*
466. Submissions on this policy consisted of a submission from New Zealand Fire Service seeking that it specifically refer to the Fire Service Code of Practice for the definition of what adequate water supplies for firefighting purposes might require<sup>197</sup> and a request that it be deleted<sup>198</sup>.
467. Submission 632 was not supported by evidence when the submitter appeared before us and given the obvious relevance of the matters addressed in the policy to subdivision and development, we need say no more about it.
468. New Zealand Fire Service, however, did appear to support its submission. Ms McLeod gave evidence explaining why, in her view, it was appropriate to reference the relevant New Zealand Standard<sup>199</sup> (referred to in turn in the Fire Service Code of Practice).

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<sup>194</sup> Submission 453

<sup>195</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>196</sup> Submission 289

<sup>197</sup> Submission 438: FS1097 queried the need for the suggested reference

<sup>198</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>199</sup> SNZ PAS 4509:2008

469. Ms McLeod drew attention to the desirability of referencing the standard to eliminate any possible confusion that might arise as a result of an existing agreement between the Council and the Fire Service Commission providing for alternatives not covered by SNZ PAS 4509:2008.
470. In his reply evidence, Mr Bryce remained of the view that this was not necessary, but noted that he had recommended that SNZ PAS 4509:2008 be integrated into the assessment matters supporting the redrafted rule.
471. We agree with Mr Bryce’s recommendation on this point. We consider that it is better that the policy remain broadly expressed. SNZ PAS 4509:2008 is referenced in the Land Development and Subdivision Code of Practice. We have already discussed the desirability of generalising reference to that document and we think the same logic applies to the Standard the Fire Service seeks to include. The concerns expressed by the Fire Service are in our view adequately addressed by the more detailed provisions, including the recommended assessment matter that Mr Bryce drew our attention to.
472. In summary, we recommend retention of Policy 27.2.5.10 unamended, save only for reformatting the bullet pointed matters as a numbered list and decapitalising the first word in each part.
473. Policy 27.2.5.11, as notified, read:
- “Ensure that the provision of any necessary additional infrastructure for water supply, stormwater disposal and/or sewage treatment and disposal and the upgrading of existing infrastructure is undertaken and paid for by subdividers and developers in accordance with the Council’s 10 Year Plan Development Contributions Policy.”*
474. Submissions addressing this policy included Submission 117 which stated, somewhat enigmatically, that the policy *“needs long-term foresight”*. We are unsure what that means, and the submitter did not appear at the hearing to provide clarification.
475. Other submissions opposed the policy. One submitter stated that the costs it covers should be covered by development contributions<sup>200</sup>. Submission 632<sup>201</sup> simply sought its deletion.
476. Mr Bryce’s initial response to Submission 453<sup>202</sup> was to accept that referencing the Development Contribution Policy within Policy 27.5.2.11 is not necessarily required, but he considered that the guidance the policy provided assisted with implementation of the PDP. Mr Bryce suggested, however, that specific reference to the Development Contribution Policy be deleted in his reply evidence.
477. We do not think that assists. If anything, it exacerbates the issue identified in Submission 453 as the implication of Policy 27.2.5.11, as amended, would be that this policy would operate separately from the Development Contribution Policy. From Mr Bryce’s evidence, we do not understand that to be the intention.
478. We have already addressed the Development Contribution Policy in the context of Section 27.1. For the reasons set out in our discussion of the purpose of Chapter 27, we think that

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<sup>200</sup> Submission 453: Supported in FS1117

<sup>201</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>202</sup> Section 42A Report at 18.140

greater clarity is required that development contributions are fixed in parallel with PDP, and independently of it. Accordingly, we recommend that Policy 27.2.5.11 be deleted.

479. Turning to stormwater arrangements, notified Policy 27.2.5.12 read:

*“Ensure appropriate stormwater design and management by having regard to:*

- a. *Recognise and encourage viable alternative design for stormwater management that minimises run-off and recognises stormwater as a resource through re-use in open space and landscape areas;*
- b. *The capacity of existing and proposed stormwater systems;*
- c. *The method, design and construction of the stormwater collection, reticulation and disposal systems, including connections to public reticulated stormwater systems;*
- d. *The location, scale and construction of stormwater infrastructure;*
- e. *The effectiveness of any methods proposed for the collection, reticulation and disposal of stormwater run-off, including the control of water-borne contaminants, litter and sediments, and the control of peak flow.”*

480. Submission 117 sought inclusion of provision in the policy to manage organic contaminants and heavy metals to mitigate adverse effects on water bodies. The submission also advocates expert design including a “*treatment train*” approach.

481. Submission 289 supported the policy but sought that stormwater collection from roads in particular be designated so that it does not run into lakes and rivers.

482. Submission 453 sought that the policy be qualified by the words “*where possible and practical*”.

483. Mr Bryce did not recommend acceptance of Submission 453 on this point. In his view, the policy already provides for a broad range of stormwater design options.

484. Mr Bryce likewise did not recommend acceptance of Submission 289. In Mr Bryce’s view, the engineering evidence of the Council indicated that the relief sought was not practicable. Mr Bryce, however, noted that the fifth bullet point already addressed the substance of much of the relief the submitter sought through controlling water-borne contaminants, litter and sediments. In relation to that fifth bullet point, Mr Bryce also drew our attention to the relief sought in Submission 632<sup>203</sup> in the form of a new policy seeking that stormwater be managed “*to provide for public safety and where opportunities exist to maintain and enhance water quality*”. Mr Bryce recommended that elements of this suggested policy be incorporated into the fifth bullet point of policy 27.2.5.12 and thereby also address what is now recommended Objective 3.2.4.4.

485. In addition, Mr Bryce recommended an amendment to the first bullet point to correct a grammatical issue with the way the introduction of the policy moves into the specific matter covered by that bullet point.

486. As with other policies, Mr Bryce recommended that the bullet point matters be converted to a numbered list.

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<sup>203</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

487. We largely agree with Mr Bryce’s recommendations on this policy, including his suggested reformatting in line with changes to previously policies. We think though that a further grammatical tweak is required to the first bullet point so it scans properly.
488. As regards to the fifth bullet point, we consider that with the amendments recommended by Mr Bryce, it goes part way to meeting the relief sought in Submission 117. That submitter did not appear to explain or support her submission and we do not think that we have an evidential basis to push this policy further towards treatment of stormwater in the absence of a proper quantification of costs and benefits, as required by section 32 of the Act.
489. In summary, therefore, and focussing on areas of suggested amendment, we recommend that the notified Policy 27.2.5.12 be renumbered 27.2.5.11 and amended to read:
- “Ensure appropriate stormwater design and management by having regard to:*
- a. any viable alternative designs for stormwater management that minimise run-off and recognise stormwater as a resource through re-use in open space and landscape areas;...*
  - e. the effectiveness of any methods proposed for the collection, reticulation and disposal of stormwater run-off, including opportunities to maintain and enhance water quality through the control of water-borne contaminants, litter and sediments, and the control of peak flow.”*
490. Mr Bryce recommended insertion of a revised form of Policy 27.2.4.3 at this point. We have already discussed the form of the notified policy and the submissions on it<sup>204</sup>.
491. Mr Bryce did not recommend acceptance of the submissions on Policy 27.2.4.3 although we note that his Section 42A Report addressed a different submission to that in fact made in Submission 117 on this point (due presumably to an error in the summary of submissions).
492. Mr Bryce did recommend an addition to the policy to qualify it by reference to the acceptability of maintenance and operation requirements to Council if assets are to be vested.
493. The suggested addition itself raised questions in our mind that we discussed with Mr Wallace – seeking to ascertain what tests the Council would in fact employ to determine acceptability. As a result, Mr Bryce recommended a lengthy clarification be added to the policy as to the meaning of that term.
494. The end result, were Mr Bryce’s recommendations to be accepted, would shift the policy a significant distance from where it started. Nor do we think that the additions suggested by Mr Bryce respond to the submissions on Policy 27.2.4.3.
495. Going back to those submissions, we agree with the suggestion in Submission 806 that the focus of the policy should not be on what the Council will or will not do. The focus should be on subdivision design, rather than the Council’s actions.
496. We also think that Submitter 117 had a point when she observed that joint use may not always be desirable, on environmental grounds (i.e. a different point to the one Mr Bryce seeks to add). We do not think it would be helpful to add a generalised reference to appropriateness, but an effects-based test would address the point the submitter was making.

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<sup>204</sup> Refer paragraph 359-361 above

497. While we understand that Mr Bryce’s suggestions reflect a concern on the part of Council that this provision might be utilised by subdividers to try and off-load residual waste land onto Council, we do not consider that the policy would commit Council to accept vesting of such land where it is not fit for purpose or would impose unreasonable costs on the Council. However, if this is a concern, we recommend that it be addressed by a variation. We do not consider that the submissions on the policy provide a proper basis for the amendments Mr Bryce recommends.
498. Responding to those submissions, we recommend that the relocated Policy 27.2.4.3 be renumbered 27.2.5.12 and amended to read:
- “Encourage subdivision design that includes the joint use of stormwater and flood management networks with open spaces and pedestrian/cycling transport corridors and recreational opportunities where these opportunities arise and will maintain the natural character and ecological values of wetlands and waterways.”*
499. Turning to wastewater policies, notified policy 27.2.5.13 read:
- “Treating and disposing of sewage is provided for in a manner that is consistent with maintaining public health and avoids or mitigates adverse effects on the environment.”*
500. The only submission on the policy<sup>205</sup> sought amendments obviously designed to make the policy more succinct without altering its meaning. Mr Bryce recommended that the submission be accepted.
501. When we discussed this particular policy with Mr Bryce at the hearing, he agreed with a concern we expressed that an open-ended reference to avoiding or mitigating adverse effects might provide insufficient guidance to ensure adverse effects are minimised. Accordingly, Mr Bryce suggested in his reply evidence that the policy might explicitly state that adverse effects should be avoided in the first instance and, where this is not reasonably possible, minimised *“to an extent that is proportionate to the level of significance of the effects”*.
502. While we consider Mr Bryce’s suggested additions would improve the policy, given the limited ambit for amendment provided by Submission 632, we think that clarification of what the existing reference to avoiding or mitigating adverse effects should be taken to mean should more closely reflect the caselaw<sup>206</sup>.
503. In summary, we recommend that notified Policy 27.2.5.13 be renumbered 27.2.5.14 and revised to read:
- “Treat and dispose of sewage in a manner that:*
- a. maintains public health;*
  - b. avoids adverse effects on the environment in the first instance; and*
  - c. where effects on the environment cannot be reasonably avoided, mitigates those adverse effects to the extent practicable.”*
504. If the Council determines that greater certainty is required as to the level of mitigation provided under this policy, we recommend that it explore a variation to the PDP.

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<sup>205</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>206</sup> Refer for instance *Winstone Aggregates Ltd v Papakura District Council A049/2002*



505. Notified Policy 27.2.5.14 read:

*“Ensure appropriate sewage treatment and disposal by having regard to:*

- *The method of sewage treatment and disposal;*
- *The capacity of, and impacts on, the existing reticulated sewage treatment and disposal system;*
- *The location, capacity, construction and environmental effects of the proposed sewage treatment and disposal system.”*

506. The only submission on this policy<sup>207</sup> sought its deletion. The submitter did not support this aspect of its submission in the evidence we heard (rather the contrary in fact) and Mr Bryce did not recommend any substantive change to the policy, much less its deletion. We agree.

507. Accordingly, we recommend that notified Policy 27.2.5.14 be renumbered 27.2.5.15 and reformatted to contain a list of numbered sub points starting in each case without a capital letter, but otherwise retained unamended.

508. Notified Policy 27.2.5.15 read:

*“Ensure that the design and provision of any necessary infrastructure at the time of subdivision takes into account the requirements of future development on land in the vicinity.”*

509. The only submission on this policy<sup>208</sup> sought an addition to state that such upgrades would be credited against development contributions.

510. Mr Bryce recommended the submission be rejected. We agree. Given that development contributions are assessed under the Council’s Development Contribution Policy promulgated under the Local Government Act, it is inappropriate that a policy in the PDP should seek to constrain how that development contribution policy is implemented. While we understand the concern developers might have that they might be required to “over spec” the infrastructure they install for the benefit of third parties, the policy is framed in a way that prompts consideration of future needs, rather than directing any particular outcome, thereby enabling negotiation of appropriate financial arrangements between the parties.

511. Accordingly, we recommend that notified Policy 27.2.5.15 be retained unamended, other than by renumbering it 27.2.5.16.

512. The following policy, 27.2.5.16 in the notified Chapter 27, related to energy supply and telecommunications. As notified, it read:

*“To ensure adequate provision is made for the supply and installation of reticulated energy, including street lighting, and communication facilities for the anticipated land uses while:*

- *Providing flexibility to cater for advances in telecommunication and computer media technology, particularly in remote locations;*
- *Ensure the method of reticulation is appropriate for the visual amenity values of the area by generally requiring services are underground;*
- *Have regard to the design, location and direction of lighting to avoid upward light spill, recognising the night sky is an element that contributes to the District’s sense of place;*

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<sup>207</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>208</sup> Submission 453

- *Generally require connections to electricity supply and telecommunication systems to the boundary of the net area of the lot, other than lots for access, roads, utilities and reserves.”*

513. This policy was supported by the telecommunication submitters. Substantive amendments were sought in Submission 635<sup>209</sup> which sought to qualify the reference to underground reticulation, so it would apply “*where technically and operationally feasible*”. Submission 632<sup>210</sup> sought deletion of reference to underground reticulation and street lighting, along with amendments to generalise the reference to technology, soften the reference to amenity values, and shift the third bullet point into a separate policy. We have already discussed the last point, in the context of recommended Policy 27.2.5.5.

514. When we discussed this policy with Mr Bryce, he accepted that typically, telecommunication and electricity line services would not be undergrounded in rural environments and thus the second bullet point needed reconsideration. He also agreed with our suggestion that the range of relevant issues in deciding whether services should be undergrounded should extend to include landscape values.

These considerations prompted Mr Bryce to recommend that the second bullet point be amended to read:

*“Ensure the method of reticulation is appropriate for the visual amenity and landscape values of the area by generally requiring services are underground and in the context of rural environments where this may not be practicable, infrastructure is sited in a manner that does not adversely impact upon visual amenity and landscape values of the receiving environment.”*

515. We discussed also with Mr Bryce the application of the fourth bullet point in rural environments where a residential building platform has been identified. Mr Bryce’s advice was that typically in such cases, infrastructure connections would be to the building platform where there is one.

516. Mr Bryce also recommended specific reference be made in the fourth bullet point to services being supplied to residential building platforms.

517. Addressing these matters in turn, we agree that reference should be made to landscape values. We do not consider this a material change because the operative requirement (that reticulation is generally underground) is not altered, other than in the manner we are about to discuss.

518. We think that Mr Bryce is correct, and that some qualification of that position is required to recognise the impracticality of undergrounding telecommunication and electricity line services throughout the rural environment. Similarly, while we agree that there needs to be a limit on acceptance of over-ground utilities in the rural environment, we consider a policy of effectively no adverse impacts on visual amenity and landscape values would be too onerous given the generally high (if not outstanding) landscape values of almost the entire District. We recommend, therefore, a policy of minimising visual effects on the receiving environment.

519. As regards Mr Bryce’s suggestion (responding constructively to the point we had raised) that the fourth bullet point extend the obligation to provide services from lot boundaries to residential building platforms (where they exist), upon reflection, we have determined that

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<sup>209</sup> Aurora Energy Limited

<sup>210</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

this would impose an obligation that the submissions on this policy would not justify. We remain of the view that this is a desirable amendment to Chapter 27 and thus we recommend that the Council institute a variation of Chapter 27 to insert Mr Bryce's recommended addition to the fourth bullet point reading:

*"Where the subdivision provides for a residential building platform, the proposed connections to electricity supply and telecommunications systems shall be established to the residential building platform."*

520. Accordingly, aside from numbering the bulleted sub-points of Policy 27.2.5.16 and starting each without a capital letter, renumbering it 27.2.5.17 and commencing the policy with the word "Ensure", the only amendments we recommend are to shift the third bullet point into Policy 27.2.5.5, amended as outlined above, and to amend the second sub-point so that it would read:

*"ensure the method of reticulation is appropriate for the visual amenity and landscape values of the area by generally requiring services are underground and in the context of rural environments where this may not be practicable, infrastructure is sited in a manner that minimises adverse visual effects on the receiving environment."*

521. The final two policies in this section of the PDP relate to easements. The first, notified Policy 27.2.5.17, read:

*"Ensure that services, shared access and public access is identified and managed by the appropriate easement provisions."*

522. The second, notified Policy 27.2.5.18, read:

*"Ensure that easements are of an appropriate size, location and length for the intended use."*

523. One submission<sup>211</sup> sought that both policies be deleted. Another submission<sup>212</sup> sought that they be retained. Mr Bryce recommended their retention because they give effect to the direction of notified Objective 27.2.5 by ensuring easements are provided and are of an appropriate size, location and length.

524. We agree with Mr Bryce's recommendation. We also agree with his suggestion (responding to a question we had) that the second policy might be amended to clarify its effect by adding *"of both the land and easement"* on the end. We do not regard that as a substantive change.

525. Accordingly, we recommend that notified Policies 27.2.5.17 and 27.2.5.18 be amended as above and renumbered to align with recommended changes above, but otherwise retained.

526. Having considered all of the policies recommended (27.2.5.1-18 inclusive), we consider that collectively they are the most appropriate way to achieve Objective 27.2.5 given the alternatives available to us.

#### **4.7 Objective 27.2.6 and Policies Following**

527. Objective 27.2.6 as notified, read:

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<sup>211</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>212</sup> Submission 635

*“Cost of services to be met by subdividers.”*

528. It needs to be read together with the two supporting policies, the first of which (27.2.6.1) read:

*“Require subdividers and developers to meet the costs of the provision of new services or the extension or upgrading of existing services (including head works), that are attributable to the effects of the subdivision or development, including where applicable:*

- *Roading, walkways and cycling trails;*
- *Water supply;*
- *Sewage collection, treatment and disposal;*
- *Stormwater collection, treatment and disposal;*
- *Trade waste disposal;*
- *Provision of energy;*
- *Provision of telecommunications and computer media;*
- *Provision of reserves and reserve improvements.”*

529. The second policy (27.2.6.2) read:

*“Contributions will be in accordance with the Council’s 10 Year Plan Development Contributions Policy.”*

530. Submission 632<sup>213</sup> sought that the objective and both policies be deleted. Submission 285 sought to qualify the objective so that the obligation on developers and subdividers would only arise when existing services were up to standard. Submission 600<sup>214</sup> supported the objective. Submission 719 supported both the objective and the first policy. Submission 632 sought in the alternative to amend Policy 27.2.6.2 to emphasise that development contributions were managed through the Local Government Act.

531. Mr Bryce recommended amendments to the policies to shift reference to the Development Contribution Policy into the start of Policy 27.2.6.1, delete the existing Policy 27.2.6.2 but otherwise to retain the objective and first policy.

532. His reasoning was that these provisions assist in making PDP users aware of the need for development contributions and that upgrading of existing infrastructure is a consequence of subdivision development activity.

533. We disagree. The Development Contribution Policy operates under the Local Government Act in parallel with the PDP. As we have discussed in the context of other policies referring to development contributions, retaining provisions purporting to direct when and how development contributions will be collected blurs that distinction and creates the possibility that those provisions might be read as creating an independent right to levy financial contributions.

534. Mr Bryce’s explanation of the utility of the existing Objective 27.2.6 and the related policies suggested to us that their sole function is to operate as advice notes rather than objectives and policies.

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<sup>213</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>214</sup> Supported in FS1209; Opposed in FS1034

535. Given our recommendation that Section 27.1 be amended to cross reference the Development Contribution Policy and emphasise the need for subdivision applicants to be aware of it, and the existence of a separate provision (notified section 27.12) providing further clarification of the position, we consider that this objective and the related policies serve no useful purpose. We recommend that they be deleted.

#### 4.8 Objective 27.2.7 and Policies Following

536. Notified objection 27.2.7 read:

*“Create esplanades where opportunities arise.”*

537. One submission sought its deletion<sup>215</sup>. Two submissions<sup>216</sup> supported the objective.

538. Mr Bryce did not support the deletion of the objective. In his view, it provided guidance on a relevant matter identified in sections 229 and 230 of the Act as to the purpose and meaning of Esplanade Reserves and Strips.

539. We agree in principle with Mr Bryce, but consider that the objective needs to be reframed. Starting with a verb, it expresses a course of action rather than an outcome. Accordingly, we recommend that the objective be renumbered 27.2.6 and amended to read:

*“Esplanades created where opportunities arise.”*

540. We do not regard this as a substantive change. We consider the amended objective to be the most appropriate way to achieve the purpose of the Act as it relates to provision of esplanade reserves and strips.

541. Policy 27.2.7.1 as notified read:

*“Create esplanades reserves or strips where opportunities exist, particularly where the subdivision is of large-scale or has an impact on the District’s landscape. In particular, Council will encourage esplanades where they:*

- *are important for public access or recreation, would link with existing or planned trails, walkways or cycles ways, or would create an opportunity for public access; have high actual or potential value with regard to the maintenance of indigenous biodiversity;*
- *comprise significant indigenous vegetation or significant habitats of indigenous fauna;*
- *are considered to comprise an integral part of an outstanding natural feature or landscape;*
- *would benefit from protection, in order to safeguard the life supporting capacity of the adjacent lake and river;*
- *would not put an inappropriate burden on the Council, in terms of future maintenance costs or issues related to natural hazards affecting the land.”*

542. The only submission seeking substantive change to this policy<sup>217</sup> sought that it be significantly shortened to read:

*“Create esplanades reserves or strips where they would provide nature conservation, natural character, natural hazard mitigation, infrastructural or recreational benefits.”*

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<sup>215</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>216</sup> Submissions 373 and 378: Opposed in FS1049, FS1095 and FS1347

<sup>217</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

543. Mr Bryce recommended to us that Submission 632 be accepted in part – he thought that the amendments proposed made the broad policy clearer, but recommended that the six sub-points be retained as providing greater guidance.

544. We agree with Mr Bryce’s recommendation. We think that the sub-points in the notified policy contained important signposts as to when esplanade reserves or strips should be a priority, or alternatively where, notwithstanding other benefits, there is good reason that they not be created. We therefore recommend that Policy 27.2.7.1 be renumbered 27.2.6.1, but otherwise largely be revised as recommended by Mr Bryce. The only additional amendments we propose are minor grammatical changes. The revised policy would therefore read:

*“Create esplanade reserves or strips where they would provide nature conservation, natural character, natural hazard mitigation, infrastructural or recreational benefits. In particular, Council will encourage esplanades where they:*

- a. are important for public access or recreation, would link with existing or planned trails, walkways or cycles ways, or would create an opportunity for public access;*
- b. have high actual or potential value with regard to the maintenance of indigenous biodiversity;*
- c. comprise significant indigenous vegetation or significant habitats and indigenous fauna;*
- d. are considered to comprise an integral part of an outstanding natural feature or outstanding natural landscape;*
- e. would benefit from protection, in order to safeguard the life supporting capacity of the adjacent lake or river;*
- f. would not put an inappropriate burden on the Council, in terms of future maintenance costs or issues related to natural hazards affecting the land.”*

545. When we discussed esplanade reserves and strips with Mr Bryce, we identified that there appeared to be a gap in the policy coverage providing guidance as to the circumstances where an esplanade reserve or strip would otherwise be required under section 230 of the Act and a waiver is sought either to reduce the width of an esplanade reserve or to avoid the requirement to create an esplanade reserve or strip at all. Mr Bryce accepted that this was an apparent vacuum in the policies and undertook to cover the point in reply.

546. In his reply evidence, Mr Bryce suggested a new policy which would address these matters worded as follows:

*“Avoid reducing the width of esplanade reserves or strips, or the waiving of the requirement to provide an esplanade reserve or strip, except where the following apply:*

- a. Safe public access and recreational use is already possible and can be maintained for the future;*
- b. It can be demonstrated that a full width esplanade reserve or strip is not required to maintain the natural functioning of adjoining rivers or lakes;*
- c. A reduced width in certain locations can be offset by an increase in width and other locations or areas, which would result in a positive public benefit in terms of access and recreation.”*

547. We have no issues with the form of the suggested new policy. We think it would be a desirable change to the notified Chapter 27 that would fill an evident policy gap.

548. However, we cannot identify any submission which would provide jurisdiction for making this change. In the Chair’s 22 May 2017 Minute, this was identified as a point that would merit the

Council addressing by way of variation. The Chair’s Minute also suggested that such a variation may also usefully provide guidance as to when the Council would prefer an esplanade strip as opposed to an esplanade reserve and identify the considerations that would come into play if a large lot were the subject of a subdivision.

549. Notified Policy 27.2.7.2 read:

*“To use opportunities through the subdivision process to improve the level of protection for the natural character and nature conservation values of lakes and rivers, as provided for in section 230 of the Resource Management Act 1991.”*

550. The sole submission on this policy seeking change to it was that of submitter 632 proposing its deletion<sup>218</sup>.

551. Mr Bryce did not recommend acceptance of that submission. His opinion was that the policy responded to matters raised under section 229-230 of the Act and therefore should be retained.

552. Given that the evidence for submitter 632 did not support the submission on this point, we have no basis to disagree with Mr Bryce. Accordingly, we recommend that notified Policy 27.2.7.2 be renumbered 27.2.6.2, but otherwise retained unamended, save only for minor grammatical changes (to delete the word “To” at the start of the policy and to refer to protection “of” the natural character and nature conservation values of lakes and rivers) and the substitute reference to “the Act”.

553. Considering our recommended policies 27.2.6.1 and 27.2.6.2 collectively, we consider that these policies are the most appropriate means to achieve our recommended Objective 27.2.6 given the alternatives available to us.

#### 4.9 Objective 27.2.8 and Policies Following

554. Notified Objective 27.2.8 read:

*“Facilitate boundary adjustments, cross-lease and unit title subdivision, and where appropriate, provide exemptions from the requirement of esplanade reserves.”*

555. Submissions on this objective variously supported in its current form<sup>219</sup> sought that the reference to exemptions for esplanade reserves be deleted<sup>220</sup>, sought recognition that boundary adjustments do not create a demand for services and should be treated as controlled activities<sup>221</sup>, and sought the deletion of the objective<sup>222</sup>.

556. Mr Bryce recommended acceptance of Submission 383 on the basis that the objective as notified reads more like a policy than an outcome statement. As such, in his view, it needed to be recast focussing on the outcome, which is provision for boundary adjustments, cross leases and unit title subdivisions. We agree with that approach.

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<sup>218</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>219</sup> Submission 370

<sup>220</sup> Submission 383

<sup>221</sup> Submission 806

<sup>222</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

557. We do not support deletion of the objective which would then provide no policy support for a more favourable rule framework than might otherwise be the case. As will be seen in due course, we support recognising the characteristics of boundary adjustments, cross leases and unit titles as either creating few or no environmental impacts (or demand for services – as Submission 806 identified) or as facilitating urban development within urban areas, and thereby assisting achievement of the strategic objectives of the Plan. For the same reason, we agree with Mr Bryce’s proposed rejection of Submission 632 on this point.
558. In summary, therefore, we recommend that notified Objective 27.2.8 be renumbered 27.2.7 and revised to read:
- “Boundary adjustments, cross-lease and unit title subdivisions are provided for.”*
559. We consider that this objective is the most appropriate way to achieve the purpose of the Act in this context, given the alternatives available to us.
560. Policy 27.2.8.1 as notified read:
- “Enable minor cross-lease and unit title subdivision of existing units without the need to obtain resource consent where there is no potential for adverse effects associated with a change in boundary location.”*
561. The only submission specifically on this policy<sup>223</sup> sought its retention.
562. Mr Bryce, however, recommended an additional sentence be added to the policy noting that the intention is not to enable subdivision of approved residential building platforms in Rural and Rural Lifestyle Zones by this means. We support that clarification as an aspect of the general point discussed earlier regarding the need to be clear when policies apply only in urban environments. This is an example of an urban-focused policy. However, we think the point could be made rather more succinctly.
563. We also recommend a minor amendment to the notified version of Policy 27.2.8.1 to delete the word ‘minor’. We think that is unnecessary given the policy requirement that there be no potential for adverse effects.
564. In summary, therefore, we recommend that Policy 27.2.8.1 be renumbered 27.2.7.1 and revised to read:
- “Enable cross-lease and unit title subdivision of existing units in urban areas without the need to obtain resource consent where there is no potential for adverse effects associated with the change in boundary location.”*
565. Policy 27.2.8.2 as notified, read:
- “Ensure boundary adjustment, cross-lease and unit title subdivisions are appropriate with regard to:*
- a. *The location of the proposed boundary;*
  - b. *In rural areas, the location of boundaries with regard to approved residential building platforms, existing buildings, and vegetation patterns and existing or proposed accesses;*
  - c. *Boundary treatment;*

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<sup>223</sup> Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316



d. *Easements for access and services.*”

566. The only submission that sought amendment to this policy<sup>224</sup> focused on the fourth bullet point, seeking that it be altered to read:

*“The location of existing or proposed accesses and easements for access and services.”*

567. Mr Bryce recommended acceptance of that submission on the basis that the second bullet point already refers to existing or proposed accesses and amendment to the fourth bullet point would provide more effective linkage between the two.

568. While we agree there is merit in referring to both existing and proposed accesses in the fourth bullet point (because the second bullet point is limited to rural areas), we think the point might be made more simply. We also think it would be a mistake to limit consideration just to the location. Unlike fee simple titles, easements depend for their efficacy on the extent of the rights created by the easement. The existing wording would already cover that and so, if it is expanded to specifically include reference to location, we consider that specific reference to the terms of any easements (or other arrangements for that matter) is also required.

569. In summary, we recommend that the policy be renumbered 27.2.7.2, the list converted to numbered sub-points with the first word in lower case (consistent with our recommendations regarding the formatting of other policies) and the fourth sub-point be amended to read:  
*“the location and terms of existing or proposed easements or other arrangements for access and services.”*

570. Mr Bryce also suggested addition of a further policy under this heading relating to unit title, strata title or cross lease subdivisions of existing approved buildings with land use consents permitting multi-unit commercial or residential development including visitor accommodation development.

571. This suggested new policy was discussed in Mr Bryce’s reply evidence<sup>225</sup>. This is a point we queried Mr Bryce about when he appeared at the hearing. As Mr Bryce noted, putting aside ‘minor’ cross-lease and unit title subdivisions addressed in (now) Policy 27.2.7.1, only renumbered Policy 27.2.7.2 provides any specific reference to unit title subdivision and even then, the policy is weighted towards boundary adjustments. While we agree with Mr Bryce’s view that unit title and cross-lease subdivisions are an important method for enabling the further intensification of urban areas provided for in the Plan’s strategic objectives, we do not think that there is jurisdiction to recommend addressing this shortcoming through a new policy. Certainly, we have not identified a submission which would provide such jurisdiction and Mr Bryce’s reply evidence suggests that there is no submission seeking a stand-alone policy of this kind.

572. This is another area where the Chair suggested in his 22 May 2017 Minute that a variation is warranted to correct a shortcoming in the notified PDP provisions.

573. During the course of the hearing, we discussed with the Council’s representatives the absence of a policy framework for Structure Plans. This was discussed in Mr Bryce’s reply evidence at section 9. Mr Bryce considered specifically the desirability of greater certainty as to what a structure plan is and what a structure plan must include in order to receive the benefit of

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<sup>224</sup> Submission 719

<sup>225</sup> At paragraph 2.5

controlled subdivision activity status (as sought in the legal submissions of Ms Baker-Galloway).

574. Mr Bryce’s evidence was that no submissions specifically sought introduction of a policy framework and definition to support the application of structure plans. Accordingly, while he supported the idea that policies might provide for structure plans, his conclusion was that there was no scope to do so in the current process.
575. We agree with that conclusion<sup>226</sup>. Accordingly, this also was included in the Chair’s 22 May 2017 Minute, so that the detailed provisions of Chapter 27 that depend on the existence of structure plans might sit within an appropriate policy framework.
576. We consider the recommended policies as above are collectively the most appropriate way to achieve recommended objective 27.2.7, given the alternatives available to us.
577. Before leaving our discussion of the district-wide objectives and policies, we should note submission 238<sup>227</sup> that sought a new objective be inserted: *“Discourage subdivision adjacent to Urban Growth Boundaries”*.
578. Mr Bryce recommended rejection of the submission on the basis that the underlying point is already suitably addressed in Chapters 3 and 4. We agree. Given the coverage at a higher level, we see no value in an additional objective overlapping, but not identical to the provisions recommended in Chapters 3 and 4, particularly given that it would be unsupported by any policy in Chapter 27.

## 5. SECTION 27.7 - LOCATION–SPECIFIC OBJECTIVES AND POLICIES

### 5.1 General

579. We have already noted the general submissions seeking reconfiguration of Chapter 27, among other things, to shift the location-specific objectives and policies forward in Chapter 27 so that they follow the general objectives and policies. As above, we agree with Mr Bryce’s recommendation that this reconfiguration would assist the clarity of the chapter and bring into line with other chapters of the PDP.
580. As Mr Bryce noted<sup>228</sup>, what was section 27.7 contained location-specific objectives, policies *“and provisions”*. The provisions in question either explicitly set out matters of discretion or identified relevant matters to be taken into account – examples are notified Sections 27.7.3, 27.7.6.1, 27.7.7.4, 27.7.14.2, 27.7.18.1 and 27.7.20. We agree with Mr Bryce’s observation that it is difficult to determine whether these are policies or rules, and like him, we consider that they are generally better shifted into a new table of location-specific provisions as part of the reconfiguration responding to the submissions on the point, in order to remove any uncertainty as to their purpose and status. We recommend revision of Chapter 27 accordingly.
581. Looking generally at the location-specific objectives and policies that remain, having shifted the text (including the section heading and introductory words that precede notified Objective 27.7.1) into a new Section 27.3, we consider that some further reformatting would assist the clarity of the PDP for the reader. Accordingly, rather than the subject matter being stated

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<sup>226</sup> While noting that later in this report, we recommend a limited definition of Structure Plans to remove the need to refer in each case to the entire range of documents serving the same purpose.

<sup>227</sup> Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

<sup>228</sup> Section 48A Report at 22.6

within the body of the objective, we recommend that in each case this be a heading that precedes the relevant objective and policies. Our recommended revised Chapter 27 shows this change, which we do not regard as substantive in nature.

## 5.2 Objectives 27.7.1 and 27.7.2, and Policies Following those objectives

582. Turning to the text of the objectives and policies, many were not the subject of submission and there is no aspect that we need to consider further. We propose, therefore, to address the location-specific objectives and policies on an exceptions basis.

583. Accordingly, the first provision that we need to mention is notified Objective 27.7.1 (renumbered 27.3.1) which relates to Peninsula Bay. Although Mr Bryce did not recommend any substantive amendments to it<sup>229</sup>, we consider that some rewording is required to more clearly express it as an outcome, that is to say as an objective.

584. Accordingly, we recommend that the word “ensure” be deleted with the result that the objective would read:

*“Effective public access is provided throughout the Peninsula Bay land.”*

585. We do not regard this as a substantive change. For the same reason, we recommend that notified Objective 27.7.2 (renumbered 27.3.2) related to Kirimoko be reworded to read:

*“A liveable urban environment is created that achieves best practice in urban design; the protection and incorporation of landscape and environmental features into the design of the area; and high quality built form.”*

586. In his Section 42A Report, Mr Bryce discussed a submission<sup>230</sup> from the Council Parks Team seeking that notified Policy 27.7.2.8 (now 27.3.2.8) be revised so that rather than seeking minimisation of disturbance to existing native plant remnants, disturbance be avoided.

587. Mr Bryce recommended rejection of this submission on the basis that it is not necessary to appropriately give effect to the relevant objective and may not be achievable in all instances.

588. We heard no evidence from any other representative of Council that would provide a basis on which we might disagree with Mr Bryce. Accordingly, we recommend rejection of Submission 809 in this respect.

589. Policy 27.7.2.3 (renumbered 27.3.2.3), as notified, read:

*“Ensure that urban development of the site is restricted to lower areas and areas of concealed topography, such as gullies (all zoned Low Density Residential) and that visually sensitive areas such as the spurs are left undeveloped (building line restriction area).”*

590. The words in brackets are both unnecessary and out of place. The provision of a favourable zoning, or building line restrictions, as the case may be, are matters for the rules which implement the policy. We recommend that in each case, the words in brackets are deleted.

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<sup>229</sup> Mr Bryce did, however, recommend deletion of a cross reference to an ODP objective in the notified version of Section 27.7.1, referring to concerns about its validity. While we agree with that concern, the issue has been overtaken by the Stage 2 Variations.

<sup>230</sup> Submission 809

The end result does not alter the meaning of the policy and therefore we regard it as a minor change within the scope of Clause 16(2).

### 5.3 Objective 27.7.4 and Policies Following

591. Notified Objective 27.7.4 (renumbered now 27.3.3) read as follows:

*“Objective – Large Lot Residential Zone between Studholme Road and Meadowstone Drive – ensure protection of landscape and amenity values in recognition of the zone’s low density character and transition with rural areas.”*

592. Mr Bryce recommended that this be reconfigured so that it is expressed as an outcome rather than a course of action. We agree both with the need to revise the objective and with the revised wording Mr Bryce suggests. Taking account of the insertion of a heading to identify the subject-matter of the objective, amended to reflect the recommendation of the Stream 6 Hearing Panel that the Large Lot Residential Zone be split into “A” and “B” zones, we recommend that this objective be reframed as:

*“Landscape and amenity values of the zone’s low density character and transition with rural areas be recognised and protected.”*

593. Submissions<sup>231</sup> sought that the word “*ridgelines*” in notified Policy 27.7.4.1 (now Policy 27.3.3.1) be substituted by the words “*skyline ridges*”. Mr Bryce did not recommend acceptance of that submission and we agree. The submitters did not appear to support their submission and it is not apparent to us that the amended wording would result in a policy which more appropriately gives effect to the relevant objective.

594. Notified Policy 27.7.4.2. (renumbered 27.3.3.2)) read:

*“Subdivision and development within land identified as ‘Urban Landscape Protection’ by the ‘Wanaka Structure Plan 2007’ shall have regard to the adverse effects of development and associated earthquakes on slopes, ridges and skylines.”*

595. We discussed with Mr Bryce the appropriateness of a cross reference to the Wanaka Structure Plan given the reasoning of the Council’s position with respect to the Land Development and Subdivision Code of Practice. Like the Code of Practice, the Wanaka Structure Plan sits outside the PDP. It is also not a Structure Plan in the sense referred to in other PDP provisions in that it does not guide the development of specific areas. Rather, as Mr Bryce put it, it is an expression of the strategic intent of Council which has legal effect because its provisions are incorporated into the PDP.

596. Mr Bryce addressed the point in his reply evidence<sup>232</sup> and suggested that the best course was to delete reference to the Structure Plan and to describe the area concerned.

597. Mr Bryce also noted that there is a submission specifically seeking deletion of the relevant policy and the ‘Urban Landscape Protection Line’ referred to in it<sup>233</sup>.

598. Mr Bryce recommended that further specific policy direction for this area be considered as part of the residential hearing stream.

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<sup>231</sup> Submissions 65 and 74

<sup>232</sup> N Bryce, Reply Statement at 2.23-2.26

<sup>233</sup> Submission 335

599. The Hearing Panel on the Residential Zone Stream (Stream 6) has not recommended any consequential changes to this policy and we agree with Mr Bryce's recommendations as to how it might be amended.

600. It follows that we recommend that what is now Policy 27.3.3.2 be reworded as:

*"Subdivision and development within land located on the north side of Studholme Road shall have regard to the adverse effects of development and associated earthworks on slopes, ridges and skylines."*

#### 5.4 Objective 27.7.5 and Policies Following

601. Notified Objective 27.7.5 read:

*"Objective – Bobs Cove Rural Residential Zone (excluding sub-zone) – Recognise the special character of the Bob's Cove Rural Residential Zone."*

602. Mr Bryce recommended a grammatical change so that this objective also reads as an outcome statement. While we would prefer an outcome statement that was somewhat clearer as to the nature of the outcome being sought, in the absence of any submission on the point, we do not consider a more substantive amendment is possible. Accordingly, we agree with Mr Bryce's suggestion, with the result that we recommend that the objective (renumbered as 27.3.4) be reworded as:

*"The special character of the Bob's Cove Rural Residential Zone is recognised and provided for."*

603. Notified Policy 27.7.5.1 (renumbered 27.3.4.1) read:

*"Have regard to the need to provide for street lighting in the proposed subdivision. If street lighting is required in the proposed subdivision to satisfy the Council standards, then in order to maintain the rural character of the zone, the street lighting shall be low in height from the ground, of reduced lux spill and directed downwards to avoid adverse effects on the night sky."*

604. Mr Bryce identified that this policy contained a level of duplication that could be resolved without altering the policy meaning.

605. We agree with the desirability of expressing this policy more succinctly. However, we consider Mr Bryce's revision inadvertently altered the meaning by omitting reference to "required" street lighting. That would imply that street lighting is required at all locations. We recommend a further revision of the wording to address that point. The only additional amendment we recommend is consequential on changes to other PDP provisions, recognising that the night sky is not affected by light on the ground. What is affected are views of the night sky. Accordingly, we recommend that what is now Policy 27.3.4.1 would read:

*"In order to maintain the rural character of the Zone, any required street lighting shall be low in height from the ground, of reduced lux spill and directed downwards to avoid adverse effects on views of the night sky."*

#### 5.5 Objective 27.7.6 and Policies Following

606. Notified Objective 27.7.6 related to the Ferry Hill Rural Residential Sub-Zone. Both the objective and Policy 27.7.6.1 following it are proposed to be deleted (and replaced) in the Stage 2 Variations, so we need say no more about it.

#### 5.6 Objective 27.7.7 and Policies Following

607. Notified Objective 27.7.7 and its associated policies related solely to the Makarora Rural Lifestyle Zone. As the Hearing Panel hearing the mapping submissions in the Upper Clutha (Stream 12) has recommended all the land which was proposed to be zoned Rural lifestyle at Makarora be zoned Rural<sup>234</sup>, this objective and these policies can be deleted as a consequential amendment. Thus, we recommend their deletion.

#### 5.7 Objective 27.7.8 and Policies Following

608. Notified Objective 27.7.8 (renumbered 27.3.5) relates to the Wyuna Station Rural Lifestyle Zone. Mr Bryce did not recommend any change to this policy, but consistent with other amendments he has recommended to objectives, we consider that some grammatical reformatting is required to express it more clearly as an outcome.

609. Accordingly, we recommend that this objective be revised to read:

*“Provision for a deferred Rural Lifestyle Zone on the terrace to the east of, and immediately adjoining, the Glenorchy Township.”*

#### 5.8 Objective 27.7.9 and Policies Following

610. Notified Objective 27.7.9 is also related to the Wyuna Station Rural Lifestyle Zone. Mr Bryce recommended that this objective be reworded to be expressed more as an outcome. Consistent to our approach in relation to other objectives, we agree with Mr Bryce both in this regard and in relation to his correction of a cross reference to what is now objective 27.3.5<sup>235</sup>.

611. The only additional change required is a minor punctuation tweak. Accordingly, we recommend that what is now Objective 27.3.8, be reworded to read:

*“Subject to Objective 27.3.5, rural living development is enabled in a way that maintains the visual amenity values that are experienced from the Glenorchy Township, Oban Street and the Glenorchy-Paradise Road”.*

#### 5.9 Objectives 27.7.10-13 Inclusive

612. Notified Objectives 27.7.10-13 inclusive were not actually objectives at all. In each case they were labelled “Objective – Industrial B Zone”. Under the label “policies” for each, there is no policy either, just a note that this was reserved for Stage 2 of the PDP review. In effect, these are merely placeholders that in our view serve no useful purpose. Mr Bryce initially recommended their deletion, but following a discussion we had with him, querying whether any submission had sought that relief, resiled on that view. We too have reflected on the position, and have concluded that while no submission sought that outcome, it nevertheless open to us to recommend that the ‘objective’ and ‘policies’ in each case be deleted. Precisely because these provisions do not say anything, we do not regard this as a substantive change.

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<sup>234</sup> Refer Report 16.17

<sup>235</sup> Accepting in this regard submission 481

5.10 Objective 27.7.14 and Policies Following

613. Notified Objective 27.7.14 (renumbered Objective 27.3.7) read:

*“Objective - Jacks Point Zone – Subdivision shall have regard to identified location-specific opportunities and constraints.”*

614. Mr Bryce recommended that this objective be revised to read:

*“Objective – Jacks Point Zone – Subdivision shall have regard to identified location specific opportunities and constraints identified within the Jacks Point Structure Plan located within Chapter 41.”*

615. Mr Bryce did not explain the rationale for this change in his evidence proper. In his section 32 evaluation, he expressed the view that it was an administrative modification to cross refer the Structure Plan located in Chapter 41 that would result in efficiencies in PDP implementation.

616. Given that the first policy under this objective cross referred the objectives and policies in Chapter 41 that make extensive reference to the Jacks Point Structure Plan, we do not consider it a material change to clarify that the opportunities and constraints referred to are those identified within the Structure Plan, as indeed Mr Bryce advised was the intent.

617. We consider that the desired outcome could be expressed more succinctly as:

*“Subdivision occurs consistent with the Jacks Point Structure Plan.”*

618. As notified, Objective 27.7.14 was supported by 8 policies. Mr Bryce recommended the first notified policy be retained, the second (27.7.14.2) be transferred to the Rule governing compliant subdivision within the Jacks Point Zone (now 27.7.1) and the remaining six to the section he drafted (discussed below) providing assessment criteria.

619. We agree with those recommendations in the first two respects. However, the rule to which the suggested assessment criteria relate applied to non-compliance with standards for conservation areas within the Jacks Point Zone and the former policies apply to activity areas, not including those conservation areas. We consider the best approach is to retain them as policies supporting Objective 27.3.7, amended as required so that they read as policies. We regard the changes in wording and formatting required as minor changes within Clause 16(2) of the First Schedule.

620. Addressing the submissions on these policies, Submission 762<sup>236</sup> sought a new heading for Policy 27.7.14.2 recognising that it provided matters of discretion. This has effectively been granted through Mr Bryce’s suggested reorganisation of provisions.

621. Submission 632<sup>237</sup> sought that Policy 27.7.14.5 related to subdivisions below 380m<sup>2</sup> on the Hanley Downs portion of the zone. While we accept the need for the relevant rule (now 27.7.5.2) to provide for smaller sections in that area, we consider that the policy guidance should start at a higher point.

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<sup>236</sup> Opposed in FS1217, FS1219, FS1252, FS1277, FS1283, and FS1316

<sup>237</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316



622. Submission 632<sup>238</sup> also sought deletion of both Policies 27.7.14.7 and 27.7.14.8 related to cul-de-sacs and configuration of sites, parking, access and landscaping. Mr Bryce did not recommend deletion of these provisions. Mr Wells, giving evidence for the submitter, identified the first as having merit, but suggested it could be dealt with under more general provisions. He did not appear to address the latter submission specifically. Given that position, we prefer to be clearer as to the desired approach, and recommend retention of these provisions, but amended as above.

623. Mr Bryce recommended inclusion of two new policies in this section reading:

*“Enable subdivision which provides for appropriate, integrated and orderly development in accordance with the Jacks Point Structure Plan located within Chapter 41.*

*The extent to which the subdivision achieves the matters of control listed under Rule 27.7.4 and as they relate to the Jacks Point Structure Plan located within Chapter 41.”*

624. We think the first suggested policy is unnecessary because the objectives and policies located within Chapter 41, and cross referred in renumbered Policy 27.3.7.1, already enable subdivision in accordance with the Structure Plan.

625. The second suggested policy is framed as an assessment criterion rather than a policy.

626. Accordingly, we do not recommend inclusion of either of the two new policies that Mr Bryce suggested.

#### 5.11 Objective 27.7.17 and Policies Following

627. Notified Objective 27.7.17<sup>239</sup> related to Waterfall Park. There were no submissions specifically on this objective<sup>240</sup> and Mr Bryce did not recommend any change to it.

628. We consider that minor grammatical changes would better identify the outcome sought by this objective and that, for the same reasons as apply in relation to the Jacks Point objective just noted, it would be desirable to cross reference the Waterfall Park Structure Plan.

629. Accordingly, we recommend that Objective 27.7.17 be renumbered 27.3.8 and reworded to read:

*“Subdivision that provides for a range of visitor, residential and recreational facilities, sympathetic to the natural setting and has regard to location specific opportunities and constraints identified within the Waterfall Park Structure Plan.”*

630. Mr Bryce recommended no change to notified policy 27.7.17.1 other than consequential renumbering. The policy refers to the Waterfall Park Structure Plan as being located within Chapter 42. As we will discuss later in this report in greater detail, we consider that all of the Structure Plans relevant to the subdivision rules and policies should be located in Chapter 27. Accordingly, we recommend that that cross reference be amended accordingly.

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<sup>238</sup> Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

<sup>239</sup> There were no Objectives 27.7.15 and 27.7.16

<sup>240</sup> Other than seeking that it be shifted to accompany the other objectives and policies in Chapter 27 (Submission 696)



631. Mr Bryce recommended a new policy under this objective framed in a similar manner to the second policy he suggested for the Jacks Point Zone. For the same reasons as above, we do not recommend inclusion of a policy that is framed as an assessment criterion.

#### 5.12 Objective 27.7.19 and Policies Following

632. Notified Objective 27.7.19 related to the Millbrook Special Zone. There were no submissions on the wording of this objective<sup>241</sup> and Mr Bryce did not recommend any change to it other than renumbering it to reflect his suggested reorganisation of the chapter. For our part, aside from renumbering it 27.3.9 to reflect our recommendations as above, we recommend a minor grammatical change to more clearly express the objective as an outcome, so that it be worded:

*“Subdivision that provides for resort development while having particular regard to landscape, heritage, ecological, water and air quality values.”*

633. Notified Policy 27.7.19.1 is framed in a similar manner to the parallel policy related to Waterfall Park. Mr Bryce did not recommend any change to it (other than consequential renumbering). For the same reasons as above, we recommend that the renumbered Policy 27.3.9.1 should cross reference the Millbrook Structure Plan located within Chapter 27.

634. As for Jacks Point and Waterfall Park, Mr Bryce recommended a new policy be inserted related to the extent to which the subdivision achieves the matters of control listed in the relevant rule. For the same reasons as above, we do not recommend inclusion of such a policy.

635. As a result of the recommendations of the Stream 13 Hearing Panel<sup>242</sup>, an objective and some seven policies are included to address subdivision activities within a new (Coneburn Industrial) zone. These have been inserted in a new Section 27.3.10.

636. Similarly, two new objectives and related policies have been inserted as 27.3.11 and 27.3.12 governing subdivision in the West Meadows Drive area of Wanaka and the Frankton North area, consequent on the recommendations of the Stream 12 and 13 Hearing Panels<sup>243</sup> respectively.

#### 5.13 Conclusion on Location and Zone-Specific Objectives and Policies

637. Looking overall at the location-specific objectives and policies, we have a concern that many of these provisions have been rolled over from the ODP with no apparent thought having been given to whether they remain appropriate. Many of the policies, in particular, relate to actions apparently taken in the past or referenced to such past actions. Renumbered Policy 27.3.1.1 refers, for instance, to actions being taken before any subdivision or development occurs within the Peninsula Bay Lower Density Suburban Residential Zone. Our understanding is that development of the Zone has already proceeded. We wonder whether that policy is effectively ‘spent’. Similarly, Policy 27.3.7.1 seeks prohibition or deferral of development of the Wyuna Station Rural Lifestyle Zone until such time as one of three servicing options is undertaken. Mr Bryce confirmed to us that the intention is not that, by restating the existing policy, there should be an opportunity to move to a different wastewater disposal option, as appears to be the effect of restating the policy in the same form as appears in the ODP.

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<sup>241</sup> Although it appears Submission 696 may have been misdirected, referring variously to Objective 27.7.17, Policy 27.7.17.1 and Section 27.7.18.1, that all relate to Waterfall Park.

<sup>242</sup> Refer Report 17-8 Part F

<sup>243</sup> Refer Reports 16.2 at Section 2.11 and Report 17-6 Parts A, B and C

638. Given the paucity of submissions on this part of Chapter 27, it was beyond the scope of our inquiry to address these matters. However, we recommend that the Council undertake a complete review of the location-specific objectives and policies to determine whether they are necessary and appropriate having regard to development that may already have occurred within the respective zones. To the extent that the outcome of such a review is a finding that one or more of the objectives and/or policies needs to be amended or deleted, we recommend that this be part of a variation to the PDP.
639. We record, however, that we have considered each of the recommended objectives in this section of Chapter 27 and that, with the amendments and deletions recommended, the resulting objectives are the most appropriate way in which to achieve the purpose of the Act, given the alternatives available to us.
640. We further record that we have considered the policies in this section and again, having regard to the alternatives available to us, we consider that, in each case, the policies supporting the location-specific objectives recommended, are the most appropriate means to achieve those objectives.

## 6. SECTION 27.3 - OTHER PROVISIONS AND RULES

### 6.1 27.3.1 – District Wide Provisions

641. The purpose of notified Section 27.3 was evidently to provide clarification as to the relationship between Chapter 27 and the balance of the PDP, and to describe the inter-relationship of Chapter 27 with the ODP. Section 27.3.1 as notified outlined a number of district wide chapters of relevance to the application of Chapter 27.
642. The only submission on Section 27.3.1<sup>244</sup> sought that specific emphasis be given to Chapter 30 as it relates to subdivision use and development near the National Grid. Mr Bryce did not recommend acceptance of that submission on the basis that issues related to the National Grid were more properly identified in the substantive provisions of Chapter 27 and because drawing out Chapter 30 would give it too much emphasis when all the district-wide chapters need to be considered. We agree with Mr Bryce’s analysis on both counts. Mr Bryce recommended only minor cosmetic changes to Section 27.3.1.
643. For our part, we thought that the distinction drawn between provisions within Stage 1 of the PDP and ODP provisions (or “Operative” provisions as Mr Bryce suggested) in Section 27.3.1 was unhelpful given that following resolution of any appeals on the PDP, its provisions will form part of the ODP. In addition, the chapter heading of Chapter 6 listed in the table following needs to be amended to reflect recommendations of the Hearing Panel hearing submissions on that chapter. Lastly, chapter headings affected by the Stage 2 Variations need to be noted in italics pending decisions as part of that process.
644. As a consequence, we recommend deletion of the second sentence of notified Section 27.3.1 (now renumbered 27.4.1), deletion of reference to provisions being in the ODP in the table following, and amendment of the reference to Chapter 6 (so that it is entitled “*Landscapes and Rural Character*”).

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<sup>244</sup> Submission 805

## 6.2 27.3.2 – Earthworks Associated with Subdivision

645. Notified Section 27.3.2 contained ‘clarification’ as to the status of earthworks associated with subdivision activities. The intention appeared to be that earthworks form part of the consideration of subdivision applications, but be considered in terms of matters of control and discretions contained in the District Wide Earthworks Chapter.

646. We identified this as raising a number of difficult issues. Fortunately perhaps, our need to grapple with those issues has been overtaken by the Stage 2 Variations which have proposed an amendment to 27.3.2. We need therefore address it no further.

## 6.3 27.3.3 – Zones Exempt from PDP and Subdivision Chapter

647. Section 27.3.3 of the notified PDP listed a number of zones under the heading:

*“Zones exempt from the Proposed District Plan and subdivision chapter.”*

648. The first list (in notified Section 27.3.3.1) listed certain zones<sup>245</sup> which did not form part of the PDP Stage 1 and in respect of which the Subdivision Chapter does not apply. The second list (in notified Section 27.3.3.2) referred to the three special zones the subject of Chapters 41-43 of the PDP and stated that they were the exception and that the balance of the special zones within Chapter 12 of the ODP were excluded from the operation of the Subdivision Chapter.

649. In its Report 2, the Hearing Panel discussed the lack of clarity generally, if not confusion, as to the matters covered by the PDP, of which these provisions are but one example. The Hearing Panel suggested to counsel for the Council that rather than have provisions buried in the Subdivision Chapter explaining what matters were within the purview of the PDP and what matters were not was not helpful and that it would assist the reader if such clarification were provided in the opening sections of the PDP. The answer the Hearing Panel received from the Council’s representatives was that the Council preferred not to make a statement as to what matters were covered by the PDP in the introductory sections of the PDP, because that would only get overtaken by subsequent plan changes, necessitating that the explanation would itself need to be changed. The advice we had from counsel was that Council preferred to provide such clarification by means of explanations on the Council website.

650. The same logic would suggest that Section 27.3.3 should be deleted, because it raises the same issues as a clarification in the introductory sections would have done.

651. We had other issues with this part of the Chapter. We do not think it is helpful to refer to the PDP: Stage 1 given that at the completion of this process, the final form of the PDP will then form part of the ODP. While we note the advice received subsequently<sup>246</sup> that Council’s intention is that the provisions of the PDP, once operative, will be held in a separate volume of the District Plan applying to most but not all of the District, it will still not be correct to describe that volume as the “Proposed District Plan”.

652. For the same reason, we do not think it is helpful to refer to Chapter 12 of the ODP given that, upon the PDP becoming operative, Chapter 12 will contain provisions related to Queenstown Town Centre, and not the special zones intended to be referred to by notified Section 27.3.3.2.

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<sup>245</sup> Frankton Flats A, Frankton Flats B, Remarkables Park, Mount Cardrona Station, Three Parks, Kingston Village Special Zone, Open Space Zone

<sup>246</sup> Counsel for the Council’s Memorandum dated 23 November 2016

653. Mr Bryce sought to resolve at least some of these issues by suggesting deletion of reference to the PDP Stage 1 in notified Section 27.3.3.1, but created new issues by suggesting insertion of a reference to Chapter 15 of the ODP.
654. Subsequently the provisions have been overtaken in part (as regards reference to the Open Space Zone) by the Stage 2 Variations.
655. The only submissions on this part of Chapter 27 sought variously an amendment to the heading<sup>247</sup> and insertion of a reference to a proposed new zone in notified provision 27.3.3.2<sup>248</sup>. This is not a promising basis for clarification of the complex position we have described above.
656. Our concerns in relation to this section were effectively overtaken by the advice we received<sup>249</sup> that Council had determined that the appropriate way to resolve the difficulties in determining what plan provisions apply to what land is to insert clarification by way of plan variation under clause 16A. The Council's resolution of 25 May 2017 (discussed in Report 1) withdrawing a number of the zones listed in notified 27.3.3.1 from the PDP is an additional consideration.
657. Against that background, we recommend that Section 27.3.3 be deleted from Chapter 27 in effect, so Council can start, in effect, with a 'blank slate'. We regard this as a minor non substantive change because, to the extent section 27.3.3 records that Chapter 27 does not apply to zones not part of the PDP, it does no more than state the position as we believe it to be in any event. We discuss this further in Section 8.1 below.

#### 6.4 Section 27.11 – Natural Hazards

658. Section 27.11 discussed the role of the Natural Hazards Chapter of the District Plan. Because renumbered Section 27.4 operates as a 'catchall' of other relevant provisions in the PDP, we consider Section 27.11 should form part of the provisions referenced in Section 27.4. There was only one submission on Section 27.11<sup>250</sup>, which sought that it reference section 106 of the Act. We are a little unclear as to the point of the submission given that Section 27.11 already does reference section 106.
659. Be that as it may, we recommend that notified Section 27.11 is shifted into a subsection of renumbered Section 27.4 (as 27.4.3), but otherwise be left unamended.

#### 6.5 Conclusion

660. We have considered the provisions recommended for renumbered Section 27.4 as a whole. We consider that collectively, they are the most appropriate means to achieve the objectives of the PDP as they relate to subdivision and development, given the alternatives available to us in this context.

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<sup>247</sup> Submission 580

<sup>248</sup> Submission 806

<sup>249</sup> In counsel for the Council's 23 November 2016 Memorandum

<sup>250</sup> Submission 806

## 7. SECTION 27.4 - RULES – SUBDIVISION

### 7.1 Introduction

661. Before commencing a review of the submissions on the rules of Chapter 27 as notified, we note that Mr Bryce suggested that consequent on reformatting of the rules he had suggested, there needed to be an initial introductory statement regarding the rules. We agree both with the need for explanation and the suggested text. Our recommended revised Chapter 27 shows the new text as Section 27.5.1.

662. We also consider that it is desirable to provide for the situation that might potentially arise when an activity falls within more than one rule. In such cases, unless stated otherwise in the rules, activity status should be determined by the most restrictive rule, and so we recommend the following be added:

*“Where an activity falls within more than one rule unless stated otherwise, its status shall be determined by the most restrictive rule.”*

### 7.2 Boundary Adjustments

663. The next rule requiring consideration is notified Rule 27.6.1.1. This is a permitted activity rule for certain boundary adjustments. The only submissions that sought amendment to the notified rule were from the survey companies<sup>251</sup> seeking variously acknowledgement of the requirement for a Certificate of Compliance under section 223 of the Act and a minor grammatical change to improve the English.

664. Mr Bryce recommended acceptance of the former point and suggested also a clarification of the reference in the notified rule to a resource consent (to identify what type of resource consent is required). We accept both recommendations in substance, but we think both the wording and the formatting suggested by Mr Bryce needs a little massaging. Specifically, the cross reference should be to a ‘*land use consent*’ so as to pick up on the language of section 87(a) of the Act and the formatting needs to make it clear that this rule relates to one activity that might arise in a number of different situations. The cross reference to section 223 needs to be framed more clearly as an advice note drawing attention to the fact that this is a collateral obligation. Lastly, we recommend that the minor grammatical change suggested in Submission 370 be accepted.

665. The end result is that we recommend that renumbered **Permitted Activity** Rule 27.5.2 be framed as follows:

*“An adjustment to an existing cross-lease or unit title due to:*

- a. an alteration to the size of the lot by alterations to the building outline;*
- b. the conversion from cross-lease to unit title: or*
- c. the addition or relocation of an accessory building;*  
*providing the activity complies with all other provisions of the District Plan or has obtained a land use consent.*

*Advice Note*

*In order to undertake such a subdivision, a Certificate of Compliance (s139 of the Act) will need to be obtained (see s223(1)(b)).”*

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<sup>251</sup> Submissions 370 and 453

666. In his Section 42A Report, Mr Bryce noted a number of submissions<sup>252</sup> seeking provision for boundary adjustments not falling within notified Rule 27.6.1.1 as a controlled activity. Mr Bryce noted that under the notified Plan, such boundary adjustments would fall within the default discretionary rule already discussed. In Mr Bryce’s view, boundary adjustments are an important and frequently utilised mechanism (he cited a statistic provided in the section 32 evaluation to the effect that of 677 subdivisions advanced between 2009 and 2015, 125 were boundary adjustments). Accordingly, Mr Bryce recommended inclusion of a new controlled activity rule for boundary adjustments. Mr Bryce felt, however, that boundary adjustments within the Arrowtown urban limits, and on sites containing heritage or other protected or scheduled items should be dealt with under a different rule with a greater level of discretion – he recommended a new restricted discretionary activity rule for such boundary adjustments.
667. We agree with Mr Bryce that there is a case for a less regulated approach to boundary adjustments than in the notified plan, that most boundary adjustments can appropriately be considered as controlled activities (subject to suitable conditions) and that a greater level of discretion is required for sites with identified sensitivity, or more generally in Arrowtown (but still short of full discretionary status).
668. Focussing on the new controlled activity rule, Mr Bryce largely recommended acceptance of the proposed matters of control suggested in the submissions subject to some drafting changes to express them more clearly. We discussed with Mr Bryce whether there needed to be an additional precondition requiring that lots be immediately adjoining each other to avoid the rule being used in situations that while technically able to be described as boundary adjustments, create additional issues. Mr Bryce agreed that that was a desirable additional precondition. We also consider that the situations proposed Rule 27.5.3 addresses might be expanded on to cover the situation where the existing lots already do not comply with the specified minimum lot areas. Subject to that point, we recommend inclusion of a new **Controlled Activity** rule numbered 27.5.3, with only minor additional rephrasing and reformatting from that suggested by Mr Bryce, reading as follows:

*“For boundary adjustment subdivision activities where there are two or more existing lots which each have separate Certificates of Title, new lots may be created by subdivision for the purpose of an adjustment of the boundaries between the existing lots, provided:*

- a. in the case of Rural, Gibbston Character and Rural Lifestyle Zones, any approved building platform is retained in its approved location;*
- b. no additional or relocated residential building platform is identified and approved as part of a boundary adjustment within the Rural, Gibbston Character and Rural Lifestyle Zones;*
- c. no additional separately saleable lots are created;*
- d. the areas of the resultant lots either comply with the minimum lot size requirement for the zone (where applicable) or where any lot does not comply with an applicable minimum lot size requirement for the zone, the extent of such non-compliance is not increased; and*
- e. lots must be immediately adjoining each other.*

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<sup>252</sup> Submissions 532, 534, 535, 762, 763, 767, 806: Supported in FS1097, FS1157, FS1259, FS1267 and FS1322; Opposed in FS1068, FS1071, FS1217, FS1219, FS1252, FS1277, FS1283 and FS1316

*Control is reserved to:*

- a. the location of the proposed boundaries;*
- b. boundary treatment;*
- c. easements for existing and proposed access and services.”*

669. Similarly, we largely accept Mr Bryce’s recommendation of a new restricted discretionary activity rule. Amendment is, however, required to adjust the language recommended by Mr Bryce, to make it clear that this is indeed a restricted discretionary rule – reference to reservation of control is therefore not appropriate. The only additional changes we consider necessary are to separate the two situations where the rules apply (for clarity), to emphasise that the focus should be on heritage or other protected items identified on the PDP maps, to provide certainty, insertion of the same precondition regards boundary adjustments involving sites that are not adjacent as in Rule 27.5.3, and minor grammatical and formatting changes.

670. Accordingly, we recommend inclusion of a new **Restricted Discretionary Activity** rule numbered 27.5.4, worded as follows:

*“For boundary adjustments that either:*

- a. involve any site that contains a heritage or other protected item identified on the District Plan maps; or*
- b. any boundary adjustment within the Urban Growth Boundary, of Arrowtown where there are two or more existing lots which each have separate Certificates of Title, new lots may be created by subdivision for the purpose of an adjustment of the boundaries between the existing lots, provided:*
  - a. no additional separately saleable lots are created;*
  - b. the areas of the resultant lots comply with the minimum lot size requirement of the zone;*
  - c. lots must be immediately adjoining each other.*

*Discretion is restricted to:*

- a. the impact on the heritage values of the protected item;*
- b. the maintenance of the historic character of the Arrowtown Residential Historical Management Zone;*
- c. the location of the proposed boundaries;*
- d. boundary treatment;*
- e. easements for access and services.”*

671. Establishing rules governing boundary adjustments with conditions on their application requires consideration of the position should those conditions not be met. For boundary adjustments within the urban zones covered by the PDP, non-complying boundary adjustments will fall within the new default rule (25.5.7) discussed earlier, and will therefore be considered as restricted discretionary activities. While this is the same status as activities within Rule 25.5.4, there are a much more extensive list of matters over which discretion is reserved and so we do not view this as inappropriate. Likewise, non-complying boundary adjustment within the Rural Residential and Rural Lifestyle Zones will fall within the new Rule 25.5.8. Lastly, non-complying boundary adjustments within the Rural and Gibbston Character Zones will be considered as discretionary activities under Rule 27.5.11, reflecting the greater potential sensitivity of land in those zones.

### 7.3 Unit Title or Leasehold Subdivision

672. Mr Bryce also recommended a new controlled activity rule to cater for “*unit title, strata title or cross lease subdivision of a multi-unit commercial or residential development the subject of a land use consent*”. This recommendation was in conjunction with Mr Bryce’s suggestion of a new policy to follow renumbered 27.2.7.2 providing for such subdivisions. We have already concluded that there is no jurisdiction for us to recommend a new policy to this effect<sup>253</sup> and recommended a variation to address the issue. We do not, however, think that there are any jurisdictional impediments to inserting a rule to this effect given the numerous submissions seeking that all subdivision activities be controlled activities.
673. There are, however, some aspects of Mr Bryce’s suggested rule that we consider require amendment. First, we do not consider that separate reference need be made to strata titles given that this has no clear meaning in terms of the PDP and, as a matter of property law, there is no meaningful distinction between a stratum title and a unit title<sup>254</sup>.
674. Secondly, although Mr Bryce focussed on cross-leased subdivisions, we consider that the precise nature of the leasehold interest in question should not influence the status which is appropriate for such subdivisions.
675. Thirdly, Mr Bryce suggested that the Council reserve control over the effects of infrastructure provision. For the reasons discussed above in relation to the Aurora line network, we consider that the reservation of control needs to include effects “*on*” infrastructure provision as well as “*of*” infrastructure provision.
676. As previously, the rule should refer to an approved “*land use consent*”. We have amended the description of the matters of control for consistency also.
677. Mr Bryce’s recommended rule included a reference to fee simple subdivisions. We consider that the wording could be clarified as to what is meant by that, and to state more clearly what it is intended to apply to.
678. Lastly, Mr Bryce suggested a reference to lots containing an approved land use consent. A lot does not contain consents. Resource consents sit alongside property rights, which is why a land use consent is described as running with the land. We therefore recommend that the reference be to lots “*the subject of*” an approved land use consent.
679. In summary, therefore, we recommend inclusion of a new **Controlled Activity** rule numbered 27.5.5 reading as follows:
- “Where a land use consent is approved for a multi-unit commercial or residential development, including visitor accommodation development, and a unit title or leasehold (including cross lease) subdivision is subsequently undertaken in accordance with the approved land use consent, provided:*
- a. all buildings must be in accordance with an approved land use consent;*
  - b. all areas to be set aside for the exclusive use of each building or unit must be shown on the survey plan, in addition to any areas to be used for common access or parking or any other such purpose;*

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<sup>253</sup> Refer paragraph 562 above

<sup>254</sup> A stratum estate is an estate (in fee simple or leasehold) created under the Unit Titles Act 2010 – see Principles of Real Property Law, Hinde et al, 2<sup>nd</sup> edition 3.004C



- c. *all service connections and on-site infrastructure must be located within the boundary of the site they serve or have access provided by an appropriate legal mechanism.*

*Control is reserved to:*

- a. *the effect of the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces;*  
b. *the effects of and on infrastructure provision.*

*This rule does not apply to a subdivision of land creating a separate fee-simple title.*

*The intent is that it applies to subdivision of a lot the subject of an approved land use consent in order to create titles in accordance with that consent.”*

#### 7.4 District Wide Subdivision Rules

680. Putting aside recommended Rule 25.5.6, that we will come to shortly, the next two rules in our recommended section 27.5 are Rules 27.5.7 and 27.5.8 discussed earlier<sup>255</sup>.
681. Mr Bryce drew our attention in his Section 42A Report to a submission by Transpower New Zealand Ltd<sup>256</sup> seeking a new rule in the Utilities Chapter (Chapter 30) that would make subdivision of land within a defined distance either side of national grid lines a restricted discretionary activity, subject to a condition/standard requiring that all allotments identify a building platform for the principal building and any dwelling to be located outside the corridor. The submission further sought a default non-complying activity rule, to operate in conjunction with the restricted discretionary activity rule.
682. Mr Bryce recommended that this submission be considered in the context of Chapter 27 and we agree with that suggestion. We also note the relevance of the policy we have recommended above as 27.2.2.8, which in turn reflects the provisions of the Proposed RPS provisions related to regionally significant infrastructure and the NPSET 2008.
683. We agree with Mr Bryce that a rule framework is required to support these policy provisions and that the need to protect the operation of the national grid means that there must be provision for applications to be declined if required. That means in practice that the rules should at least be restricted discretionary in nature.
684. In relation to the framing of the rule, by Mr Bryce’s reply, he had largely agreed with the suggestions made by Ms McLeod in relation to his initial draft attached to the Section 42A Report. For our part, we think that, aside from minor wording and formatting changes for consistency, two amendments are required to Mr Bryce’s draft rule. The first is that Mr Bryce’s draft refers to the “*National Grid Subdivision Corridor*”. We asked Ms McLeod about this and she saw no reason not to call the area in question just “*National Grid Corridor*”. This would have the practical advantage of enabling utilisation of the existing definition, which Transpower did not seek to substantively change.
685. The second amendment is to the specified condition/standard Transpower sought and Mr Bryce agreed that the condition/standard should have, with the result that the rule would apply “*where all allotments identify a building platform for the principal building and any dwelling to be located outside of the National Grid Yard*”. This would mean that a subdivision in the vicinity of the National Grid lines not involving construction of any building or dwelling,

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<sup>255</sup> See the discussion at paragraphs 99-176 above

<sup>256</sup> Submission 805: Opposed in FS1132

such as the creation of a reserve or a subdivision for utility purposes, would become a non-complying activity. We therefore recommend that the provision be turned around so it expresses the position on an exceptions basis.

686. Accordingly, we recommend inclusion of a new **Restricted Discretionary** rule numbered 27.5.10<sup>257</sup>, worded as follows:

*“Subdivision of land in any zone within the National Grid Corridor except where any allotment identifies a building platform to be located within the National Grid Yard.*

*Discretion is restricted to:*

- a. impacts on the operation, maintenance, upgrade and development of the National Grid;*
- b. the ability of future development to comply with NZECP34:2001;*
- c. the location, design and use of any proposed building platform as it relates to the National Grid transmission line.”*

687. The corollary of this rule is a further non-complying activity rule for subdivisions that do not comply with the standard. We accept Mr Bryce’s recommendation as to its wording save that the cross reference should be to the National Grid Corridor and a consequential renumbering.

688. As a result, we recommend inclusion of a new **Non-Complying** activity rule numbered 27.5.24 worded:

*“Any subdivision of land within the National Grid Corridor, which does not comply with Rule 27.5.10.”*

689. Mr Bryce’s recommended set of rules next had a new restricted discretionary activity rule for subdivision of land within a defined distance from electricity sub-transmission lines, responding to the submissions of Aurora Energy Limited<sup>258</sup>.

690. We have already addressed the point more generally, by recommending inclusion of a discretion over adverse effects on energy supply and telecommunication networks in the context of recommended Rules 27.5.7 and 27.5.8 and control over effects on infrastructure in Rule 27.5.5. Against this background, we do not regard a rule specifically applying to electricity sub-transmission lines as being required.

691. The next rule recommended by Mr Bryce is a discretionary activity rule governing subdivision activities in the Rural and Gibbston Character Zones. The need for this rule is a consequence of shifting from a discretionary default rule (as per notified rule 27.4.1). We have already addressed the need to treat subdivisions in the Rural and Gibbston Character Zones differently to subdivisions in other zones and so we do not need to go back over that ground (except in relation to the Ski Area Sub-Zones, which we will discuss shortly). Mr Bryce also recommended that an exception be made for subdivisions undertaken in accordance with Rule 27.5.5.

692. The evidence we heard from the representatives of some of the ski companies<sup>259</sup> was that in the existing ski areas, there might well be leasehold subdivisions of accommodation facilities. While it is difficult to contemplate a situation where multi-unit commercial residential developments would occur in the Rural Zone outside the ski areas, we think that the same

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<sup>257</sup> Leaving 27.5.9 available for a new rule proposed in the Stage 2 Variations.

<sup>258</sup> Submission 635: Opposed in part in FS1301

<sup>259</sup> Submissions 610 and 613

logic would apply to such subdivisions: provided the subdivision occurs in conjunction with an approved land use consent, it might properly be considered as a controlled activity.

693. Subdivisions under Rule 27.5.5 are not, however, the only potential exception to full discretionary activity status in the Rural and Gibbston Character Zones. Rules 27.5.2-4 also might apply. We therefore consider the exception needs to be more generic – “*unless otherwise provided for*”. That formulation would also enable non-complying boundary adjustments in these zones to be addressed under Rule 27.5.11, in the manner we discussed above<sup>260</sup>.
694. Turning to the broader submission made on behalf of submitters 610 and 613 that subdivision within the Ski Area Sub-Zones should be a controlled activity rather than discretionary, as for the balance of the Rural Zone, this was the subject of extensive legal submissions and planning evidence.
695. The argument for the Ski Company submitters, building on the case they advanced in the Stream 2 hearing related to the relevant provisions of Chapter 21, is that the PDP identifies the Ski Area Sub-Zones as an important area for growth and development by reason of their contribution to the District’s economy and provides an enabling policy and rule framework. It was argued that the Ski Area Sub-Zones are quite different to the balance of Rural Zoned land and that their different purpose justifies a different subdivision status. Specific attention was given to the extent of modification which, in counsel’s submission, justified the exclusion from the stringent policies applicable to ONLs and ONFs. The submitters also emphasised the importance of subdivision as a means to optimise ski area operations and to enable their continued prosperity. It appears from the evidence we heard that a major strategic initiative planned by the submitters is creation of ski villages with accommodation on the mountain. Subdivision is required, so we were told, to facilitate this although, as noted above, probably by way of lease rather than freehold subdivision.
696. While the Ski Area Sub-Zones are atypical in the context of the Rural Zone as a whole, we think it also needs to be recognised (as noted in the Hearing Panel’s Report 3) that exclusion of the Ski Area Sub-Zones from the ONL classification process is something of an anomaly. They are clearly not sufficiently large to be landscapes in their own right and they have been developed (so far) in a manner which does not appear to have caused the broader landscapes within which they sit to cease to have the qualities justifying a classification as an ONL. We also think it needs to be borne in mind that minimum lot sizes are a key constraint in the Residential, Rural Residential and Rural Lifestyle Zones justifying a less restrictive rule regime for subdivision and development in those zones. The absence of a minimum lot size in the Rural Zone both enables flexibility in design and requires a greater level of discretion to be retained.
697. At the hearing, we explored with the representatives of the submitters whether subdivision on a more favourable basis might be limited to discrete parts of the Ski Area Sub-Zones (specifically, the ski bases). The thought that we had in mind was that in those parts of the Sub-Zone, there is an existing level of development and incremental subdivision and development within a defined area around the ski base facilities might be able to be provided for on a less restrictive basis.
698. However, when the submitters reappeared on 17 August accompanied by Mr McCrostie, he advised that while they were not looking to undertake subdivision and development across the entire ski area (that would of course defeat the whole purpose of a ski facility) there were

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<sup>260</sup> See paragraph 658 above

Pods across the field where visitor accommodation, food and beverage operations and the like might be located, so it was not as simple as identifying a single discrete area within each Sub-Zone.

699. We discussed with the representatives of the submitters whether this conundrum might be addressed by a structure plan type approach and when they reappeared on 17 August, Mr Ferguson had clearly given considerable thought to this suggestion. He tabled suggested revised rules based on the subdivision being undertaken in accordance with a Landscape and Ecological Management Plan for the Sub-Zone, that additional feature justifying controlled activity status. It occurred to us that such an arrangement might raise issues of the kind that were addressed in the litigation on the Proposed Auckland Unitary Plan surrounding the use of framework plans<sup>261</sup>. Counsel for the submitters, Ms Baker-Galloway responded that the concept is one where an activity is consented, and an application contains the Landscape and Ecological Management Plan. Unlike the proposal considered by the Environment Court, it was not proposed that they be sequential.
700. We have discussed the Auckland Framework Plan cases in more detail in our Report 1. For present purposes, it is sufficient to say that while the approach advanced by Ms Baker-Galloway and Mr Ferguson might solve the legal hurdles identified in the framework plan cases (we assume that might be the case for the moment), it presents a more fundamental problem that is discussed in Report 1. If the Landscape and Ecological Management Plan is only approved as a condition of consent, it is not possible to identify in advance that the end result will be sufficiently acceptable that consent should be granted – that is to say, whether sufficient control is retained by controlled activity status. Mr Bryce came to the same view in his reply evidence. His opinion was that the approach advanced by Mr Ferguson “*falls short of a true structure plan response and therefore I question whether it offers the same level of certainty provided by the structure plan approach*”<sup>262</sup>. Mr Bryce also drew our attention to the jurisdictional issues created by the way in which the submitters’ original submissions had been framed, limiting the scope of parallel amendments proposed to Chapter 21 to visitor accommodation.
701. We have concluded that Mr Bryce is correct, and the proposal proffered by Mr Ferguson on behalf of the submitters does not provide us with sufficient comfort to recommend controlled activity status. We consider that the solution for the ski companies is to pursue the course adopted in a number of other developments and proffer a true structure plan for the Ski Area Sub-Zones that might be incorporated in the PDP through a variation to it, with subdivision thereafter considered as a controlled activity under Rule 27.7.1.
702. In the absence of a Structure Plan within the District Plan, we think that any subdivision and development in the Ski Area Sub-Zones not falling within Rule 27.5.5 should remain discretionary.
703. In our assessment of costs and benefits of the competing alternatives we have had regard to Mr Bryce’s view, as set out in his reply evidence<sup>263</sup>, that Rule 27.5.5 is a more effective way of addressing the concern advanced on behalf of the submitters than the relief they suggest.
704. Lastly Mr Bryce’s recommended rule had a typographical error in that it referred to the “*Rural General*” zone that needs to be corrected.

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<sup>261</sup> *Re Application for Declarations by Auckland Council* [2016] NZEnvC 056 and [2016] NZEnvC 65

<sup>262</sup> N Bryce, Reply Statement at 2.11

<sup>263</sup> N Bryce, Reply Statement at 2.14

705. In summary, we recommend inclusion of a new discretionary activity rule numbered 27.5.11 worded:

*“All subdivision activities in the Rural and Gibbston Character Zones and Airport Zone - Wanaka, unless otherwise provided for.”*

706. Mr Bryce also recommended as separate discretionary activity rules, the subdivision of land containing heritage or other protected items, archaeological sites, heritage landscapes and significant natural areas. Previously these rules had been located, somewhat anomalously, within the section (27.5) that set out the standards for subdivision activities. Accordingly, we accept Mr Bryce’s suggestion. The only recommended changes to his suggested rules are consequential on the recommendations of the Hearing Panel in relation to how heritage and archaeological items are treated, and a cross-referencing correction – Mr Bryce suggested boundary adjustments under Rule 27.5.2 be exempted, but we consider that it should refer to Restricted Discretionary Rule 27.5.4. Otherwise Rules 27.5.4 and 27.5.12 would overlap.

707. Accordingly, we recommend inclusion of four discretionary activity rules numbered 27.5.12-15 respectively reading:

*“The subdivision of land containing a heritage or other protected item scheduled in the District Plan. This rule does not apply to boundary adjustments under Rule 27.5.4.*

*The subdivision of land identified on the planning maps as a Heritage Overlay Area.*

*The subdivision of a site containing a known archaeological site.*

*Subdivision that would alter, or create a new boundary within a Significant Natural Area scheduled in the District Plan.”*

708. Notified Rule 27.4.2(e) provided as a non-complying activity, where a subdivision occurs under the Unit Titles Act and the building in question is not completed. This needs to be read together with notified Rule 27.4.2(f) which indicated (notwithstanding that it sits under a heading stating that the specified rules are non-complying activities) that where a unit title subdivision is lodged concurrently with an application for building consent or land use consent, it should be considered as a discretionary activity.

709. Submission 166 sought that both Rules 27.4.2(e) and (f) should be deleted. The submission argued that they operate as a barrier to staged developments and that other statutory provisions protect the Council in relation to the issue of unit titles.

710. Mr Bryce did not support that relief. While we agree in substance with Mr Bryce, we do think that greater clarity could be provided as to the inter-relationship between the two rules (and indeed Rule 27.5.5).

711. Logically, the second, less restrictive rule should be stated first. Mr Bryce suggested only minor wording amendments. Aside from amending Mr Bryce’s reference to a “land use resource consent” to refer to the correct statutory term (*‘land use consent’*), we agree with Mr Bryce’s recommendations. The revised **Discretionary Activity** rule (numbered 27.5.16) would therefore read:

*“A Unit Titles Act subdivision lodged concurrently with an application for building consent, or land use consent.”*

712. Turning to the second rule, we recommend that notified Rule 27.4.2(e) be renumbered 27.5.20 and revised to read:

*“A subdivision under the Unit Titles Act not falling within Rules 27.5.5 or 27.5.16 where the building is not completed (meaning the applicable Code of Compliance Certificate has not been issued), or building consent or land use consent has not been granted for the buildings.”*

713. The next rule we need to discuss relates to subdivision within the Jacks Point Zone. As notified, Rule 27.4.2(a) provided that subdivision within the Jacks Point Zone that did not comply with the Chapter 27 standards should be a discretionary activity. Mr Wells gave evidence on this point<sup>264</sup> seeking recognition of the particular situation created within the Hanley Downs part of the Jacks Point Zone, where more intensive development (more intensive than is than the standard of 380m<sup>2</sup> provided for in notified Section 27.5.1) is planned. He sought restricted discretionary activity status for that area. In Mr Bryce’s reply evidence, he recommended acceptance of Mr Wells’ suggestion. We concur. Mr Bryce recommended a site specific restricted discretionary activity rule related to subdivision within another part of the Jacks Point Zone (a Farm Preserve activity area). However, that activity area has been deleted from the revised Jacks Point Structure Plan and the accompanying recommended Chapter 41 provisions, and so the rule is no longer required. We also suggest consequential changes to reflect our recommendations as to the heading and content of subsequent sections and to standardise the numbering with the other rules.

714. In summary, therefore, we recommend the **Discretionary** activity rule providing for non-compliance with the Jacks Point standards should be numbered 27.5.17 and read:

*“Within the Jacks Point Zone, subdivision that does not comply with the minimum lot areas specified in Part 27.6 and the zone and location specific rules in Part 27.7, excluding:*

- a. *In the R(HD) Activity Area, where the creation of lots less than 380m<sup>2</sup> shall be assessed under Rule 27.7.5.2 (as a restricted discretionary activity).”*

715. Mr Bryce recommended that the balance of what was notified Rule 27.4.2(a) be the subject of a separate non-complying activity rule and be amended to cross reference the Jacks Point rule just discussed. We agree both with that reformatting and recommend the rule be as suggested by Mr Bryce, subject only to correcting the cross-reference numbering and consequential changes reflecting recommended changes to section headings.

716. The recommended **Non-Complying** rule (numbered 27.5.19 to accommodate an additional discretionary activity rule we will discuss shortly) therefore reads:

*“Subdivision that does not comply with the minimum lot areas specified in Part 27.6 with the exception of the Jacks Point Zone which is assessed pursuant to Rule 27.5.17.”*

717. The final discretionary activity rule in this part of Chapter 27 is consequential on to a new zone recommended by the Stream 13 Hearing Panel for the Coneburn Industrial area. Amended to reflect the revised terminology we have recommended, it reads:

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<sup>264</sup> In relation to Submission 632: Supported in FS1097; Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

*“Within the Coneburn Industrial Zone Activity Area 2a, subdivision which does not comply with the minimum lot areas specified in Part 27.6.”*

718. The next rule we need to consider is notified Rule 27.4.2(b) which identified as a non-complying activity the further subdivision of an allotment previously used to calculate a minimum average density in the Rural Lifestyle Zone or Rural Residential Zone.
719. Submission 350 sought deletion of this particular rule. The submission provides reasonably detailed reasons for the relief sought. It is argued that the rule has been carried over from legacy plans and is not based on achieving the objectives of the PDP or on achieving good environmental outcomes. The rule is described as a technicality which should not apply because the parent lot has been subdivided before. The reference point should be whether the objectives of the Rural Lifestyle and Rural Residential Zones are met. It is also supported on efficiency grounds. These various points might have carried more weight had Mr Jeff Brown, who gave evidence for this submitter, addressed them in his evidence.
720. Having said that, we consider that there is a problem with the way the rule is worded. The concern the rule seeks to address (we infer) is one of *“environmental creep”* if subdividers are permitted to obtain consents on one basis and then make further application, leveraging off the initial consent to obtain a better outcome.
721. Accordingly, where a subdivision has been approved with the maximum number of lots meeting the average density requirements in the relevant zone, the applicant should be discouraged from *“having another bite of the cherry”*. The test in the rule, however (*“used to calculate the minimum average densities for subdivision”*) has wider application. In any subdivision in the Rural Lifestyle Zone, for instance, the average density will be calculated and compared to the average required (not less than 2 hectares). If the calculated average density is greater than 2 hectares, there may be room for a further subdivision in future with the average of the original subdivision remaining above 2 hectares. On the face of the matter, such a further subdivision would be a non-complying activity in terms of notified Rule 27.4.2(b). We do not consider that should be the case.
722. Another submission on this rule<sup>265</sup> sought deletion of reference to the Rural Residential Zone. The submission argues that minimum average densities are not relevant to the Rural Residential Zone.
723. The submission is not quite correct. While minimum average densities are not provided for in the Rural Residential Zone generally, either under the ODP or under the PDP, they are provided for in the Bob’s Cove Sub-Zone. On this rather slender basis (and because specification of this as a non-complying activity in the balance of the Rural Residential Zone will impose no costs on subdividers if they have not had to meet an average density requirement), we recommend retention of reference in the rule (now numbered 27.5.21) to the Rural Residential Zone.
724. Reverting to the substantive issue we have identified with the reformatted rule Mr Bryce recommended, we consider it would be addressed if the Rule were worded as follows:  
*“The further subdivision of one or more allotments that if undertaken as part of a previous subdivision would have caused that previous subdivision to exceed the minimum average density requirements for subdivision in the Rural Lifestyle Zone or the Rural Residential Zone.”*

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<sup>265</sup> Submission 166

725. Notified Rule 27.4.2(c) provided that the subdivision of the building platform was a non-complying activity. Mr Bryce recommended a slight change of wording to meet the concern expressed in Submission 166 that the notified rule wording lacked clarity. We agree with Mr Bryce's suggestion and recommend retention of notified **Non-Complying** Rule 27.4.2(c), renumbered 27.5.22 and amended to read:

*"The subdivision of land resulting in the division of a building platform."*

726. Notified Rule 27.4.2(d) provided that the subdivision of a residential flat from the residential unit it is ancillary to was a non-complying activity except where this is permitted in the Low Density Residential Zone. Submission 453 suggested that this rule was unclear and needed clarification.

727. Mr Bryce discussed the point in his Section 42A Report and suggested that it could be made clearer. We agree with his reasoning and accordingly we recommend that notified **Non-Complying** Rule 27.4.2(d) be renumbered 27.5.23 and amended to read:

*"The subdivision of a residential flat from a residential unit."*

728. Mr Bryce recommended inclusion of a new non-complying activity rule consequential on his reorganisation of the chapter. The specific issue is that standards related to servicing and infrastructure were formerly located in Section 27.5.4, but have been shifted to Part 27.7. Non-compliance with the standards in Section 27.5 was a non-complying activity under notified Rule 27.4.2. The effect of Mr Bryce's recommended new rule is to retain that position unchanged. We agree with that recommendation, subject only to amending the terminology to reflect our recommendations as to the heading of Section 27.7. Accordingly, we likewise recommend a new **Non-Complying** rule numbered 27.5.25 reading:

*"Subdivision that does not comply with the requirements related to servicing and infrastructure in Rule 27.7.13."*

729. Finally, under this general heading, and out of abundant caution, we recommend a new rule to catch any subdivision not otherwise addressed by any of the rules we have recommended. While we have not identified any subdivision activity that is not in fact covered by the rules, either in Section 27.5 or 27.7. we think it is prudent to have a default rule. Discretionary status for such a rule will maintain the status quo under notified Rule 27.4.1 and, to that extent, we recommend that that rule be retained. As with Rule 27.4.1, a catchall rule should come first in the group of rules.

730. Accordingly, we recommend that **Discretionary** Rule 27.4.1 be renumbered 27.5.6 and revised to read:

*"Any subdivision that does not fall within any rule in Part 27.5 or Part 27.7."*

731. Considering the rules we have recommended in our revised section 27.5, we believe that collectively they are the most appropriate way to achieve the Chapter 27 objectives and to implement the policies under those objectives.



## 8. SECTION 27.5 - RULES –STANDARDS FOR SUBDIVISION ACTIVITIES

### 8.1 Rule 27.5.1 – Minimum Lot Sizes

732. A large number of submissions were made on notified Section 27.5.1 (renumbered 27.6.1), which set out the minimum lot area in specified zones. Most of these submissions were transferred for consideration in the relevant zone hearings given the obvious linkages between minimum densities and the outcomes sought to be achieved in each zone. This was not possible in relation to the parts of Rule 27.5.1 (as notified) specifying minimum densities in the Rural, Rural Lifestyle, Rural Residential and Gibbston Character Zone because, by the time that decision was made, the hearings of submissions on those zone provisions had already occurred. Submissions related to densities in the Rural Lifestyle Zone were, however, deferred as a result of the Council’s decision to undertake a structure planning process in the Wakatipu Basin<sup>266</sup>.
733. The Chair’s direction provoked a degree of confusion on the part of submitters. Mr Ben Farrell gave evidence, and Mr Goldsmith made submissions for a group of submitter parties on the minimum average lot size in the Rural Lifestyle Zone in case that particular aspect had not been deferred along with the minimum lot size.
734. The minimum average density applied in the Rural Lifestyle Zone is inextricably connected to the minimum lot size. As we observed to Mr Goldsmith, it is necessary to know what the minimum lot size is before considering the minimum average, because the minimum average must necessarily be greater than the minimum if it is to serve any purpose. Accordingly, we think there is no value of entering into a discussion of the minimum average lot size separate from the minimum lot size and have proceeded on the basis that both should be deferred until the results of the Wakatipu Basin Structure Plan process are able to be considered.
735. The Stage 2 Variations now proposes rezoning of the Wakatipu Basin, with the result that there is no Rural Lifestyle Zoned land in that area. Accordingly, any consideration of minimum densities (and minimum average densities) within Rural Lifestyle Zoned land in the Wakatipu Basin will only need to be considered as a consequence of the decisions on the Stage 2 Variations altering that position.
736. As above<sup>267</sup>, no submitter sought to be heard in relation to Rural Lifestyle Zone Minimum lot density requirements outside the Wakatipu Basin, and we thus have no evidence to contradict the Council position that the notified minimum densities are appropriate in the balance of the District.
737. Notified Rule 27.5.1 stated minimum lot areas for a number of zones that we had understood (based on advice from counsel for the Council) would be the subject of a subsequent stage of the District Plan review process – specifically the Township, Industrial A and B, Riverside and Hydro Generation Zone.
738. In his Section 42A Report, Mr Bryce recommended that those references be deleted. When we discussed the point with him, however, he could not identify for us any submission seeking that relief and in the legal submissions in reply for the Council, it was submitted that there was no jurisdiction to do so. The fact that some provisions of the PDP purport to apply to land not

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<sup>266</sup> Refer the Chair’s procedural direction of 4 July 2016 discussed earlier

<sup>267</sup> Refer Section 1.4 above

forming part of Stage 1 of the PDP review is problematic, to say the least. The key issues were canvassed in the Chair's Minute to the Council dated 12 June 2017<sup>268</sup> albeit in the context of notations on the planning maps.

739. The point of particular concern to us is whether members of the public would have thought to go past advice that Stage 2 zones were not part of the PDP process, looking for standards for those zones buried in Chapter 27. The fact that it appears the sole submission on the minimum lot standards in section 27.5.1 for the Stage 2 zones is by the Council itself tends to reinforce that concern. It is also somewhat ironic that the staff recommendation is that the Council's own submission be rejected as being out of scope as not being within Stage 1 of the PDP.
740. In a subsequent hearing, relating to Chapters 30, 35 and 36 (Stream 5), the Council submitted that it would be appropriate to transfer provisions purporting to set noise limits for zones not within Stage 1 of the PDP to Stage 2. The Stream 5 Hearing Panel noted a number of reasons why it did not agree with that course of action. It concluded that reference to non-Stage 1 zones in the relevant rule was in error and that those references could and should be deleted under Clause 16(2)<sup>269</sup>. We have come to the same conclusion. In summary, if the zones are not part of Stage 1, they remain part of the ODP, and nothing in the PDP can change the provisions of the ODP. Their removal is not a substantive change to the PDP.
741. As a result, a relatively small number of submissions on notified Rule 27.5.1 require consideration at this point.
742. Following the order in which submissions are discussed in the Section 42A Report, the first zone Mr Bryce discussed was the Rural Residential Zone. He noted a submission<sup>270</sup> seeking reinstatement of the ODP provisions governing any Rural Residential land at the north of Lake Hayes, which would require an 8000m<sup>2</sup> lot average. Mr Bryce recommended acceptance of that submission, but the land in question is proposed to be rezoned as part of the Stage 2 Variations. The submission will need to be reconsidered in that process.
743. The second zone discussed by Mr Bryce was the Rural Zone (mislabelled Rural General in the Section 42A Report). Mr Bryce noted two submissions<sup>271</sup> seeking a minimum lot size be specified for subdivisions within the Rural Zone and the Gibbston Character Zone and a minimum allotment size of 5 acres (2 hectares) in the Rural Zone respectively.
744. Mr Bryce recommended rejection of both submissions, referring to the reasoning of the section 32 evaluation to the effect that the absence of a minimum lot size prevents any '*development right*' arising in these zones and emphasising the desirability of maintaining the existing approach, based on landscape considerations.
745. We note that Mr MacColl did not seek to support NZTA's submission on this point and submitter 38 did not appear at the hearing to provide us with evidence that would cause us to reconsider the approach in the Section 32 Report supported by Mr Bryce.
746. Accordingly, we agree with Mr Bryce's recommendation that these submissions should be rejected.

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<sup>268</sup> Minute Concerning Annotations on Maps 12 June 2017

<sup>269</sup> Report 8 at Section 18.1

<sup>270</sup> Submission 26

<sup>271</sup> Submissions 719 and 38: Supported in FS1109; Opposed in FS1097 and FS1155

747. The next zone Mr Bryce discussed was the Jacks Point Zone. He noted Submission 762<sup>272</sup> seeking that the final specified ‘*minimum lot area*’ should be referenced to “*all other activity areas*”.
748. Mr Bryce recommended this amendment be made in aid of efficient and effective plan administration.
749. The Stream 9 Hearing Panel has, however, identified broader issues with these provisions. Specifically, neither FP area will exist following revision of the Jacks Point Structure Plan, and the cross reference to Rule 41.5.8 should apply to subdivision in Residential Activity Areas, rather than ‘other’ areas. Our recommended table shows these amendments.
750. Mr Bryce also noted<sup>273</sup> two submissions<sup>274</sup> seeking amendment to the activity table in notified Rule 27.5.1 so that LDRZ land within the Queenstown Airport Outer Control Noise Boundary should have a minimum lot area of 600m<sup>2</sup>. Mr Bryce recommended that these submissions be accepted in order to maintain the status quo established by ODP Plan Change 35 and thereby protect the operation of an item of regionally significant infrastructure. We note specifically the emphasis given by the Proposed RPS in that regard.
751. We agree with Mr Bryce’s recommendation with the result that in that part of the table related to the renamed Lower Density Suburban Residential Zone, additional text is inserted as follows:
- “Within the Queenstown Airport Air Noise Boundary and Outer Control Boundary: 600m<sup>2</sup>.”*
752. We note that the Hearing Panel hearing submissions on the residential zones (Stream 6) has recommended<sup>275</sup> that the Large Lot Residential Zone be separated into two zones (Large Lot Residential Zone A and B respectively) and that the minimum densities in these zones be 2000m<sup>2</sup> and 4000m<sup>2</sup> respectively. We recommend consequential amendment of Rule 27.6.1 accordingly. Insertion of the Coneburn Industrial Zone and special provisions for the Rural Residential Zone at Camp Hill, as recommended by the Stream 13 Hearing Panel, has likewise created a need for consequential amendments to insert minimum lot sizes for those areas. The Stream 13 Panel has also recommended deletion of the Queenstown Heights Sub-Zone, and so minimum lot sizes are no longer required for that area.
753. Finally, a consequence of the Stream 8 Hearing Panel rezoning Wanaka Airport from Rural to Airport Zone and the recommendation of that Panel that the subdivision provisions applying to the Airport Zone at Wanaka mirror those applying to the Rural Zone<sup>276</sup>, is that the reference to “Airport Mixed Use” needs to be changed to “Airport Zone”. We have not had any recommendations for other changes to the minimum lot areas in other zones from Hearing Panels considering those matters.

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<sup>272</sup> Opposed in FS1217, FS1219, FS1252, FS1277, FS1283 and FS1316

<sup>273</sup> Section 42A Report at 16.1

<sup>274</sup> Submissions 271 and 433: Opposed in FS1097 and FS1117

<sup>275</sup> Refer Report 9A at Section 16.1

<sup>276</sup> Refer Report 11 at Section 61.1

754. Lastly, we record that the Stage 2 Variations have proposed deletion of some line items in renumbered section 27.6 (and addition of others). Our recommended Chapter 27 greys out the existing provisions proposed to be changed.
755. More generally, the format of (now) Rule 27.6.1 was the subject of criticism<sup>277</sup>. It was suggested that it be redrafted to be clearer. We agree with Mr Bryce’s view that the table of minimum lot sizes is clear (or in reality, as clear as it is possible to be, given the need for district-wide provisions in this area). However, we recommend both a minor change to the description of average net site area in the opening words of the rule, and an Advice note referring the reader to the rules governing non-compliance with the minimum site areas to assist readability.
756. Notified Section 27.5.1 had 7 sub-rules followed by two further rules governing subdivision associated with infill development and subdivision associated with residential development on small sites in the (now) Lower Density Suburban Residential Zone. As part of the reorganisation of the chapter recommended by Mr Bryce, these provisions have been shifted either into our renumbered Section 27.5 or into the zone and location specific rules in renumbered Section 27.7. We agree that with one exception, they are more appropriately grouped with these other provisions and we will consider them in that context. The exception is notified Rule 27.5.1.3 which related to minimum size requirements (for access lots, utilities, roads and reserves) and which more properly should remain with renumbered 27.6.1.
757. This provision was the subject of a submission<sup>278</sup> that sought that it also state that lots created for the specified purposes shall not be required to identify a building platform. Mr Bryce recommended rejection of this submission on the basis that the requirement for a building platform (refer renumbered Rule 27.7.8) stated that it relates to allotments created for the purposes of containing residential activity. As Mr Bryce observed, the suggested addition is therefore unnecessary and we likewise recommend rejection of the submission.
758. The end result is, however, that a renumbered Section 27.6 is limited to minimum lot area standards and we recommend that the heading of the section be amended to reflect that, and therefore to read:

*“Rules – Standards for Minimum Lot Areas.”*

759. We record that having considered the alternatives open to us on the few matters the subject of submission in renumbered 27.6.1, we believe that the recommended provisions represent the most appropriate way to achieve the Chapter 27 objectives, and the most appropriate way to implement the policies relevant to those objectives.

## 8.2 Zone and Location Specific Rules

760. In his Section 42A Report, Mr Bryce noted three submissions<sup>279</sup> that sought that subdivision undertaken in accordance with a Structure Plan or Spatial Layout Plan identified in the PDP be a controlled activity. Notified Rule 27.4.3 provided that it is was restricted discretionary activity. Mr Bryce supported controlled activity status on the basis that a Structure Plan/Spatial Layout Plan provides a level of certainty to both proponents and decision-makers

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<sup>277</sup> Submission 631

<sup>278</sup> Submission 635

<sup>279</sup> Submissions 456, 632 and 696: Supported in FS1097; Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

as to what is expected in terms of subdivision design, and the fact that the Structure Plan/Spatial Layout Plan has been identified through a Plan Change process means that opportunities, constraints and effects of the future subdivision and land use activities have already been identified.

761. We agree that where a Structure Plan or similar document has been incorporated in the PDP there are good grounds for taking a less restricted regulatory approach to subdivision that is consistent with the Structure Plan.
762. Mr Bryce suggested a number of matters of control to accompany a new controlled activity rule in his Section 42A Report, that were further refined in his reply evidence. We have no issue in principle with the matters of control other than that the language should largely, parallel that discussed in Section 2.1, but we consider that the initial description of the activity recommended by Mr Bryce needs amendment in three respects. First, Mr Bryce suggested that the cross reference to a Structure Plan should test whether subdivision is undertaken “*in accordance with*” the document. We consider that requiring consistency with the document would be a better test given that Mr Bryce proposes that in each of the following rules dealing with areas that are currently the subject of a Structure Plan or like document, consistency with the document is a suggested matter of control.
763. Secondly, the suggested rule refers to Structure Plans, Spatial Layout Plans and Concept Development Plans, reflecting the range of different documents that are already identified and included in the District Plan. We think it would be more efficient if the term “*Structure Plan*” were defined to include documents that fulfil a similar function. Ideally, a new definition would also outline the minimum requirements for a ‘Structure Plan’ to be included in the PDP, but as discussed earlier, the policy gap in this regard will need to be filled by a variation.
764. Thirdly, we consider that it is not sufficient that a Structure Plan is “*identified*” in the PDP. We believe it should be “*included*” within the PDP so the key aspects of subdivision design are apparent to the readers of the Plan, and there can be no doubt as to whether the requirements for controlled activity status are met. As discussed shortly, there is also a technical problem with the approach in the notified PDP because Structure Plans do not meet the tests for incorporation by reference in Clause 30 of the First Schedule.
765. In summary, therefore, we recommend inclusion of a new controlled activity rule numbered 27.7.1, to replace notified Rule 27.4.3 that reads as follows:

*“Subdivision consistent with a Structure Plan that is included in the District Plan.*

*Control is restricted to:*

- a. subdivision design, and any consequential effects on the layout of lots and on lot sizes and dimensions*
- b. internal roading design and provision, and any consequential effects on the layout of lots, and on lot sizes and dimensions;*
- c. property access and roading;*
- d. esplanade provision;*
- e. the adequacy of on site measures to address the risk of natural and other hazards on land within the subdivision;*
- f. fire fighting water supply;*
- g. water supply;*
- h. stormwater design and disposal;*
- i. sewage treatment and disposal;*

- j. *energy supply and telecommunications, including adverse effects on energy supply and telecommunication networks;*
- k. *open space and recreation;*
- l. *ecological and natural values;*
- m. *historic heritage;*
- n. *easements;*
- o. *any additional matters relevant to achievement of the objectives and policies in part 27.3 of this Chapter.*

766. Associated with this Rule we recommend to the Stream 10 Hearing Panel that a new definition be inserted in Section 2 of the PDP worded as follows:

*“Structure Plan means a plan included in the District Plan, and includes Spatial Development Plans, Concept Development Plans and other similarly titled documents.”*

767. Notified Section 27.7.3 is headed *“Kirimoko Structure Plan – Matters of Discretion for Restricted Discretionary Activities”*.

768. Submission 656 sought enlargement of the discretion provided over earthworks and greater specification of aspects of subdivision design the subject of discretion.

769. Initially, Mr Bryce recommended acceptance of the submission<sup>280</sup>.

770. By his reply evidence, Mr Bryce had come to the view that the specific matters of control needing to be considered in relation to the Kirimoko could be substantially reduced. Mr Bryce did not discuss in his reply evidence his reasons for coming to this conclusion, but we infer that some of the matters were considered redundant in the light of other recommended PDP provisions (particularly the matters of assessment Mr Bryce recommended be introduced as part of his reply evidence).

771. We agree with that and we think that Mr Bryce’s recommended rule might be further pruned to remove duplication. In particular, given our recommendation that consistency with a structure plan should be a precondition to Rule 27.7.1, it is not necessary to refer to such consistency as an additional matter of control in this rule. Similarly, given that subdivision design is a matter of control under Rule 27.7.1, further reference to it is not required in this rule.

772. We also consider that some amendment of the language is required to reflect the fact that the rule is specifying matters of control rather than (as was the case for notified Section 27.7.3) matters of discretion, to which particular regard had to be had.

773. In summary, therefore, we recommend that section 27.7.3 be renumbered 27.7.2 and revised to read:

*“In addition to those matters of control under Rule 27.7.1, any subdivision of the land shown on the Kirimoko Structure Plan included in Part 27.13, the following shall be additional matters of control:*

- a. *roading layout;*
- b. *the provision and location of walkways in the green network;*
- c. *the protection of native species as identified on the Structure Plan as green network.”*

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<sup>280</sup> Section 42A Report at 22.12

774. Because this section of the PDP contains other provisions related to Kirimoko, we think it would be clearer if all of those provisions were collected under a single heading. We have therefore numbered the rule above 27.7.2.1 under the heading “27.7.2 – Kirimoko”. We will discuss the balance of provisions under that heading shortly.
775. Rule 27.7.3.1 in Mr Bryce’s revision of Chapter 27 (relocated from notified Policy 27.7.6.1) related to the Ferry Hill area. The Stage 2 Variations propose deletion of these provisions and so we need say no more about them
776. Mr Bryce recommended that the next provision in his reformatted section 27.7 relate to the Jacks Point Zone. By his reply evidence, Mr Bryce had recommended that the sole additional matter of control that needed to be referenced, consequential on other provisions he had recommended, was consistency with the Jacks Point Zone Structure Plan. For the reasons discussed above in relation to the Kirimoko area, it is not necessary to provide another rule solely for that purpose we do not therefore recommend inclusion of the rule suggested by Mr Bryce.
777. The next two rules Mr Bryce suggested in this part of the revised Chapter 27 related to the Peninsula Bay area and were derived from notified Section 27.8.2.1. As notified, that provision read:
- “No subdivision or development shall take place within the Low Density Residential Zone at Peninsula Bay unless it is consistent with an Outline Development Master Plan that has been lodged with and approved by the Council.”*
778. The sole primary submission on Section 27.8.2.1 supported its continued inclusion<sup>281</sup>. While two further submissions<sup>282</sup> opposed that submission, given the permissible ambit of further submissions discussed in the Hearing Panel’s Report 3, these further submissions do not take the matter further.
779. This rule needs to be read together with heading of Section 27.8 and Section 27.8.1 that preceded it.
780. The heading of Section 27.8 as notified was:
- “Rules – Location Specific Standards.”*
781. Section 27.8.1 contained a general provision stating that activities not meeting the standards specified in Section 27.8 should be non-complying activities, unless otherwise specified.
782. Mr Bryce recommended that consequential on his recommended revision of the format of Chapter 27, Section 27.8.2.1 should be converted to two rules, one a controlled activity rule (for subdivision or development consistent with the Outline Development Master Plan) and the second, a non-complying rule (for development which is inconsistent with the Outline Development Master Plan).
783. Unlike the rules that we have been discussing however, the Outline Development Master Plan for Peninsula Bay is not contained in the PDP.

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<sup>281</sup> Submission 378

<sup>282</sup> FS1049 and FS1095

784. Nor is it even clear whether this is an existing document or one that might be “*approved*” by the Council in future. The way that notified Section 27.8.2.1 is framed, however, suggests that even if an Outline Development Master Plan has already been approved, there might yet be a successor. Be that as it may, the reference in the notified PDP to this Outline Development Master Plan, and the suggestion that the activity status of future subdivision and development should be dependent on whether there is such a plan (and whether the subdivision or development in question is consistent with it), raises questions as to whether this is permissible in the light of the Environment Court decisions on declarations sought in relation to the use of framework plans in the context of the Proposed Auckland Unitary Plan<sup>283</sup> discussed in our Report 1.
785. Given the conclusions reached by the Hearing Panel in Report 1, this then requires us to determine what we can and should do with Section 27.8.2.1 of the notified PDP given that the only submission on it specifically seeks its retention.
786. Section 27.8.2.1 is framed in directive terms rather than as a standard in the ordinary sense of that term. From that point of view, it does not sit easily within the notified section 27.8.
787. Nor is it altogether clear to us what the rule status is intended to be for subdivision or development that is consistent with an approved Outline Development Master Plan. Mr Bryce has treated the Peninsula Bay “*Outline Development Master Plan*” as a Structure Plan, which might suggest that under the notified PDP, it fell within Rule 27.4.3. If that were the case, it would be a restricted discretionary activity with discretion restricted to matters specified in Part 27.7. Rule 27.4.3 referred, however, to a structure plan or spatial layout plan, which does not suggest an intention that the rule apply to all plans that might be considered to fall within a generic reference to structure plans. In addition, the only matters specified in Part 27.7 related to Peninsula Bay refer to provision of public access and are not framed as matters of discretion, so it would not seem to have been intended that Rule 27.4.3 would apply to the Peninsula Bay area on that ground also.
788. The end result therefore, is that we consider that under the notified PDP, subdivisions would fall within the default discretionary activity rule if consistent with an approved Outline Development Master Plan, and if not, then as non-complying activities.
789. Given our conclusion that subdivisions in most zones might appropriately be dealt with as restricted discretionary activities, we consider that the best outcome in the light of the Environment Court’s guidance in the Auckland framework plan cases is that Section 27.8.2.1 be deleted as a consequential amendment to our acceptance (in part) of submissions seeking that all subdivision activities be controlled activities, and Mr Bryce’s recommendation of two rules to be inserted in substitution in revised section 27.7 not be accepted. That will leave subdivision in the Peninsula Bay area as a restricted discretionary activity under our recommended Rule 27.5.7. If, in the future, the Council and/or the Peninsula Bay JV wish that further subdivision be considered as a controlled activity, then the Outline Development Master Plan applying to that area will need to be incorporated in the PDP by way of variation or plan change. Because, however, the end result is beneficial to the submitter, compared to the relief sought, we have classified the submission as ‘Accepted in Part’.
790. The next provision recommended by Mr Bryce related to the Kirimoko area. The provisions Mr Bryce recommended are derived from notified Section 27.8.3.

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<sup>283</sup> *Re Application for declarations by Auckland Council* [2016] NZ EnvC 056 and [2016] NZ EnvC 65



791. Those provisions were the subject of a specific submission<sup>284</sup> that sought inclusion of an additional standard related to post development stormwater runoff (that would require that during a 1 in 100year event stormwater runoff is no greater than the pre-development situation).
792. Mr Bryce recommended rejection of that submission on the basis of the Council’s engineering evidence (initially Mr Glasner, but adopted by Mr Wallace) that the Council’s Code of Practice requires that post development stormwater runoff be no greater than pre-development runoff up to and including in a 1 in 20-year event. Mr Wallace’s evidence was that designing stormwater runoff management systems for a 1 in 100 year event would create a significant level of over-design which would in turn add significantly to the Council’s maintenance costs.
793. The submitter in question did not appear to support its submission with evidence that would contradict that provided by Council. On this basis, we agree with Mr Bryce’s recommendation.
794. Mr Bryce therefore suggested only grammatical changes to frame the notified provisions more clearly as standards or conditions, failure to comply with which would properly cause the activity to default to non-complying status.
795. We agree with the suggested changes. The only additional change we recommend is to correct a typographical error (referring to the Rural General Zone), to amend the cross reference to the Structure Plan to be consistent with the language of 27.7.2.1 and (as discussed above) to relocate the rule to follow Rule 27.7.2.1. Accordingly, we recommend inclusion of new **Non-Complying** Rules 27.7.2.2-4 text, reading:  
*“Any subdivision that does not comply with the principal roading layout and reserve network depicted in the Kirimoko Structure Plan included in Part 27.13 including the creation of additional roads, and/or the creation of accessways for more than 2 properties.*  
  
*Any subdivision of land zoned Rural proposed to create a block entirely within the Rural Zone to be held in a separate Certificate of Title;*  
  
*Any subdivision of land described as Lots 3 to 7 and Lot 9 DP300734, and Lot 1 DP304817 (and any title derived therefrom) that creates more than one lot that has been included in its legal boundary land zoned Rural.”*
796. The next rule recommended by Mr Bryce related to the Bob’s Cove Rural Residential Sub-Zone and was derived from notified Sections 27.8.5.1 and 27.8.5.2. Those provisions were not the subject of specific submission by any party and Mr Bryce recommended that they be reproduced unchanged save for the formatting necessary to express them more clearly as standards/conditions. We agree, and our recommended revised Chapter 27 includes Mr Bryce’s provisions in a new Rule 27.7.3.
797. The next rule recommended by Mr Bryce related to the Ferry Hill Rural Residential Sub-Zone and was derived from notified Sections 27.8.6.1-8 inclusive. These provisions are proposed to be deleted in the Stage 2 Variations and so we need not consider them further.
798. The next rule recommended by Mr Bryce related to Ladies Mile and derived from notified Section 27.8.7.1. There were no specific submissions seeking change to these provisions and

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<sup>284</sup> Submission 656

Mr Bryce recommended that they be amended only to express them more clearly as standards or conditions, failure to comply with which might prompt a shift to non-complying status.

799. We agree, and our revised Chapter 27 shows these provisions as recommended Rule 27.7.4.
800. The next rule recommended by Mr Bryce related to Jacks Point and derived from notified Sections 27.8.9.1 and 27.8.9.2.
801. These provisions were the subject of two submissions. The first<sup>285</sup> sought minor changes to 27.8.9.2 by way of clarification rather than substantive change. Mr Bryce recommended acceptance in part with the suggestions made by the submitter, that were in practice subsumed within the reformatting that Mr Bryce recommended.
802. The second submission<sup>286</sup> sought that Rule 27.8.9.2 make provision, where discretion was restricted to traffic and access, to also include the ability to provide and support public transport services, infrastructure, and connections. Mr Bryce recommended rejection of this submission on the basis that as the rule in question relates to the Jacks Point Zone conservation lots, within the identified Farm Preservation Activity Area, the matters sought to be referenced by the submitter were not applicable.
803. Mr Bryce recommended retention of the existing provisions with consequential amendments reflecting the reformatting exercise he had undertaken in response to more general submissions discussed earlier.
804. Mr Bryce also recommended specific recognition of the Hanley Downs part of Jacks Point, accepting in this regard, Mr Wells evidence discussed earlier in the context of recommended Rule 27.5.17.
805. We largely agree with Mr Bryce's recommendations. Notified rule 27.8.9.2 is, however, no longer required following deletion of the FP1 Activity Area from the Jacks Point Structure Plan. It should be deleted as a consequential change. In addition, as well as consequential renumbering and reformatting, we recommend expanding the matters of discretion so that they are consistent with our recommendations in relation to Rule 27.7.1, and address the matters made relevant by recommended Policies 27.3.7.4 and 27.3.7.7. We also suggest amending the text to refer to the Jacks Point Structure Plan as being contained in Part 27.13 and insert a new Rule 27.7.5.3, reflecting a recommendation we have received from the Stream 13 Hearing Panel<sup>287</sup>.
806. Mr Bryce next recommended a rule to govern subdivision within the Millbrook Resort Zone that is inconsistent with the Millbrook Resort Zone Structure Plan, reflecting his observation that there does not appear to be any rule governing non-compliance with that Structure Plan. Mr Bryce recommended that subdivision in this case be a discretionary activity. Given that operation of notified Rule 27.4.1 would have had that effect in any event, this is not a substantive change. We agree with Mr Bryce that it is helpful, however, to be specific in this case. Accordingly, we recommend inclusion of a new Rule 27.7.6 along the lines suggested by Mr Bryce. The only amendments we would suggest would be that the rule cross reference the Millbrook Resort Zone Structure Plan as located in Chapter 27 and correction of a minor typographical error.

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<sup>285</sup> Submission 762: Opposed in FS1217, FS1219, FS1252, FS1277, FS1283 and FS1316

<sup>286</sup> Submission 798

<sup>287</sup> Refer Report 17-8Part I

807. We should note that we recommend inclusion of three additional site/zone specific rules under this heading, the first two related to the Coneburn Industrial Zone and the Frankton North area and numbered 27.7.7 and 27.7.9 respectively, consequential on the recommendations of the Stream 13 Hearing Panel, and the last related to the West Meadows Drive area and numbered 27.7.8, reflecting recommendations from the Stream 12 Hearing Panel.
808. Lastly, and more generally, we note that many of the site-specific standards in this part of Chapter 27 do not fit easily into the structure we recommend on Mr Bryce's advice. We suspect they may be legacy provisions rolled over from the ODP. Renumbered Rule 27.7.4.1 a. for instance, was notified as a standard governing subdivision on Ladies Mile. It does not read as a standard and it would be difficult to apply as such. There were no submissions on it, and hence Mr Bryce (understandably) did not focus on it. Even if there had been a submission giving us some scope to amend (or delete) it, we were unsure what role it was intended to have. We recommend that the Council review the provisions in this section to identify any that are past their 'use-by' date, or that need reframing to meet their intended purpose.

### 8.3 Building Platform and Lot Dimensions

809. Mr Bryce next recommended inclusion of rules relocated from notified Rule 27.5.1.1 (related to building platforms) and 27.5.1.2 (related to site dimensions).
810. Addressing first notified Rule 27.5.1.1, this was the subject of one submission<sup>288</sup> seeking that the maximum dimensions of a building platform in the Rural Lifestyle Zone be specified to be 600m<sup>2</sup> (rather than 1000m<sup>2</sup>) as at present. Mr Bryce recommended rejection of that submission on the basis that flexibility as to building platform size is often required.
811. In our discussion of the restricted discretionary activity rule we have proposed for subdivision within the Rural Lifestyle Zone (27.5.8), we have recommended retention of a discretion over the size of building platforms. We regard that as a more appropriate solution than arbitrarily reducing the maximum building platform size in the Rural Lifestyle Zone, particularly given that the submitter did not appear to provide us with evidence that would have given us confidence that a reduced maximum building platform size would be appropriate in every instance.
812. Accordingly, we agree with Mr Bryce's recommendation that notified Rule 27.5.1.1 might be retained unamended, save only for relocating it in Section 27.7, and numbering it 27.7.10.
813. Turning to notified Rule 27.5.1.2, the only submissions on this provision<sup>289</sup> supported retention of particular aspects of the rule.
814. Mr Bryce recommended, however, deletion of specific reference to the Township Zone on the basis that it was not part of Stage 1 of the PDP. For the reasons discussed earlier, in relation to revised section 27.6, we agree that this is the appropriate outcome. The only other amendment to notified provision 27.5.1.2 recommended is to insert the word "*lots*" rather than "*sites*" for clarity and to renumber it 27.7.11.
815. Before going on the next rule Mr Bryce recommended, we need to address the position if either of renumbered rules 27.7.8 and 27.7.9 are not complied with. Under the notified plan, this fell within Rule 27.4.2 as a non-complying activity.

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<sup>288</sup> Submission 367: Opposed in FS1150 and FS1325

<sup>289</sup> Submission 208, 596, 775, 803

816. We have not identified any submission seeking to change that position. We therefore recommend a new Rule 27.7.12 be inserted as follows:

*“Subdivision applications not complying with either Rule 27.7.10 or Rule 27.7.11 shall be non-complying activities.”*

#### 8.4 Infill subdivision

817. The next rule Mr Bryce discussed related to subdivision associated with infill development which he recommended be relocated from notified Rule 27.5.2.
818. This rule was the subject of a number of submissions. Several submissions<sup>290</sup> sought that the definition of an established residential unit should turn on whether construction has reached the point of roof installation rather than whether a Building Code of Compliance certificate has been issued.
819. In addition, Submission 275 sought to amend 27.5.2 so that in the High Density Residential Zone the minimum lot size need not apply to any lots being created which contain a residential unit, provided that any vacant lots also being created do meet the minimum lot size. Lastly, Submissions 208 and 433<sup>291</sup> sought deletion of the rule.
820. In his Section 42A Report, Mr Bryce acknowledged that the submitters opposing recognition of a Building Code of Compliance Certificate as the sole determinant of whether a residential unit has been established had a point, given that the concept of Building Code of Compliance Certificates dates only from 1992, and therefore a large number of “*established*” residential units will not have such a certificate. He recommended that the rule be made more explicit that completion of construction to not less than the installation of the roof be an alternative to issue of a Building Code of Compliance Certificate as a means to define an established residential unit for the purposes of this rule. We agree with his recommendation in that regard.
821. Mr Bryce did not explicitly discuss Submission 275 in his Section 42A Report and the submitter did not appear to elaborate on the submission.
822. Reading the submission in context, it appears to us that the submission on this point is associated with a broader request for relief related to (and reducing) the minimum lot areas for the High Density Residential Zone<sup>292</sup>. We think that that is the appropriate context for consideration of the merits of the submission rather than broadening the ambit of this particular rule, which essentially sought to recognise the reality of existing lawful residential developments and provide that title boundaries might be brought into line with those developments.
823. The breadth of Submission 169 is also difficult to address in this context – particularly in the absence of any evidence from the submitter that might satisfy us that the effects of infill development can be addressed by conditions in all locations (and identifying appropriate areas of control).

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<sup>290</sup> Submissions 166, 169, 389 and 391

<sup>291</sup> Opposed in FS1097 and FS1117

<sup>292</sup> Submission 169 also appears to be linked to more wide-ranging relief, seeking controlled activity status for a single infill unit subdivision in any zone.

824. Deletion of the rule sought in Submission 433 was also part of broader relief; in this case, which sought to carry over the provisions of ODP Plan Change 35 into the PDP and thereby protect the ongoing operations of Queenstown Airport. As we will discuss shortly, Mr Bryce recommended an amendment to the following rule to address the submission. When the representatives of the QAC appeared before us, Ms O’Sullivan giving planning evidence for the submitter, supported that relief and did not provide evidence suggesting why it should be broadened to this particular rule. This accorded with our understanding of QAC’s position which sought to avoid intensification of residential activities within the defined Airport noise boundaries. Given that this particular rule relies on dwellings already having been established, aligning the title position with the existing pattern of development would appear to have no effect on the airport’s operations.
825. The reasons for Submission 208 indicated that the concern of that submitter was for maintenance of amenity in the High Density Residential Zone. Mr Bryce did not discuss the submission specifically and the submitter did not provide evidence to support its submission. In the absence of an evidential basis for the submission, we do not recommend deletion of this provision.
826. In summary, therefore, we accept Mr Bryce’s recommended rule which is numbered 27.7.13 in our revised Chapter 27, save only for correction of internal cross reference numbering and amending the reference to the former Low Density Residential Zone.
827. The revised rule we recommended is therefore worded:
- “The specified minimum allotment size in Rule 27.6.1, and minimum dimensions in Rule 27.7.9 shall not apply in the High Density Residential Zone, Medium Density Residential Zone and Lower Density Suburban Residential Zone where each allotment to be created, and the original allotment, all contain at least one established residential unit (established meaning a Building Code of Compliance Certificate has been issued or alternatively where a Building Code of Compliance Certificate has not been issued, construction shall be completed to not less than the installation of the roof).”*
828. The next rule Mr Bryce discussed was derived from notified Rule 27.5.3.1 and related to circumstances where the minimum allotment size in the (now) Lower Density Suburban Residential Zone does not apply.
829. Submissions on it sought variously clarification of the interrelationship with Rule 27.5.2<sup>293</sup> (now 27.7.11), deletion and a more enabling approach generally<sup>294</sup>, deletion<sup>295</sup>, and revision to make the rule *“more practical”*<sup>296</sup>.
830. Mr Bryce did not discuss the apparent overlap between Rules 27.5.2 and 27.5.3 (to the extent both applied to the Lower Density Suburban Residential Zone). We think there is a logic to the distinction between the rules given that Rule 27.5.2 applied in the three specified zones and addressed the situation where residential units actually exist, whereas Rule 27.5.3 was limited to the (now) Lower Density Suburban Residential Zone and addressed the situation where residential units were consented but not constructed.

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<sup>293</sup> Submission 169

<sup>294</sup> Submission 166

<sup>295</sup> Submission 433: Opposed in FS1097 and FS1117

<sup>296</sup> Submission 453

831. We do not recommend acceptance of Submission 166. The submitter did not appear to amplify their submission and we consider that we have addressed the more general issues it poses elsewhere in this report.
832. The request for deletion by Submission 433 was addressed by Mr Bryce's recommendation that the rule not apply within the Airport noise boundaries defined in the Plan.
833. We agree with that approach although we consider it needs to be clearer that any reference to the Air Noise Boundary and Outer Control Boundary should be as defined in the planning maps.
834. Lastly, Mr Duncan White gave evidence in support the submissions of Patterson Pitts Partners (Wanaka) Limited<sup>297</sup>. He explained that the reference to more practical provisions related to the changes to the land transfer system (including the establishment of electronic titles for land) and the interrelationship of section 221 registrations with certification under section 224(c). For our part, we were grateful for the assistance provided by Mr White and his colleague Mr Botting on these matters. Mr Bryce recommended acceptance of the suggestions in the submission and we concur. Mr White raised other issues of the practical application of this rule. In particular, he queried whether it was appropriate for District Plan requirements like the maximum building height and the limitation of one residential unit per lot to be locked in by consent notices. He also noted the potential issues posed by changes of design requiring a cancellation or variation of the consent notice with consequent costs on the landowner. Lastly, Mr White queried the position if a consent or certificate of compliance has lapsed. Mr Bryce did not recommend additional changes to address these issues. In his reply evidence<sup>298</sup>, he expressed his view that any additional costs associated with the need to vary a consent notice were outweighed by the benefits derived from investment certainty.
835. Many of the points about which Mr White expressed concern are in landowners' own hands to address. Certificates of compliance and land use consents might be granted for generic designs. How specifically or how widely an application for either is framed is a matter for a landowner. Similarly, if a landowner has a certificate of compliance or land use consent that is in danger of lapsing, they can apply to extend the lapse period under section 125 of the Act.
836. While Mr White had a point regarding the desirability of using consent notices only to bind the subdivider to planning requirements that require compliance on an ongoing basis, these particular requirements (building height and number of lots) are key to the effects of residential development on an ongoing basis. We therefore agree with Mr Bryce's recommendation in this regard.
837. The only additional amendments we recommend are a minor grammatical change (to refer to 'the' residential unit(s), consistent with the first part of the rule) amendment of the zone name consequential on the Stream 6 Hearing Panel's Report, a clarification of the type of resource consent required, and some internal renumbering and reformatting for consistency.
838. In summary, therefore, we recommend that notified Rule 27.5.3 be renumbered 27.7.14 and amended to read:

*"Subdivision associated with residential development on sites less than 450m<sup>2</sup> in the Lower Density Suburban Residential Zone.*

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<sup>297</sup> Submission 453

<sup>298</sup> N Bryce, Reply Statement at 10.4

27.7.14.1 *In the Lower Density Suburban Residential Zone, the specified minimum allotment size in Rule 27.6.1 shall not apply in cases where the residential units are not established, providing:*

- a. *a certificate of compliance is issued for the residential unit(s) or,*
- b. *a land use consent has been granted for the residential unit(s).*

*In addition to any other relevant matters, pursuant to s221 of the Act, the consent holder shall register on the Computer Freehold Register of the applicable allotments:*

- a. *that the construction of any residential unit shall be undertaken in accordance with the applicable certificate of compliance or land use consent (applies to the additional undeveloped lot to be created);*
- b. *the maximum building height shall be 5.5m (applies to the additional undeveloped lot to be created);*
- c. *there shall be not more than one residential unit per lot (applies to all lots).*

27.7.14.2 *Rule 27.7.14.1 shall not apply to the Lower Density Suburban Residential Zone within the Queenstown Airport Air Noise Boundary and Outer Control Boundary as shown on the planning maps."*

## 8.5 Servicing and Infrastructure Requirements

839. The next rule Mr Bryce discussed are a series of provisions contained in notified Section 27.5.4 which was entitled "*Standards relating to servicing and infrastructure*", but which are in fact limited to water supplies. These provisions were the subject of submissions from the telecommunication companies<sup>299</sup> seeking insertion of a new standard regarding telecommunication reticulation and, in one case, electricity connections. Putting those matters aside for the moment, the only submissions on the existing provisions related to water supply supported them<sup>300</sup>, although Submission 166 did seek clarification as to the Council's intention regarding what capacity potable water supply should be available to lots where no communal owned and operated water supply exists. The submission observed that the rule appeared to be at variance from current Council standards.

840. Mr Wallace provided the answer to that question: the current Council Code of Practice requires provision for 2100 litres per day, which covers both potable and irrigation water supply, and is designed for a reticulated system. Mr Wallace advised that where a reticulated system is not available, the minimum requirement is 1000 litres per day (as per the notified rule) with the subdivider needing to identify what supply will be available for irrigation separately.

841. Mr Bryce however recommended that provisions in the notified Rule 27.5.4.1 referring to zones not covered by Stage 1 of the PDP process be deleted. For the reasons already discussed, we concur and recommend those references be deleted pursuant to Clause 16(2). In the case of the reference to the Corner Shopping Centre Zone, this should be corrected to the Local Shopping Centre Zone on the same basis, as should the reference to the Airport Mixed Use Zone be changed to Airport Zone - Queenstown.

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<sup>299</sup> Submissions 179, 191, 421 and 781: Supported in FS1132; Opposed in FS1097, FS1117 and FS1164

<sup>300</sup> Submissions 453, 586, 775 and 803

842. Apart from a minor grammatical change in the opening words of what was notified Rule 27.5.4.1, and some internal renumbering for consistency, the only substantive amendments we recommend are to make the first rule (providing that all lots must be connected to a reticulated water supply) subject to the third rule (which provides the position where no reticulated water supply exists) and to correct the references to the Millbrook Resort and Waterfall Park Zones.

843. In summary, therefore, we recommend that notified Rules 27.5.4.1-3 be renumbered 27.7.15.1-3 and amended to read:

*“27.7.15.1 Subject to Rule 27.7.15.3, all lots, other than lots for access, roads, utilities and reserves except where irrigation is required, must be provided with a connection to a reticulated water supply laid to the boundary of the net area of the lot, as follows:*

*To a Council or community owned and operated reticulated water supply:*

- a. Residential, Business, Town Centre, Local Shopping Centre Zones and Airport Zone - Queenstown;*
- b. Rural-Residential Zones at Wanaka, Lake Hawea, Albert Town, Luggate and Lake Hayes;*
- c. Millbrook Resort Zone and Waterfall Park Zone.*

*27.7.15.2 Where any reticulation for any of the above water supplies crosses private land, it should be accessible by way of easement to the nearest point of supply.*

*27.7.15.3 Where no communal owned and operated water supply exists, all lots other than lots for access, roads, utilities and reserves, shall be provided with a potable water supply of at least 1000 litres per day per lot.”*

844. Turning to infrastructure services other than water supplies, Mr Bryce drew our attention in his Section 42A Report to the interrelationship with renumbered Policy 27.2.5 which indicates an intention to generally require connections to electricity supply and telecommunication systems at the boundary of lots. He recommended a new standard related to provision of telecommunication reticulation to allotments in new subdivisions.

845. We discussed with Mr Bryce whether the suggested standard was consistent with the policy emphasis in recommended Policy 27.2.5.16 on providing flexibility to cater for advances in telecommunication and computer media technology. Mr Bryce’s view was that it was broadly consistent. Mr Bryce also agreed with our suggestion that it was desirable to include an equivalent rule/requirement related to electricity.

846. The submissions from telecommunications companies sought to introduce an emphasis on telecommunication reticulation meeting the requirements of the network provider. We also note further submissions on this point seeking to emphasise the commercial nature of the arrangements between landowners and telecommunication service providers and the potential, given changing technology, for self-sufficiency<sup>301</sup>.

847. In some ways, electricity supply is rather easier to address than telecommunications. Unless a property is ‘off-grid’, there must be an electricity line to the boundary, and in our view, this should be a subdivision standard.

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<sup>301</sup> Further submissions 1097, 1132, 1117 and 1164



848. With telecommunication technology increasingly offering connection options not involving hard wiring, this is somewhat more problematic. We are also wary of recommending rules that enable the telecommunication companies to leverage the position for their commercial advantage.

849. We have come to the view that while subdivision standards might legitimately provide for hard-wired telecommunication reticulation in urban environments and Rural Residential zoned land, in Rural Lifestyle, Gibbston Character and Rural zoned areas, greater flexibility is required.

850. In summary, we recommend amendments to the new rule suggested by Mr Bryce to split it into three under a new heading “*Telecommunications/Electricity*”, numbered 27.7.15.4-6, and worded as follows:

*“Electricity reticulation must be provided to all allotments in new subdivisions (other than lots for access, roads, utilities and reserves).*

*Telecommunication services must be available to all allotments in new subdivisions in the Rural Zone, Gibbston Character Zone and Rural Lifestyle Zone (other than lots for access, roads, utilities and reserves).*

*Telecommunication reticulation must be provided to all allotments in new subdivisions in zones other than the Rural Zone, Gibbston Character Zone and Rural Lifestyle Zone (other than lots for access, roads, utilities and reserves).”*

851. Before leaving revised Section 27.7, we should address the heading for the whole section. Mr Bryce recommended that it be headed “*Rules – Zone and Location Specific Standards*”. Many of the provisions in this section are not ‘standards’ in the ordinary sense of the word. We recommend that the heading be amended to “*Zone and Location Specific Rules*”.

## 8.6 Exemptions

852. In Mr Bryce’s recommended revised Chapter 27, the next section (numbered 27.8) was entitled “*Rules – Exemptions*” which was then amplified with a statement (numbered 27.8.1):

*“The following activities are permitted and shall not require resource consent.”*

853. This initial statement was derived from notified Section 27.6.1. Consequent on Mr Bryce’s recommendation (that we support) that Rule 27.6.1.1 be transferred into the rule table in Section 27.5, the only remaining provision from what was Section 27.6 related to the provision of esplanade reserves or strips.

854. The only submissions on Rule 27.6.1.2 supported the rule in its current form<sup>302</sup>, but Submission 453 queried whether the rule should have its own heading.

855. While Mr Bryce did not feel the need to amend what was 26.6.1, we consider that the submission made a valid point. Notified Rule 27.6.1.2 did not describe a permitted activity not requiring a resource consent. What it did was identify exemptions from the requirement to provide an esplanade reserve or strip, and the heading of the rule should say that. The more

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<sup>302</sup> See Submissions 453, 635 and 719

general heading might also usefully be clarified given that the section now identifies only one exemption.

856. Secondly, the language of notified Rule 27.6.1.2 was quite convoluted. Paraphrasing section 230(3) of the Act, it stated that unless provided otherwise in a rule of a District Plan, where any allotment of less than 4 hectares is created by a subdivision, an esplanade reserve is normally required to be set aside. The purpose of Rule 27.6.1.2 was clearly to make such provision and we consider that that might be stated much more clearly than it is at present. In addition, the cross reference to activities under former Rule 27.6.1.1 needs to be changed to refer to activities provided for in renumbered Rule 27.5.2.

857. In summary, therefore, we recommend that revised section 27.8 of the PDP be worded as follows:

*“27.8 Rules – Esplanade Reserve Exemption*

*27.8.1 Esplanade reserves or strips shall not be required where a proposed subdivision arises solely due to the land being acquired or a lot being created for a road designation, utility or reserve, or in the case of activities authorised by Rule 27.5.2.”*

858. In Mr Bryce’s revised recommended Chapter 27, two other provisions were suggested to be inserted within section 27.8 worded as follows:

*“27.8.2 Industrial B Zone;  
a. Reserved for Stage 2 of the District Plan review.*

*27.8.3 Riverside Stage 6 – Albert Town:  
a. Reserved for Stage 2 of the District Plan review.”*

859. We suspect that these provisions were left in Mr Bryce’s recommended Chapter 27 in error. Clearly they do not fit the suggested heading to Section 27.8 (Rules – Exemptions).

860. Nor do they actually say anything. At most they are placeholders. As such, we do not recommend they be included.

## **8.7 Assessment Criteria**

861. The following section (27.9 in Mr Bryce’s suggested revised Chapter 27) is a new section entitled *“Assessment Matters for Resource Consents”*.

862. The background to this particular part of the subdivision chapter was discussed in section 5 of Mr Bryce’s reply evidence. As Mr Bryce noted, one of the legal submissions made by Mr Goldsmith<sup>303</sup> was to query whether Chapter 27 as notified created legal issues as a result of the extensive use of objectives and policies as the basis for assessment of subdivision applications, as opposed to using assessment criteria (as is the case under the ODP). Mr Bryce’s reply evidence also recorded that Mr Goldsmith highlighted concerns that a number of the *“matters of discretion”* were framed in fact as assessment criteria.

863. We discussed with Mr Goldsmith the potential to employ the structure used within the Proposed Auckland Unitary Plan, which included assessment matters for controlled activity

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<sup>303</sup> On behalf of GW Stalker Family Trust and Others (Submissions 430, 515, 523, 525, 530, 531, 535 and 537, FS1256)

and restricted discretionary activity rules within both urban and rural subdivision chapters as a means to supplement the objectives and policies. Mr Goldsmith thought that we might use the wording of that Plan, subject to confirming scope.

864. We asked Mr Bryce to consider these matters and to advise us whether, in his opinion, the understanding and implementation of Chapter 27 would be improved with insertion of appropriate assessment criteria. His conclusion was that this would be the case and he provided us with draft provisions which we might consider recommending. Given the time pressures Mr Bryce was under, this was a significant undertaking, and we express our thanks for his work on this aspect of his reply evidence, which we have found of particular assistance.
865. Mr Bryce noted that the suggested assessment criteria responded to requests in submissions both for clear guidance for Council planning officers processing applications<sup>304</sup> and to the large number of submissions seeking inclusion of the provisions of the ODP Chapter 15 in whole or in part that we have already discussed<sup>305</sup>.
866. We also consider that inclusion of assessment criteria is consequential on our recommendation to accept Mr Bryce's recommendation and provide a more permissive rule regime for subdivisions than in the notified PDP (responding in that regard to the very large number of submissions seeking that outcome).
867. As Mr Bryce recorded, his recommended assessment criteria did not seek to reintroduce significant volumes of assessment matters reflective of those within the ODP, but rather sought to achieve an appropriate balance between effective guidance to plan users and administrators, while still seeking to ensure that the PDP is streamlined<sup>306</sup>.
868. Mr Bryce also recommended adoption of an approach advanced within the Proposed Auckland Unitary Plan whereby relevant policies are cross referenced within the assessment matters. We agree with Mr Bryce that this approach is advantageous, because it provides an effective link between the policies and supporting methods.
869. Lastly, we note that inclusion of assessment criteria properly so called has enabled Mr Bryce to remove an unsatisfactory feature of the notified Chapter 27 commented on by Mr Goldsmith: "*assessment criteria*" which are mislabelled as matters of discretion or like provisions.
870. We do not intend to review all of the assessment criteria recommended by Mr Bryce in detail, but rather to identify where, in our view, Mr Bryce's recommendations need to be amended and/or supplemented.
871. The first point that we would note is that we consider it necessary to revise the headings Mr Bryce had suggested in order that the new Section 27.9 might have its own numbering system, albeit cross referenced to the rules to which each set of assessment criteria relate.
872. The second general set of amendments that we recommend is to amend the assessment criteria where necessary, to express each point more clearly as a question or issue to which Council staff should direct themselves.

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<sup>304</sup> Submission 370

<sup>305</sup> Mr Goldsmith also directed us to those submissions as providing a jurisdictional basis for adopting the same approach as the Proposed Auckland Unitary Plan.

<sup>306</sup> N Bryce Reply Statement at 5.8

873. In our renumbered Sections 27.9.3.1 and 27.9.3.2 (related to revised Rules 27.5.7 and 27.5.8 respectively) we have added assessment criteria as a consequential change reflecting the additional changes we have recommended to those rules to insert a discretion related to reverse sensitivity effects on infrastructure.
874. Similarly, we recommend amendment to delete assessment criteria recommended by Mr Bryce related to activities affecting electricity sub-transmission lines, reflecting our recommendation as above, that this not be the subject of a separate rule. We have made other more minor amendments to Mr Bryce’s recommended assessment criteria to cross reference our recommended revisions to the policies and rules.
875. We consider that Mr Bryce’s recommended assessment criteria for the Jacks Point Zone need amendment to reflect deletion of the rule related to subdivisions in the FP-1 area. As discussed in section 5.10 above, we recommend that most of the ‘assessment criteria’ recommended by Mr Bryce be returned to what is now section 27.3.7.
876. We also recommend use of the defined term “*Structure Plan*” that we have suggested to the Stream 10 Hearing Panel rather than seeking to describe all of the various plans of similar ilk.
877. Where we have recommended deletion of location-specific rules as above (or where they have been deleted by the Stage 2 Variations), we have not included assessment criteria Mr Bryce has suggested related to those rules.
878. Lastly, we have inserted a new set of assessment criteria recommended by the Stream 12 Hearing Panel in relation to the new Controlled Activity rule discussed above, applying to the West Meadows Drive area.
879. The end result, however, is that recommended Section 27.9 contains a set of assessment criteria that in our view will assist implementation of the objectives and policies and is the best way to implement those policies.

## 8.8 Notification

880. Turning to notification issues, this was dealt with in notified Section 27.9. As a result of the reorganisation of the Chapter, the parallel provisions are in Section 27.10 of our recommended version of the Chapter.
881. Relevant submissions included:
- a. A request that all subdivisions in the Lake Hawea area be notified<sup>307</sup>;
  - b. Deletion of provision creating potential for notification where an application site adjoins a state highway<sup>308</sup>;
  - c. Insertion of a requirement for restricted discretionary and discretionary subdivisions in the (now) Lower Density Suburban Residential Zone to be supported with affected party approval before they are considered on a non-notified basis<sup>309</sup>;
  - d. Addition of the Ski Area Sub-Zone as an additional category of non-notified applications<sup>310</sup>;

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<sup>307</sup> Submission 272

<sup>308</sup> Submission 275

<sup>309</sup> Submission 427 and 406: Opposed in FS1261

<sup>310</sup> Submissions 613 and 610

- e. Addition of subdivision of sites within the Queenstown or Wanaka Airport air noise boundaries within the category of applications that are potentially notified<sup>311</sup>;
  - f. Provision for notification where there is a need to assess natural hazard risk<sup>312</sup>.
882. Mr Bryce recommended that consequent on his recommended amendments to the rules, the scope of applications that are directed not to be notified or limited–notified should be revised and limited to controlled activity boundary adjustments and to controlled and restricted discretionary activities, but that otherwise, the submissions on this part of the Chapter should be rejected.
883. Addressing the specific points of submission, Mr Bryce recommended rejection of Submission 272 on the basis that in cases to which renumbered Section 27.10.1 did not apply, notification would be addressed on a case by case basis<sup>313</sup>. We agree with Mr Bryce’s recommendation. While, as the submission notes, public notification provides a public consultation process, the presumption in favour of notification has been removed from the Act and we have seen no evidence that would suggest that the costs of notification in every case, irrespective of the nature and scale of any environmental effects, is matched by the benefits of doing so.
884. As regards Submission 275, Mr Bryce recommended rejection of the submission, noting that it perpetuated an existing provision under the ODP and had the effect only of ensuring notification would be assessed on a case by case basis where sites adjoin or have access to a state highway. We agree with Mr Bryce’s reasoning. Given the policy provisions related to reverse sensitivity effects on regionally significant infrastructure, we consider it is appropriate that notification decisions be assessed on their merits in this instance. However, the way in which these provisions have been reframed means that we categorise the submission as ‘Accepted in Part’.
885. Mr Bryce recommended rejection of submissions 427 and 406 regarding subdivisions in the Low Density Residential Zone. In his view, a case by case assessment for subdivision applications not falling within the general provisions of renumbered Rule 27.10.1 was appropriate. We note also that Mr Bryce’s recommended revisions to this section would have the result of accepting the submissions in part because discretionary applications within the (now) Lower Density Suburban Residential Zone would not fall within the general no notification rule. The submitters in this case did not appear to provide evidence as to why the renamed Lower Density Suburban Residential Zone should be treated differently to the balance of zones in the Plan, or to provide us with evidence as to the balance of costs and benefits were their relief to be accepted. In these circumstances, we agree with Mr Bryce’s recommendation and recommend that the submissions be rejected.
886. Mr Bryce discussed the submissions seeking an exemption for subdivisions within the Ski Area Sub-Zones in somewhat greater detail in his Section 42A Report<sup>314</sup>. In his view, there is the potential for subdivision within the Ski Area Sub-Zones to create arbitrary lines within sensitive landscape settings and accordingly, a need for the effects of subdivision in the Sub-Zone to be considered on a case by case basis.

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<sup>311</sup> Submission 433: Opposed in FS1097 and FS1117

<sup>312</sup> Submission 798

<sup>313</sup> While this has changed since the hearing (with effect from 18 October 2017) with enactment of the Resource Legislation Amendment Act 2017, the transition provisions (refer section 12 of Schedule 12 of the Act) direct that the PDP First Schedule process must be completed as if the 2017 Amendment Act had not been enacted.

<sup>314</sup> Section 42A Report at 23.4

887. Mr Ferguson gave planning evidence on behalf of the submitters. He noted that Mr Bryce's position appeared to be related to the issues surrounding the status of a subdivision within the Ski Area Sub-Zones. As already noted, Mr Ferguson gave evidence supporting controlled activity status for such subdivisions which, if accepted, would have had the effect of bringing such subdivisions within the ambit of the non-notification rule.
888. Mr Ferguson did not explore the position should we recommend (as we have done) that discretionary status for subdivisions within the Sub-Zone be retained.
889. We agree that there is a linkage between these matters. The same considerations that have prompted us to recommend rejection of the broader submissions on the status of subdivisions within Ski Area Sub-Zones suggest to us that notification decisions should be assessed on a case by case basis rather than being predetermined through operation of a non-notification rule.
890. In summary, we agree with Mr Bryce's recommendation and we recommend rejection of these submissions.
891. Mr Bryce also recommended rejection of the submission by Queenstown Airport Corporation seeking an exception for activities within the defined noise boundaries around Queenstown and Wanaka Airports.
892. In his opinion, the amendments to the PDP recommended to address potential reverse sensitivity effects on the Airport meant that those issues were already appropriately addressed. Mr Bryce noted in this regard that subdivisions in the vicinity of Wanaka Airport would in most circumstances be a discretionary activity anyway and accordingly could be notified on that basis. He invited QAC to respond to this matter at the hearing<sup>315</sup>. When QAC appeared before us, its Counsel advised that Ms O'Sullivan (the submitter's planning adviser) agreed that the relief sought was unnecessary and that the submitter no longer pursued the submission. Accordingly, we need take that particular point no further.
893. As regards the submission of Otago Regional Council<sup>316</sup>, this poses a practical difficulty given that (as discussed in greater detail in Report 14) virtually every property in the District is subject to some level of natural hazard. We therefore have difficulty understanding how the submission could be granted other than by requiring notification of every application the Council receives. This would have obvious cost implications. ORC did not appear to suggest how its submission could practically be addressed and provided no section 32AA analysis upon which we could rely. Accordingly, we recommend the Regional Council's submission be rejected.
894. Considering the detail of Mr Bryce's recommendations, we consider that his recommended Rule 27.10.1 requires further amendment to be clear that boundary adjustments falling within Rule 27.5.4 fall outside the non-notification rule (presumably the reason why he suggested that specific reference be made to controlled activity boundary adjustments).
895. In addition, we do not think it is necessary to make specific reference in 27.10.2 to archaeological sites or listed heritage items, or to discretionary activities within the Jacks Point Zone. Consequent on Mr Bryce's recommended focus of the non-notification rule on

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<sup>315</sup> Refer Section 42A Report at 23.5.

<sup>316</sup> Submission 798

controlled and restricted discretionary activities, those activities automatically fall outside the rule in any event.

896. We also think that the reference to the National Grid Line might be simplified, just to cross reference Rule 27.5.10.
897. Lastly, the existing reference to the Makarora Rural Lifestyle Zone can be deleted, consequent on the Stream 12 Hearing Panel’s recommendation to rezone that land Rural.
898. More generally, while improved by Mr Bryce, we found the drafting of these provisions to be quite convoluted, with an initial rule, followed by two separate sets of exceptions. We think it can be simplified further.
899. In summary, we recommend that notified Section 27.9 be renumbered 27.10 and amended to read:

*“Applications for all controlled and restricted discretionary activities shall not require the written approval of other persons and shall not be notified or limited notified except:*

- a. where the site adjoins or has access onto a State Highway;*
- b. where the Council is required to undertake statutory consultation with iwi;*
- c. where the application falls within the ambit of Rule 27.5.4;*
- d. where the application falls within the ambit of Rule 27.5.10 and the written approval of Transpower New Zealand Limited has not been obtained to the application.*

#### 8.9 Section 27.10 – Rules – General Provisions

900. Notified Section 27.10 was entitled “Rules – General Provisions”. The first such provision related to subdivisions with access onto State Highways. NZTA<sup>317</sup> made some technical suggestions as to how this rule should be framed that Mr Bryce recommended be accepted. We concur. The only additional amendment that we would recommend relates to the cross reference to the Designations Chapter. We consider that this should, for clarity, record that the designations chapter notes sections of State Highways that are limited access roads as at the date of notification of the PDP (August 2015).
901. The second general provision relates to “*esplanades*”. The only submission on it<sup>318</sup> suggested correction of an internal cross reference. Mr Bryce recommended that that submission be accepted.
902. For our part, in addition to that correction, we think that both the heading and text of this rule would more correctly refer to esplanade reserves and strips rather than “*esplanades*”. We regard this as a minor matter falling within Clause 16(2).
903. Thirdly, consequent on the concern expressed to us by representatives of Aurora Energy Limited that the general public are not familiar with the legal obligations arising under the New Zealand Electrical Code of Practice for electrical safe distances, we consider it would be helpful if the existence of this Code of Practice were noted at this location.
904. Lastly, we consider that the heading of this section is incorrect. Mr Bryce agreed that they are not rules and suggested that the title might better be “*General Provisions*”. For our part, we consider that “*Advice Notes*” better captures the character of the provisions in question given

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<sup>317</sup> Submission 719

<sup>318</sup> Submission 809

that they are in the nature of advice and are not intended to have independent regulatory effect.

905. In summary, therefore, we recommend that notified Section 27.10 be renumbered 27.11 and amended to read:

*“Advice Notes*

**27.11.1 State Highways**

*Attention is drawn to the need to obtain a Section 93 notice from New Zealand Transport Agency for subdivisions with access onto State Highways that are declared Limited Access Roads (LAR). Refer to the Designations Chapter of the District Plan for sections of State Highways that are LAR as at August 2015. Where a designation will change the use, intensity or location of the access on the State Highway, subdividers should consult with the New Zealand Transport Agency.*

**27.11.2 Esplanade Reserves and Strips**

*The opportunities for the creation of esplanade reserves or strips are outlined in the objective and policies in Section 27.2.6. Unless otherwise stated, section 230 of the Act applies to the standards and process for creation of esplanade reserves and strips.*

**27.11.3 New Zealand Electrical Code of Practice for Electrical Safe Distances**

*Compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001) is mandatory under the Electricity Act 1992. All activities regulated by NZECP34:2001 including any activities that are otherwise permitted by the District Plan must comply with this legislation.”*

**8.10 Section 27.12 – Financial Contributions**

906. Notified Section 27.12 related to financial contributions. The only submissions on it supported the existing provisions, although Submission 166 queried the title. Mr Bryce did not recommend any change to it other than to alter the heading to read:

*“Development and Financial Contributions”*

907. We agree with that suggestion.

**8.11 Section 27.13 – Structure Plans**

908. Notified Section 27.13 contained the Ferry Hill Rural Residential Subzone Concept Development Plan and the Kirimoko Block Structure Plan. The only submissions on it supported the existing provisions. The Stage 2 Variations propose deletion of the Ferry Hill document. For our part, for the reasons discussed earlier, we consider that a copy of the other *“Structure Plans”* contained in the PDP and referenced in the objectives, policies and rules of Chapter 27 should be contained here. Accordingly, we recommend that the Structure Plans for the Jacks Point, Waterfall Park, Millbrook Resort, Coneburn Industrial Zones and West Meadows Drive (the latter two consequential on recommendations from the Stream 13 and Stream 12 Hearing Panels respectively) be inserted in this section of the Chapter.

909. We also recommend the section be labelled *“Structure Plans”*.



## 8.12 Conclusions on Rules

910. Having considered all of the rules and other provisions of the PDP discussed above, we are of the belief that individually and collectively, the rules and other provisions recommended are the most appropriate provisions to implement the policies of Chapter 27 and thereby achieve the objectives both of Chapter 27 and, to the extent they are relevant, the objectives of the strategic chapters of the PDP.

## 9. SUMMARY OF RECOMMENDATIONS TO OTHER HEARING STREAMS

911. We also record that during the course of our deliberations, we determined that it would assist implementation of Chapter 27 if the definitions in Chapter 2 were amended in two respects:

- a. Deletion of the existing definition of “community facilities” (refer Section 4.3 above)
- b. Inclusion of a new definition of the term “Structure Plan” as follows:

*“Structure Plan means a plan included in the District Plan, and includes Spatial Development Plans, Concept Development Plans and other similarly titled documents.”* (refer the discussion at Section 8.7 above).

912. These are matters for the Hearing Panel considering submissions on the definitions (Stream 10) to consider.

## 10. SUMMARY OF RECOMMENDATIONS

913. As already noted, we have attached our recommended version of Chapter 27 as a clean document in Appendix 1.

914. Appendix 2 contains our recommendations in respect of submissions in tabular form.

915. In addition, in the course of this Report, we have made a number of other recommendations for consideration of the Council. These are detailed in Appendix 3.

**For the Hearing Panel**



**Denis Nugent, Chair**

**Dated: 4 April 2018**

# 33 INDIGENOUS VEGETATION AND BIODIVERSITY



## 33.1

### Purpose

The District contains a diverse range of habitats that support indigenous plants and animals. Many of these are endemic, comprising forests, shrubland, herbfields, tussock grasslands, wetlands, lake and river margins. Indigenous biodiversity is also an important component of ecosystem services and the District's landscapes.

The Council has a responsibility to maintain indigenous biodiversity and to recognise and provide for the protection of significant indigenous vegetation and significant habitats of indigenous fauna, which are collectively referred to as Significant Natural Areas (SNAs).

Such activities as ski-field development within identified Ski Area Sub Zones, farming, fence, road and track construction can be reasonably expected to be undertaken providing such activities maintain or enhance the District's indigenous biodiversity values. In addition, there are ski-field developments where vegetation clearance is already managed under separate legislation such as the Conservation Act or the Land Act.

The limited clearance of indigenous vegetation is permitted, with discretion applied through the resource consent process to ensure that indigenous vegetation clearance activities exceeding the permitted limits protect, maintain or enhance indigenous biodiversity values. Where the clearance of indigenous vegetation would have significant residual effects after avoiding, remedying or mitigating adverse effects, opportunities for biodiversity offsetting are encouraged.

Alpine environments are identified as areas above 1070m and are among the least modified environments in the District. Due to thin and infertile soils and severe climatic factors, establishment and growth rates in plant life are slow, and these areas are sensitive to modification. In addition, because these areas contribute to the District's distinctive landscapes, and are susceptible to exotic pest plants, changes to vegetation at these elevations may be conspicuous and have significant effects on landscape character and indigenous biodiversity.

The District's lowlands comprising the lower slopes of mountain ranges and valley floors have been modified by urban growth, farming activities and rural residential development. Much of the indigenous vegetation habitat has been removed and these areas are identified in the Land Environments of New Zealand Threatened Environment Classification as either acutely or chronically threatened environments, having less than 20% indigenous vegetation remaining.

## 33.2

### Objectives and Policies

#### 33.2.1 Objective - Indigenous biodiversity is protected, maintained and enhanced.

Policies	33.2.1.1	Identify the District's Significant Natural Areas, including the ongoing identification of Significant Natural Areas through the resource consent process, using the criteria set out in Policy 33.2.1.8, and schedule them in the District Plan to assist with their management for protection.
	33.2.1.2	Provide standards in the District Plan for indigenous vegetation that is not identified as a Significant Natural Area, which are practical to apply and that permit the clearance of a limited area of indigenous vegetation.

- 33.2.1.3 Have regard to and take into account the values off tangata whenua and kaitiakitanga.
- 33.2.1.4 Encourage the long-term protection of indigenous vegetation and in particular Significant Natural Areas by encouraging land owners to consider non-regulatory methods such as open space covenants administered under the Queen Elizabeth II National Trust Act 1977.
- 33.2.1.5 Undertake activities involving the clearance of indigenous vegetation in a manner that ensures the District's indigenous biodiversity is protected, maintained or enhanced.
- 33.2.1.6 Manage the adverse effects of activities on indigenous biodiversity by:
- a. avoiding adverse effects as far as practicable and, where total avoidance is not practicable, minimising adverse effects;
  - b. requiring remediation where adverse effects cannot be avoided;
  - c. requiring mitigation where adverse effects on the areas identified above cannot be avoided or remediated;
  - d. requiring any residual adverse effects on significant indigenous vegetation or indigenous fauna to be offset through protection, restoration and enhancement actions that achieve no net loss and preferably a net gain in indigenous biodiversity values, having particular regard to:
    - i. limits to biodiversity offsetting due the affected biodiversity being irreplaceable or vulnerable;
    - ii. the ability of a proposed offset to demonstrate it can achieve no net loss or preferably a net gain;
    - iii. Schedule 33.8 – Framework for the use of Biodiversity Offsets;
  - e. enabling any residual adverse effects on other indigenous vegetation or indigenous fauna to be offset through protection, restoration and enhancement actions that achieve no net loss and preferably a net gain in indigenous biodiversity values having particular regard to:
    - i. the ability of a proposed offset to demonstrate it can achieve no net loss or preferably a net gain;
    - ii. Schedule 33.8 – Framework for the use of Biodiversity Offsets.
- 33.2.1.7 Protect the habitats of indigenous fauna, and in particular, birds in wetlands, beds of rivers and lakes and their margins for breeding, roosting, feeding and migration.
- 33.2.1.8 Determine the significance of areas of indigenous vegetation and habitats of indigenous fauna by applying the following criteria:
- a. Representativeness
 

Whether the area is an example of an indigenous vegetation type or habitat that is representative of that which formerly covered the Ecological District;

OR

b. Rarity

Whether the area supports;

- i. indigenous vegetation and habitats within originally rare ecosystems;
- ii. indigenous species that are threatened, at risk, uncommon, nationally or within the ecological district;
- iii. indigenous vegetation or habitats of indigenous fauna that has been reduced to less than 10% of its former extent, regionally or within a relevant Land Environment or Ecological District;

OR

c. Diversity and Pattern

Whether the area supports a highly diverse assemblage of indigenous vegetation and habitat types, and whether these have a high indigenous biodiversity value including:

- i. indigenous taxa;
- ii. ecological changes over gradients;

OR

d. Distinctiveness

Whether the area supports or provides habitats for indigenous species:

- i. at their distributional limit within Otago or nationally;
- ii. are endemic to the Otago region;
- iii. are distinctive, of restricted occurrence or have developed as a result of unique environmental factors;

OR

e. Ecological Context

The relationship of the area with its surroundings, including whether the area proposed to be cleared:

- i. has important connectivity value allowing dispersal of indigenous fauna between different areas;
- ii. has an important buffering function to protect values of an adjacent area or feature;
- iii. is important for indigenous fauna during some part of their life cycle.

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### 33.2.2 **Objective** - Significant Natural Areas are protected, maintained and enhanced.

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| Policies | 33.2.2.1 | Avoid the clearance of indigenous vegetation within scheduled Significant Natural Areas, and those other areas that meet the criteria in Policy 33.2.1.8, that would reduce indigenous biodiversity values.  |
|          | 33.2.2.2 | Allow the clearance of indigenous vegetation within Significant Natural Areas only in exceptional circumstances and ensure that clearance is undertaken in a manner that retains the indigenous biodiversity values of the Significant Natural Area. |
|          | 33.2.2.3 | Provide for small scale, low impact indigenous vegetation removal to enable the maintenance of existing fences and tracks in recognition that the majority of Significant Natural Areas are located within land used for rural activities.           |

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### 33.2.3 **Objective** - Land use and development maintains indigenous biodiversity values.

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| Policies | 33.2.3.1 | Ensure the clearance of indigenous vegetation within the margins of water bodies does not reduce natural character and indigenous biodiversity values, or create erosion.  |
|          | 33.2.3.2 | Encourage opportunities to remedy adverse effects through the retention, rehabilitation or protection of the same indigenous vegetation community elsewhere on the site.   |
|          | 33.2.3.3 | Encourage the retention and enhancement of indigenous vegetation including in locations that have potential for regeneration, or provide stability, and particularly where productive values are low, or in riparian areas or gullies. |
|          | 33.2.3.4 | Have regard to any areas in the vicinity of the indigenous vegetation proposed to be cleared, that constitute the same habitat or species which are protected by covenants or other formal protection mechanisms.                      |

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### 33.2.4 **Objective** - Indigenous biodiversity and landscape values of alpine environments are protected from the effects of vegetation clearance and exotic tree and shrub planting.

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| Policies | 33.2.4.1 | Protect the alpine environments from vegetation clearance as those environments contribute to the distinct indigenous biodiversity and landscape qualities of the District and are vulnerable to change. |
|          | 33.2.4.2 | Protect the alpine environment from degradation due to planting and spread of exotic species.  |

## 33.3

# Other Provisions and Rules

### 33.3.1 District Wide

Attention is drawn to the following District Wide chapters.

1	Introduction	2	Definitions	3	Strategic Direction
4	Urban Development	5	Tangata Whenua	6	Landscapes and Rural Character
25	Earthworks	26	Historic Heritage	27	Subdivision
28	Natural Hazards	29	Transport	30	Energy and Utilities
31	Signs	32	Protected Trees	34	Wilding Exotic Trees
35	Temporary Activities and Relocated Buildings	36	Noise	37	Designations
	Planning Maps				

### 33.3.2 Interpreting and Applying the Rules

- 33.3.2.1 Compliance with any of the following Standards, in particular the permitted Standards, does not absolve any commitment to the conditions of any relevant land use consent, consent notice or covenant registered on the site's computer freehold register.
- 33.3.2.2 Where an activity does not comply with a Standard listed in the Standards table, the activity status identified by the 'Non-Compliance Status' column applies.
- 33.3.2.3 The rules in Chapter 33 apply to all parts of the District, including formed and unformed roads, whether zoned or not.
- 33.3.2.4 The following abbreviations are used in the tables. Any activity that is not permitted (P) or prohibited (PR) requires resource consent.

P	Permitted	C	Controlled	RD	Restricted Discretionary
D	Discretionary	NC	Non-Complying	PR	Prohibited

### 33.3.3 Rules: Application of the indigenous vegetation rules

- 33.3.3.1 For the purposes of determining compliance with the rules in Tables 1 - 4, indigenous vegetation must be measured cumulatively over the area(s) to be cleared.
- 33.3.3.2 Rules 33.5.1 and 33.5.2 shall apply where indigenous vegetation attains 'structural dominance' and the indigenous vegetation exceeds 50% of the total area to be cleared or total number of species present of the total area to be cleared.
- 33.3.3.3 Rules 33.5.1 and 33.5.2 4 shall apply where indigenous vegetation does not attain structural dominance and exceeds 67% of the total area to be cleared, or total number of species present of the total area to be cleared.
- 33.3.3.4 Structural dominance means indigenous species that are in the tallest stratum.
- 33.3.3.5 Rules 33.3.3.2 and 33.3.3.3 do not apply to Significant Natural Areas listed in Schedule 33.7. In a Significant Natural Area all clearance is subject to Rules 33.5.4 and 33.5.5.

Advice Notes

Refer to the Planning Maps and Part 33.7 for the Schedule of Significant Natural Areas.

## 33.4 Rules - Clearance of Indigenous Vegetation

Table 1	Any activity involving the clearance of indigenous vegetation, earthworks within SNAs and the planting of exotic plant species shall be subject to the following rules:	Activity Status
33.4.1	Activities that do not breach any of the Standards in Tables 2 to 4.	P
33.4.2	Notwithstanding Table 3, activities in any area identified in the District Plan maps and scheduled as a Significant Natural Area that is, or becomes protected by a covenant under the Queen Elizabeth II National Trust Act 1977.	P
33.4.3	Indigenous vegetation clearance for the operation and maintenance of existing and in service/operational roads, tracks, drains, utilities, structures and/or fence lines, but excludes their expansion.	P
33.4.4	Indigenous vegetation clearance for the construction of walkways or trails up to 1.5 metres in width provided that it does not involve the clearance of trees greater than a height of 4 metres.	P
33.4.5	Indigenous vegetation clearance within the Ski Area Sub Zones on land administered under the Conservation Act 1987 where the relevant approval has been obtained from the Department of Conservation, providing that: <ul style="list-style-type: none"> <li>a. the indigenous vegetation clearance does not exceed the approval by the Department of Conservation;</li> <li>b. prior to the clearance of indigenous vegetation, the Council is provided with the relevant application and approval from the Department of Conservation.</li> </ul>	P





Table 4	Activities within Alpine Environments – land 1070 metres above sea level:	Non-Compliance
33.5.7	<p>The following rules apply to any land that is higher than 1070 meters above sea level:</p> <p>33.5.7.1 indigenous vegetation must not be cleared;</p> <p>33.5.7.2 exotic species must not be planted.</p> <p>Except where indigenous vegetation clearance is permitted by Rule 33.4.5</p>	D
	Clarification: For the purpose of the clearance of indigenous vegetation by way of burning, the altitude limit of 1070 metres means the average maximum altitude of any land to be burnt, averaged over north and south facing slopes.	

## 33.6 Rules - Non-Notification of Applications

The provisions of the RMA apply in determining whether an application needs to be processed on a notified basis. No activities or non-compliances with the standards in this chapter have been identified for processing on a non-notified basis.

## 33.7 Schedule of Significant Natural Areas

Identifier	Map Number	SNA Site Name	Property or location Reference	Description/Dominant Indigenous Vegetation
A10C	9	SNA C Mount Alfred Faces	Mt Earnslaw Station, Glenorchy	Mixed beech forest, montane and sub-alpine shrubland and sub-alpine short tussock land.
A8A	12	SNA A Fan Creek Shrublands	Mt Creighton Station	Grey shrubland. Old matagouri with <i>Olearia odorata</i> , <i>Coprosma propinqua</i> , <i>Aristotelia fruticosa</i> , <i>Carmichaelia petriei</i> and briar.
A8B	12	SNA B Lake Face Shrublands	Mt Creighton Station	Broadleaf indigenous hardwood community. Common species within this community include: <i>Griselinia littoralis</i> , <i>Olearia</i> spp., cabbage tree, <i>Pseudopanax</i> sp., marble leaf and <i>Coprosma</i> spp..
A8C	9, 10, 12, 13	SNA C Sites 1 to 9 Manuka Shrublands	Mt Creighton Station	Extensive shrublands of manuka.
A8D	12	SNA D Moke Creek Wetland	Mt Creighton Station	Wetland marsh.
A23A	12, 38	SNA A	Closeburn	Shrubland dominated by manuka and <i>Coprosma propinqua</i> .
B3A	8	SNA A	Mt Burke Station	Shrubland consisting of kanuka ( <i>Kunzea ericoides</i> ), manuka ( <i>Leptospermum scoparium</i> ), matagouri ( <i>Discaria toumatou</i> ), kowhai ( <i>Sophora</i> sp.) and briar ( <i>Rosa rubiginosa</i> ).

Identifier	Map Number	SNA Site Name	Property or location Reference	Description/Dominant Indigenous Vegetation
B3B	8, 18	SNA B	Mt Burke Station	Woodland dominated by kanuka, but also contains a stand of halls totara ( <i>Podocarpus cunninghamii</i> ) on rubbly slopes at the head of the catchment and kowhai ( <i>Sophora</i> sp.) in the upper kanuka forest.
B3C	8	SNA C	Mt Burke Station	Woodland dominated by halls totara ( <i>Podocarpus cunninghamii</i> ) and mountain toatoa ( <i>Phyllocladus alpinus</i> ).
B11A	4	SNA A Sites 1 to 2 Estuary Burn	Minaret Station	Kanuka woodland with a minor component of matagouri and mingimingi.
B11C	4	SNA C Sites 1 to 6 Bay Burn	Minaret Station	Kanuka dominated woodland with a minor component of matagouri and mingimingi and regenerating broadleaved species.
B11D	4, 7	SNA D Minaret Burn	Minaret Station	Shrubland mosaic consisting of manuka/kanuka woodland and broadleaved indigenous hardwoods and beech forest.
B11F	4	SNA F Minaret Bay Riparian	Minaret Station	Indigenous broadleaved hardwoods.
B15A	4, 5	SNA A Sites 1 to 3 Mt Albert Burn & Craigie Burn Kanuka Woodlands	Mt Albert Station	Lakeshore fan communities - dense kanuka forest on flat river fans where the Craigie Burn and Albert Burn flow into the lake. The wet flats on the north side of the Albert Burn contain an excellent population of <i>Olearia lineata</i> growing along a small stream.
B15B	2, 5	SNA B Sites 1 to 5 Lake face shrublands and forest	Mt Albert Station	Beech forest remnants in several gullies and spreading onto some adjacent rolling country and generally surrounded by regenerating manuka shrubland.
B16A	8	SNA A Long Valley Creek	Glen Dene Station	Shrubland mosaic consisting of manuka woodland, broadleaved indigenous hardwoods and beech forest.
B16B	5	SNA B Sites 1 to 3 Lake Wanaka Shrublands	Glen Dene Station	Shrubland mosaic consisting of manuka woodland, broadleaved indigenous hardwoods and beech forest.
C14A	13, 13a	SNA A Sites 1 to 5 Remarkables Face SNA	Remarkables Station	Remnant broadleaf forest forming a buffer to Wye Creek and a good representation of sub-alpine shrubland occurring on several of the south faces of the steep spurs descending from the west faces of the Remarkables, as well as remnant totara logs.
C24A	13	SNA A Wye Creek SNA	Lake Wakatipu Station	Shrubland dominated by bracken fern and <i>Pittosporum tenuifolium</i> , but also including tutu, <i>Coprosma propinqua</i> , <i>Griselinia littoralis</i> , manuka, <i>Hebe salicifolia</i> , matagouri, mistletoe sp., <i>Carmichaelia</i> sp., and <i>Cordyline australis</i> .
D1A	13	SNA A	Loche Linnhe Station	Grey shrubland consisting of <i>Olearia odorata</i> , <i>Olearia fimbriata</i> , <i>Discaria toumatou</i> , <i>Coprosma propinqua</i> , <i>Coprosma rugosa</i> , <i>Melicytus alpinus</i> , <i>Muehlenbeckia complexa</i> , and <i>Rubus schmidelioides</i> .
D1B	13	SNA B Sites 1 to 3	Loche Linnhe Station	Forest and shrubland consisting of <i>Griselinia littoralis</i> , <i>Aristotelia serrata</i> , <i>Olearia arborescens</i> , <i>Metrosideros umbellata</i> , <i>Carpodetus serratus</i> , <i>Fuschia excorticata</i> , <i>Sophora microphylla</i> , <i>Pittosporum tenuifolium</i> , <i>Pseudopanax crassifolium</i> and <i>Coriaria arborea</i> .

Identifier	Map Number	SNA Site Name	Property or location Reference	Description/Dominant Indigenous Vegetation
D1C	15	SNA C	Loche Linnhe Station	Beech forest dominated by mountain beech ( <i>Nothofagus solandri. cliffortoides</i> ) with occasional mature red beech ( <i>Nothofagus fusca</i> ), located above the highway.
D1D	15	SNA D	Loche Linnhe Station	Grey shrubland and pasture grassland. Species recorded include tree daisys ( <i>Olearia odorata</i> , <i>Olearia fimbriata</i> ), matagouri, <i>Coprosma propinqua</i> , briar and <i>Melicytus alpinus</i> .
D1E	15	SNA E	Loche Linnhe Station	Beech forest dominated by mountain beech ( <i>Nothofagus solandri. cliffortoides</i> ), with occasional mature red beech ( <i>Nothofagus fusca</i> ).
D4A	15	SNA A Halfway Bay Lake Shore	Lake Wakatipu Station	Red and mountain beech forest in gullies, broadleaf lakeshore forest (including kowhai, broadleaf, occasional southern rata, <i>Olearia</i> species and <i>Coprosma</i> species) and regenerating broadleaf forest, shrubland, bracken fernland, occasional gorse and wild conifers.
D5A	13, 13b	SNA A Sites 1 to 7 Lakeshore Gullies	Cecil Peak Station	Beech forest, shrubland, bracken fernland and pasture grasses.
D6A	12, 13	SNA A McKinlays Creek	Walter Peak Station/Cecil Peak Station	Mountain beech forest with remnant and regenerating shrubland on steep, rocky slopes and exotic grassland that follows along a vehicle track.
D6B	14	SNA B Von – White Burn	Walter Peak Station	A series of extensive ponds and bogs with red tussock merging into dryland hard tussockland.
D7A	12, 14	SNA A Sites 1 to 2 North Von, Lower Wetlands	Mt Nicholas Station/Walter Peak Station	Lacustrine wetland, swamp, marshland and bog.
D7B	12, 14	SNA B North Von, Central Wetlands	Mt Nicholas Station	Palustrine wetlands and sub alpine bogs.
D7C	12	SNA C Sites 1 to 3 North Von, Upper Wetlands	Mt Nicholas Station	Cushion bog, sedgeland, rushland and turf communities containing plants typical of these communities.
D7D	14	SNA D North Von Lower Wetlands	Mt Nicholas Station	A kettle lake, kettle holes and adjacent wetlands and ephemeral wetlands.
E18B	8, 18	SNA B	Watkins Rd, Hawea Flat	Mosaic of short tussock grassland, cushionfields and herbfields.
E18C	8, 18	SNA C	Mt Iron	Kanuka woodland.
E18D	8, 18	SNA D Sites 1 to 2	Mt Iron	Kanuka woodland.
E18G	8	SNA G	Wanaka-Luggate Hwy, Upper Clutha River	Kanuka woodland with some small areas of short tussock grassland dominated by introduced grasses.
E18H	8, 18	SNA H	Mt Iron	Kanuka woodland.
E19A	8	SNA A	Glenfoyle Station	Kanuka woodland.
E19B	8, 11	SNA B	Glenfoyle Station	Kanuka woodland, dominated by kanuka but also including a more diverse plant assemblage in the gully bottoms including matagouri, <i>Coprosma propinqua</i> and tree daisys ( <i>Olearia</i> sp.).

Identifier	Map Number	SNA Site Name	Property or location Reference	Description/Dominant Indigenous Vegetation
E19C	8, 11	SNA C	Glenfoyle Station	Kanuka woodland.
E30A	8, 11, 11a	SNA A Dead Horse Creek	Lake McKay Station	Kanuka woodland dominated by kanuka, but also includes shrubland species such as matagouri, native broom, Coprosma propinqua and mature stands of Olearia lineata.
E30B	8, 11	SNA B Sites 1 to 4 Tin Hut Creek	Lake McKay Station	Kanuka woodland dominated by kanuka but also includes other shrubland species such as matagouri, native broom, and Coprosma propinqua.
E30C	11	SNA C Alice Burn Tributary	Lake McKay Station	Grey shrubland, which includes significant populations of Olearia lineata.
E30D	8, 11, 18a	SNA D Luggate Creek	Lake McKay Station	Kanuka woodland dominated by kanuka but also includes other shrubland species such as matagouri, native broom, and Coprosma propinqua.
E30E	8, 11	SNA E Sites 1 to 2 Lake McKay	Lake McKay Station	Kanuka woodland dominated by kanuka but also includes other shrubland species such as matagouri, native broom, and Coprosma propinqua.
E30F	8, 11	SNA F Alice Burn	Lake McKay Station	Kanuka woodland dominated by kanuka but also includes other shrubland species such as matagouri, native broom, and Coprosma propinqua.
E35A	8, 11	Sites 1 to 11 Sheepskin Creek	Luggate-Cromwell Road, Upper Clutha.	Diverse kanuka, and mixed kanuka/mingimingi-matagouri, scrub/shrubland communities in mid to lower reaches of the Sheepskin Creek catchment with intervening areas of pasture.
E37A	8, 11	SNA A	Kane Road – Hawea Back Road, Hawea Flat	Grey shrubland on rocky outcrop, including Coprosma intertexta, Coprosma propinqua, Coprosma tayloriae, Coprosma rigida, Coprosma crassifolius, Carmichaelia petriei, Melicytus alpinus, Discaria toumatou, Pteridium esculentum, Muehlenbeckia complexa and Cordyline australis.
E38A	8, 18a	SNA A Sites 1 to 5	Stevensons Road, Clutha River	Cushion fields (including Pimelea sericeovillosa subsp. pulvinaris) and kanuka stands.
E39A	8, 18, 24b	SNA A	Dublin Bay Road, Albert Town, Wanaka.	Short tussock grassland and cushion field.
E44A	8	SNA A Sites 1 to 2	Te Awa Road Hawea River	Hard tussock grassland with shrubland species, including kanuka, Ozothamnus leptophyllus and matagouri.
E45A	8	SNA A Sites 1 to 2	Te Awa Road Hawea River	Kanuka stands with other native species interspersed including Coprosma propinqua, Ozothamnus leptophyllus, matagouri and stands of bracken fern.
F2A	10	SNA A	Branch Creek, Cardrona Valley	Shrubland including Dracophyllum longifolium, Dracophyllum uniflorum, Olearia avicennifolia, Olearia arborescens, Olearia nummularifolia, Olearia odorata, and Coprosma propinqua, with a small pocket of silver beech forest.

Identifier	Map Number	SNA Site Name	Property or location Reference	Description/Dominant Indigenous Vegetation
F2B	10	SNA B Sites 1 to 3	Branch Creek, Cardrona Valley	Shrubland consisting of matagouri, <i>Olearia odorata</i> , <i>Olearia bullata</i> , <i>Aristotelia fruiticosa</i> , <i>Coprosma propinqua</i> , <i>Coprosma tayloriae</i> , <i>Carmichaelia petriei</i> , sweet briar, elderberry, <i>Melicytus alpinus</i> , <i>Rubus schmidelioides</i> and <i>Meuhlenbeckia australis</i> .
F2C	10	SNA C Sites 1 to 2	Branch Creek, Cardrona Valley	Shrubland consisting of matagouri, <i>Olearia odorata</i> , <i>Olearia bullata</i> , <i>Aristotelia fruiticosa</i> , <i>Coprosma propinqua</i> , <i>Carmichaelia petriei</i> , sweet briar, elderberry, <i>Melicytus alpinus</i> , <i>Rubus schmidelioides</i> and <i>Meuhlenbeckia australis</i> .
F2D	10	SNA D	Branch Creek, Cardrona Valley	Shrubland consisting of matagouri, <i>Olearia odorata</i> , <i>Olearia bullata</i> , <i>Aristotelia fruiticosa</i> , <i>Coprosma propinqua</i> , <i>Coprosma tayloriae</i> , <i>Carmichaelia petriei</i> , sweet briar, elderberry, <i>Melicytus alpinus</i> , <i>Rubus schmidelioides</i> and <i>Meuhlenbeckia australis</i> .
F21A	10	SNA A	Hillend Station, Wanaka	<i>Coprosma</i> -matagouri- <i>Olearia</i> shrubland with some elder and briar and a small pocket of silver beech forest.
F21B	10	SNA B Sites 1 to 3	Hillend Station, Wanaka	Shrubland including matagouri, <i>Coprosma propinqua</i> , kanuka – manuka, <i>Olearia odorata</i> , briar and elder.
F21C	10	SNA C Sites 1 to 2	Hillend Station, Wanaka	Beech forest fragments with extensive areas of regenerating shrubland.
F22A	10	SNA A Sites 1 to 2 Back Creek	Back Creek, Cardrona Valley.	Grey shrubland dominated by <i>Olearia odorata</i> , <i>Coprosma propinqua</i> and matagouri.
F26A	10	SNA A	Avalon Station, Cardrona Valley	Grey shrubland including <i>Coprosma propinqua</i> , matagouri, <i>Olearia odorata</i> and briar.
F26B	10	SNA B	Avalon Station, Cardrona Valley	Grey shrubland including <i>Olearia</i> spp., <i>Coprosma propinqua</i> , matagouri and <i>Corokia cotoneaster</i> .
F26C	10	SNA C Sites 1 to 3	Avalon Station, Cardrona Valley	Grey shrubland including <i>Olearia lineata</i> , <i>Coprosma propinqua</i> , matagouri, <i>Hebe salicifolia</i> and <i>Carmichaelia kirkii</i> .
F31A	13, 15a	SNA A Kawarau Faces	Waitiri Station, Kawarau Gorge.	Shrubland heavily dominated by matagouri and sweet briar but also includes <i>Coprosma propinqua</i> and to a lesser degree <i>Olearia odorata</i> .
F32A	13, 30	SNA A Sites 1 to 3 Owen Creek	Remarkables Range.	Grey shrubland dominated by <i>Olearia</i> species, <i>Coprosma propinqua</i> , <i>Discaria toumatou</i> , <i>Carmichaelia petriei</i> , <i>Melicytus alpinus</i> , <i>Rubus schmidelioides</i> and <i>Meuhlenbeckia</i> species.
F32B	13, 30	SNA B Rastus Burn	Remarkables Range.	Grey shrubland dominated by <i>Olearia</i> species, <i>Coprosma propinqua</i> , <i>Discaria toumatou</i> , <i>Carmichaelia petriei</i> , <i>Melicytus alpinus</i> , <i>Rubus schmidelioides</i> , and <i>Meuhlenbeckia</i> species.
F40A	13, 15a	SNA A	Gibbston Valley	Grey shrubland largely dominated by matagouri and <i>Coprosma propinqua</i> , but also includes populations of <i>Olearia</i> spp. and <i>Meuhlenbeckia complexa</i> .

Identifier	Map Number	SNA Site Name	Property or location Reference	Description/Dominant Indigenous Vegetation
F40B	13, 15a	SNA B	Gibbston Valley	Grey shrubland including <i>Olearia odorata</i> , <i>Olearia lineata</i> , <i>Discaria toumatou</i> , <i>Coprosma propinqua</i> , <i>Melicytus alpinus</i> , <i>Muehlenbeckia complexa</i> , <i>Rubus schmidelioides</i> , <i>Carmichaelia petriei</i> , <i>Clematis quadribracteolata</i> and <i>Hebe salicifolia</i> .
F40C	13, 15a	SNA C	Gibbston Valley	Grey shrubland.
F40D	13, 15a	SNA D	Gibbston Valley	Grey shrubland dominated by matagouri and kowhai, but also includes <i>Coprosma propinqua</i> , <i>Melicytus alpinus</i> , <i>Coprosma crassifolia</i> and <i>Muehlenbeckia complexa</i> .
G28A	10, 26	SNA A Site 6	Coronet Peak (Bush Creek)	<i>Olearia odorata</i> -matagouri shrubland.
G28A	10, 26	SNA A Site 7	Coronet Peak (Bush Creek)	Mountain beech forest.
G33A	10	SNA A	Ben Lomond Station, Upper Shotover River	Mixed mingimingi-matagouri- <i>Olearia</i> spp. shrubland.
G33B	10	SNA B	Ben Lomond Station, Upper Shotover River	Mixed mingimingi-matagouri- <i>Olearia</i> spp. shrubland.
G33C	9	SNA C	Ben Lomond Station, Upper Shotover River	Extensive manuka scrub & shrubland community and mountain beech forest.
G34A	7	SNA A	Alpha Burn Station, West Wanaka	Kanuka, mingimingi-matagouri-kohuhu-broadleaf-manuka/bracken shrubland.
G34B	7	SNA B	Alpha Burn Station, West Wanaka	Kohuhu-broadleaf shrubland merging with mingimingi-matagouri/bracken shrubland.
G34C	7	SNA C	Alpha Burn Station, West Wanaka	Mixed broadleaf-kohuhu-mingimingi-matagouri-bracken shrubland.
G34D	7	SNA D	Alpha Burn Station, West Wanaka	Mixed beech forest, manuka forest, montane shrubland.
2A	5	Hunter River Delta	G38 270 557	WERI: A braided river used for fishing and recreational boating activities. An important site for bird breeding.
16A	10	Caspar Flat Bush	E40 669 936	SSWI: An area with mountain beech. Bird species present include yellow breasted tit, rifleman, grey warbler and silvereve. Reasonable canopy but low plant diversity (natural for environment).
17A	10	Left Branch bush	E40 665 925	SSWI: An area of mountain beech, mountain toatoa, small leaf Coprosmas and ferns. A very steep south facing habitat. Reasonable canopy but very little plant diversity (natural for environment). Bird species include yellow breasted tit, rifleman, silvereve and grey warbler. Some large slips.
18A	10	Butchers Gully Bush	E40 665 906	SSWI: An area with mountain beech and mountain toatoa. Bird species include grey warbler, rifleman and yellow breasted tit. A steep south facing habitat. Reasonable canopy but little plant diversity. Some slipping.

Identifier	Map Number	SNA Site Name	Property or location Reference	Description/Dominant Indigenous Vegetation
35A	9, 10	Mount Aurum Remnants	S123 520 930	SSWI: An area with mountain beech, situated in gullies and on southern faces. Reasonable canopy, but low plant diversity. Yellow breasted tit, rifleman and grey warbler present.
38A	12	Moke Lake	S132 470 738	WERI, SSWI: A steep montane lake surrounded by tussock farmland. Brown trout fishery.
40A	12	Lake Isobel	S132 406 807	WERI: A lake with restiad bog and tussock land ( <i>Chionochloa</i> species).
41A	12	Lake Kirkpatrick	S132 477 704	WERI, SSWI: A sub-alpine lake with <i>Carex</i> bog and surrounded by tussock farmland. Common native water-fowl present. More important as trout fishery.
42A	12, 38	Few Creek Bush (includes 127)	S132 440 675	SSWI: A moderate sized plain beech forest (red beech, mountain beech) with common forest birds, including brown creeper, fantail, bellbird, rifleman, grey warbler and yellow breasted tit.
43A	12, 38	Twelve Mile Bush	S132 420 655	SSWI: Reasonable sized bush with more diversity than usual, with red beech, mountain beech, broadleaf shrubbery, bracken and tussock surrounds. Good range of common forest birds, including brown creeper, fantail, bellbird, rifleman, grey warbler and yellow breasted tit. Very good lakeshore diversity.
57A	31	Lake Johnson	F41 735 695	WERI, SSWI: An eutrophied lowland lake, rush and sedge swamp ( <i>Carex</i> species - Cyperaceae).
69A	13	Shadow Basin Tarn	F41 798 639	Montane lake and montane flush surrounded by steep slopes of snow tussock, cushion vegetation and herb fields.
71A	13	Lake Alta (adjoins 70)	F41 801 632	WERI: A montane lake surrounded by steep snow tussock slopes with extensive cushion vegetation and herb fields.
72A	13	Upper Wye Lakes	F41 812 612	WERI: Four montane lakes surrounded by scree and snow tussock. Cushion vegetation and herb fields.
91A	5	Dingle Lagoon	G39 220 347	WERI SSWI: A lagoon with a sloping edge with good plant communities and populations of paradise shelduck, mallard, grey duck and Canada geese.
114A	6, 9	Mt Earnslaw Forest and Bush Remnants	E40	SSWI: A healthy area of bush with red beech, totara, mountain beech, <i>Grisilinea</i> , fuchsia, wineberry, <i>Coprosma</i> sp., hard fern. Good numbers of bush birds present, including yellow breasted tit, rifleman, bellbird, grey warbler and silvereye.
126A	32	Gorge Road Wetland	S132 555 720	Significant site of insects and plants ( <i>Carox</i> soceta).



## 33.8

# Framework for the use of biodiversity offsets

The following sets out a framework for the use of biodiversity offsets. It should be read in conjunction with the NZ Government Guidance on Good Practice Biodiversity Offsetting in New Zealand, August 2014:

- a. restoration, enhancement and protection actions will only be considered a biodiversity offset where they are used to offset the anticipated residual effects of activities after appropriate avoidance, minimisation, remediation and mitigation actions have occurred as per Policy 33.2.1.6, i.e. not in situations where they are used to mitigate the adverse effects of activities;
- b. a proposed biodiversity offset should contain an explicit loss and gain calculation and should demonstrate the manner in which no net loss or preferably a net gain in biodiversity can be achieved on the ground;
- c. a biodiversity offset should recognise the limits to offsets due to irreplaceable and vulnerable biodiversity and its design and implementation should include provisions for addressing sources of uncertainty and risk of failure of the delivery of no net loss;
- d. restoration, enhancement and protection actions undertaken as a biodiversity offset are demonstrably additional to what otherwise would occur, including that they are additional to any remediation or mitigation undertaken in relation to the adverse effects of the activity;
- e. offset actions should be undertaken close to the location of development, where this will result in the best ecological outcome;
- f. the values to be lost through the activity to which the offset applies are counterbalanced by the proposed offsetting activity which is at least commensurate with the adverse effects on indigenous biodiversity, so that the overall result is no net loss, and preferably a net gain in ecological values;
- g. the offset is applied so that the ecological values being achieved through the offset are the same or similar to those being lost;
- h. as far as practicable, the positive ecological outcomes of the offset last at least as long as the impact of the activity, and preferably in perpetuity. Adaptive management responses should be incorporated into the design of the offset, as required to ensure that the positive ecological outcomes are maintained over time;
- i. the biodiversity offset should be designed and implemented in a landscape context – i.e. with an understanding of both the donor and recipient sites role, or potential role in the ecological context of the area;
- j. the development application identifies the intention to utilise an offset, and includes a biodiversity offset management plan that:
  - i. sets out baseline information on indigenous biodiversity that is potentially impacted by the proposal at both the donor and recipient sites;
  - ii. demonstrates how the requirements set out in this appendix will be addressed;
  - iii. identifies the monitoring approach that will be used to demonstrate how the matters set out in this appendix have been addressed, over an appropriate timeframe.

(While this appendix sets out a framework for the use of biodiversity offsets in the Queenstown Lakes District Council District Plan, many of the concepts are also applicable to other forms of effects management where an overall outcome of no net loss and preferably a net gain in biodiversity values are not intended, but restoration and protection actions will be undertaken).

# QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 4A

Report and Recommendations of Independent Commissioners Regarding  
Chapter 21, Chapter 22, Chapter 23, Chapter 33 and Chapter 34

## Commissioners

Denis Nugent (Chair)

Brad Coombs

Mark St Clair

## PART E: CHAPTER 33 INDIGENOUS VEGETATION AND BIODIVERSITY

### 46 PREAMBLE

1349. Two submissions<sup>1150</sup> generally supported the chapter. As we are recommending changes to provisions in the chapter we recommend they be accepted in part.
1350. One submission<sup>1151</sup> opposed the chapter in full, citing the restrictions it had imposed on the submitter’s land. Again, as we are recommending changes to provisions in the chapter we recommend it be accepted in part.
1351. General submissions received sought:
- a. Ban or discourage burn-off of tussock<sup>1152</sup>;
  - b. Encourage native plantings<sup>1153</sup>; and
  - c. Change Chapter name to “Indigenous Biodiversity” and include reference to aquatic biodiversity<sup>1154</sup>.
1352. We did not hear from these submitters and were not provided any further clarification of how these submitters considered the chapter should be amended. In the absence of such clarification we recommend these submissions be rejected. We note that Mr Barr considered that those relating to burn-offs were out of scope. We are not so convinced. Burning is a form of clearance and arguably the submitters were seeking a specific prohibited activity rule in relation to the practice.
1353. Before discussing the chapter provision by provision, there are three general areas that need to be dealt with first:
- a. The definitions of ‘indigenous vegetation’ and ‘clearance’;
  - b. The complexity of the notified provisions; and
  - c. The submissions seeking removal of Significant Natural Areas from the schedule in notified Section 33.8.

### 47 DEFINITIONS OF ‘INDIGENOUS VEGETATION’ AND ‘CLEARANCE VEGETATION’

#### 47.1 Indigenous Vegetation

1354. As notified, the definition of ‘indigenous vegetation’ in Chapter 2 was –

*Means vegetation that occurs naturally in New Zealand, or arrived in New Zealand without human assistance.*

1355. Mr Barr explained to us that the Environment Court had recently highlighted deficiencies in the definition of ‘indigenous vegetation’ in the ODP<sup>1155</sup>. We understood the notified definition to be an attempt to overcome these deficiencies.

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<sup>1150</sup> Submissions 19 and 290

<sup>1151</sup> Submission 133, supported by FS1021

<sup>1152</sup> Submissions 9 (opposed by FS1097) and 300 (opposed by FS1097)

<sup>1153</sup> Submission 281

<sup>1154</sup> Submission 755

<sup>1155</sup> C Barr, Section 42A Report, at paragraphs 6.15 to 6.20

1356. Two submissions<sup>1156</sup> sought that the second part of the definition read “*arrived in New Zealand through natural processes without human intervention*”.

1357. Other submissions sought the definition refer to ‘*plant communities*’ rather than vegetation<sup>1157</sup>.

1358. Mr Barr discussed the first suggested amendment<sup>1158</sup> but did not comment on the other suggested amendments. However, Mr Barr did also note that a submission on notified Rule 33.3.3<sup>1159</sup> sought that the rule reference both vascular and non-vascular plants. He recommended the definition of ‘*indigenous vegetation*’ be amended to make it clear that the chapter related to both types of plant<sup>1160</sup>.

1359. We agree with Mr Barr that use of the term ‘without human assistance’ must mean that the plant species arrived by natural processes, so the additional wording would not add anything to the definition. We consider that including the terms ‘*plant communities*’ would only confuse the definition. The modern meaning of vegetation is:

*Plants collectively, esp. those dominating a particular area or habitat; plant cover.*<sup>1161</sup>

1360. Vegetation is thus more than a plant community, it is all plants in an area, whether vascular or non-vascular. We largely agree with Mr Barr’s wording. The changes we recommend are merely grammatical. We recommend to the Stream 10 Hearing Panel that the definition read:

<b>Indigenous Vegetation</b>	Means vegetation that occurs naturally in New Zealand, or arrived in New Zealand without human assistance, including both vascular and non-vascular plants.
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## 47.2 Clearance of Vegetation

1361. As notified, ‘*clearance of vegetation*’ was defined as:

*Means the removal, trimming, felling, or modification of any vegetation and includes cutting, crushing, cultivation, spraying with herbicide or burning.*

*Clearance of vegetation includes, the deliberate application of water where it would change the ecological conditions such that the resident indigenous plant(s) are killed by competitive exclusion. Includes dryland cushion field species.*

1362. We note that the term defined was actually “*Clearance of Vegetation (Includes Indigenous Vegetation)*”. We are not sure what value is added by the words enclosed in brackets. We also note that in a provision we come to later in this report, there are certain circumstances where clearance of exotic vegetation needs to be controlled. We recommend the deletion of “*(Includes Indigenous Vegetation)*” as potentially leading to confusion in applying the rules.

<sup>1156</sup> Submissions 339 and 706 (opposed by FS1162)

<sup>1157</sup> Submissions 600 (supported by FS1209, opposed by FS1034, FS1040), 791 and 794

<sup>1158</sup> C Barr, Section 42A Report, at paragraphs 9.2 to 9.4

<sup>1159</sup> Submission 706

<sup>1160</sup> C Barr, Section 42A, at paragraph 9.11

<sup>1161</sup> The New Shorter Oxford English Dictionary, Clarendon Press, Oxford, 1993

1363. Most of the submissions on this definition sought the deletion of the second paragraph<sup>1162</sup>. The Director-General of Conservation<sup>1163</sup> sought to include ‘over-sowing’ as a form of clearance. Forest & Bird<sup>1164</sup> sought to include “soil disturbance including direct drilling” and references to application of “other substances”. This submission also sought to have plants *threatened* by competitive exclusion included in the definition.
1364. Mr Davis, for the Council, presented evidence on the ecological effects of direct drilling, irrigation and over-sowing<sup>1165</sup>. He supported the inclusion of direct drilling in the definition as this activity can crush native vegetation to a degree that would constitute direct clearance.
1365. Mr Davis did not support the inclusion of over-sowing within the definition as:
- [w]ithin the District much of the oversowing that has occurred is undertaken following the burning or spraying of predominantly bracken fern dominated vegetation.*<sup>1166</sup>
1366. Mr Davis also explained how irrigation is a form of vegetation clearance by altering the plant species composition. He noted that when irrigated indigenous vegetation adapted to naturally drier habitats cannot successfully compete with exotic species that are better adapted to wetter conditions. He also noted that irrigation would be undertaken in tandem with the application of seed and fertiliser, which would further enhance the competitive exclusion process and consequent clearance of indigenous vegetation. He referred us specifically to the Upper Clutha basin where native cushion field communities have adapted to relatively dry conditions and would not successfully compete with exotic species that grow taller and more rapidly in the presence of irrigation.
1367. Mr Cooper, for Federated Farmers, in opposing the inclusion of irrigation within the definition, emphasised the economic importance of irrigation to farm productivity<sup>1167</sup>. He suggested that importance of, and economic benefits derived from, irrigation in this District had not been considered in drafting the definition.<sup>1168</sup>
1368. Mr Tim Burdon, appearing on his own behalf<sup>1169</sup> and for Lakes Landcare Group<sup>1170</sup> told us that irrigation of undeveloped land would give a doubling in productive value, plus an increase in land value. He also told us that over-sowing and fertiliser would be applied in conjunction with irrigation. He stated that he hadn’t seen the deliberate use of irrigation to clear land. He said that the land would be cultivated and planted with better grass seeds first.
1369. We heard from several other submitters or their representatives on this issue, but the above summarises the range of evidence put to us.
1370. We consider that most of those appearing before us failed to consider the definition purely as a definition: they sought the definition be worded in a particular way to predetermine how rules

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<sup>1162</sup> Submissions 315, 400 (supported by FS1091), 600 (supported by FS1091, FS1209, opposed by FS1034, FS1040, 701 (supported by FS1162), 784, 791 (supported by FS1091) and 794 (supported by FS1091)

<sup>1163</sup> Submission 373, supported by FS1040, opposed by FS1091, FS1132, FS1347

<sup>1164</sup> Submission 339, opposed by FS1097

<sup>1165</sup> G Davis, EIC, Section 10

<sup>1166</sup> *ibid*, at paragraph 10.3

<sup>1167</sup> D Cooper, EIC,

<sup>1168</sup> *ibid* at paragraphs 58-59

<sup>1169</sup> Submission 791

<sup>1170</sup> Submission 794 and FS1347

may apply to particular circumstances. We consider Mr Rance, appearing for DoC, provided the most helpful analysis<sup>1171</sup>.

1371. In our view, the purpose of the definition is to set out clearly those activities or methods which amount to clearance of vegetation. Whether that leads to a restriction on an activity or method is a matter for any rule imposing such a restriction.
1372. Looking at the definition in this way, it is clear from the evidence that both irrigation and over-sowing are a form of clearance of indigenous vegetation. Arguably the application of fertiliser may also be a form of clearance, but Ms Maturin did not pursue the inclusion of the term “other substances” when she appeared<sup>1172</sup>. Such a term is not sufficiently precise, in our view, to be used in such a definition.
1373. Finally, we need to consider Mr Page’s submission that the Council did not have jurisdiction to control the use of water, and the definition of vegetation clearance purported to be a control of the use of water<sup>1173</sup>. It was his submission that the control of the use of water was solely within the functions of the Regional Council.
1374. In her legal submissions in reply<sup>1174</sup>, Ms Scott submitted that the Council was not seeking to control the take or use of water. Rather, it was seeking to control activities that result in the application of water to land, and she submitted, that activity falls within the use of land. She further submitted that the Council was entitled to control land management practices such as irrigation (which fell within the use, development and protection of land) where it related to a matter over which the Council has an express statutory function – in this instance, the maintenance of indigenous biodiversity.
1375. We agree with Ms Scott. We note that the Regional Council has the function of controlling the discharge of contaminants to air, which includes the contaminants arising from burning off vegetation. No one suggested that burning should be excluded from the definition of clearance on the grounds that it fell outside the Council’s jurisdiction. As Ms Scott noted, it is a fact that applying water to certain dryland indigenous species has the effect of clearing those species. In the same way that burning those species would be a land use, so would the application of water. We also note that, while Mr Page discussed spray irrigation, the definition does not identify the form of irrigation used. That reinforces our view that the Council is not concerned with the method of discharge, but the activity itself.
1376. Accordingly, we recommend to the Stream 10 Hearing Panel that the definition of clearance of vegetation read:

<b>Clearance of Vegetation</b>	Means the removal, trimming, felling, or modification of any vegetation and includes cutting, crushing, cultivation, soil disturbance including direct drilling, spraying with herbicide or burning. Clearance of vegetation includes the deliberate application of water or over-sowing where it would change the ecological conditions such that the resident
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<sup>1171</sup> B Rance, EIC, at paragraph 35

<sup>1172</sup> Submissions by S Maturin, May 2016, at paragraph 53

<sup>1173</sup> Submissions of Counsel for Jeremy Bell Investments Limited, 17 My 2016

<sup>1174</sup> Legal Submissions on Behalf of Queenstown Lakes District Council as Part of Council’s Right of Reply – Hearing Stream 2 – Rural Chapters, 3 June 2016

	indigenous plant(s) are killed by competitive exclusion. Includes dryland cushion field species.
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## 48 CLARITY AND CERTAINTY OF RULES

### 48.1 Introduction

1377. As notified, the PDP contained the following policies:

- 33.2.1.1 Identify the District’s Significant Natural Areas and schedule them in the District Plan, including the ongoing identification of Significant Natural Areas through resource consent applications, using the criteria set out in Policy 33.2.1.9.
- 33.2.1.2 Identify the District’s rare or threatened indigenous species and schedule them in the District Plan to assist with the management of their protection.
- 33.2.1.3 Provide standards in the District Plan for indigenous vegetation that is not identified as a Significant Natural Area or threatened species, which are practical to apply and that permit the removal of a limited area of indigenous vegetation.

1378. In terms of SNAs, Table 3 set out clear standards limiting earthworks and clearance of indigenous vegetation. Rule 33.4.2 required a discretionary activity resource consent be obtained to exceed the standards in Table 3. While we discuss submissions on this policy and Table 3 later in this report we refer to Policy 33.2.1.1 here to enable understanding of the regulatory regime proposed in notified Chapter 33.

1379. In terms of Policy 33.2.1.2, Section 33.7 contained a table listing 120 threatened species. Rules 33.4.1 and 33.5.6 made it a discretionary activity to clear any plant on that list.

1380. In terms of Policy 33.2.1.3, it was necessary to consider the matters listed in Section 33.3.3, Rules 33.4.1 and 33.4.3, and the standards in Tables 2 and 4, to ascertain whether an activity was permitted or required a consent.

1381. DoC<sup>1175</sup> sought that *“the structure of the indigenous vegetation and biodiversity provisions be altered to ensure that these provisions are clear, easy for the community to use, and ensure that appropriate protection is applied when it comes to areas of significant indigenous vegetation and habitats of indigenous fauna”*.

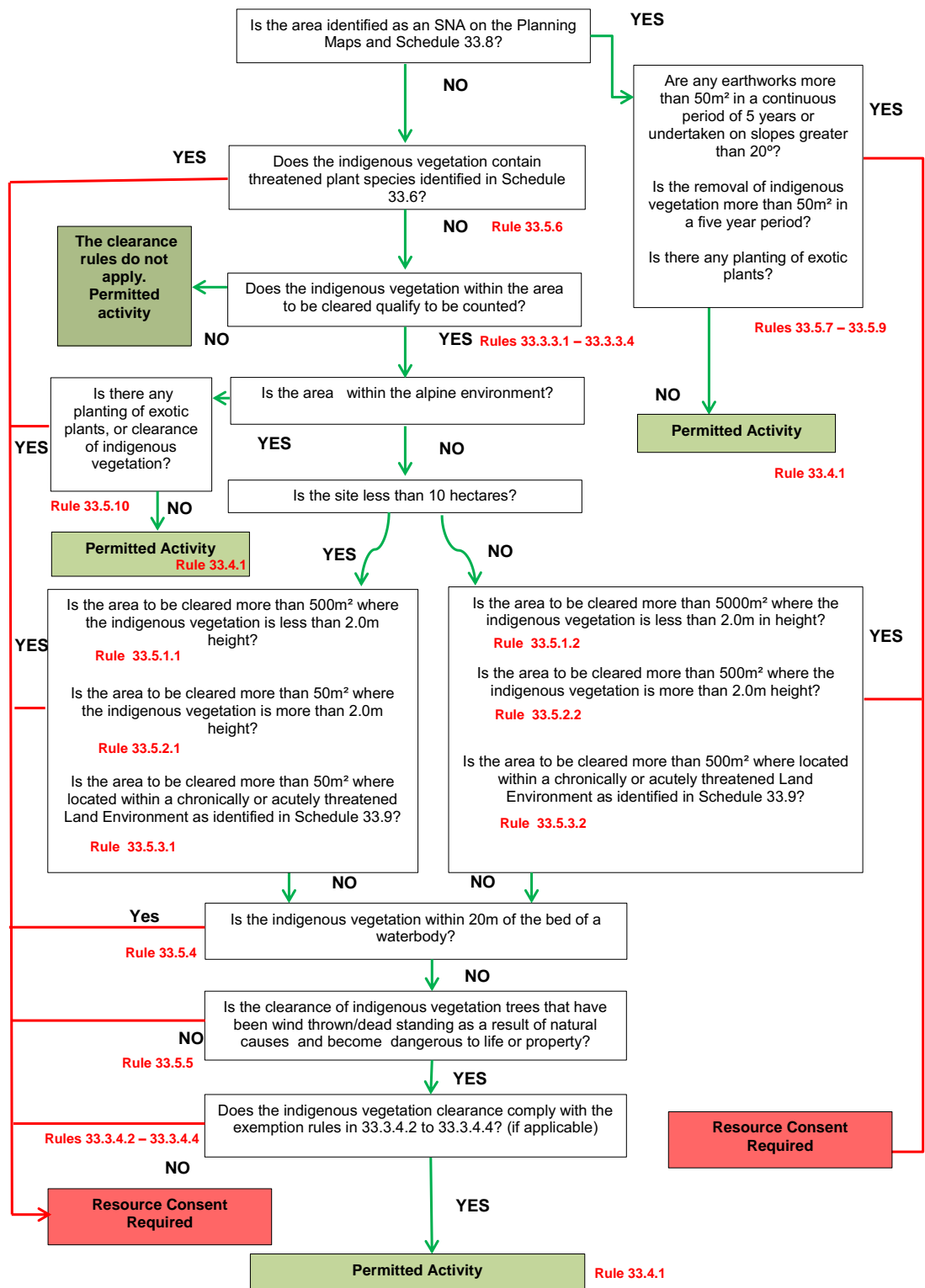
1382. We state at the outset that we found the provisions, other than those relating to SNAs and land over 1070 masl to be confusing and difficult to use to the point of almost being incomprehensible. Thus, we did not consider they accorded with Policy 33.2.1.3, which sought to provide standards that were practical to apply.

1383. In an attempt to understand how the Council envisaged these provisions being applied we asked Mr Barr to prepare a flow diagram of how the rules were to be applied, and to provide photographic examples of land containing indigenous vegetation along with an explanation of how the rules would apply to that land. We thank Mr Barr for the effort he put into answering these requests, and note that his examples assisted us greatly in our deliberations.

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<sup>1175</sup> Submission 373, opposed by FS1254, FS1287, FS1313, FS1347

1384. We include final version of Mr Barr's flow diagram as Figure 33-1.



Clearance of indigenous vegetation flow diagram. Council Reply 3 June 2016

Figure 33-1: C Barr, Flow Diagram



1385. We think this diagram illustrates the complexity of the rules on its own. However, some rules are more difficult to interpret than others. Before discussing the rules, we need to consider the relevant objectives and policies first.

#### **48.2 Objective 33.2.1, Policies 33.2.1.2 and 33.2.1.3**

1386. As notified, these read:

Objective

*Protect, maintain and enhance indigenous biodiversity.*

Policies

33.2.1.2 *Identify the District's rare or threatened indigenous species and schedule them in the District Plan to assist with the management of their protection.*

33.2.1.3 *Provide standards in the District Plan for indigenous vegetation that is not identified as a Significant Natural Area or threatened species, which are practical to apply and that permit the removal of a limited area of indigenous vegetation.*

1387. Submissions on Objective 33.2.1 sought:

- a. Retain the objective<sup>1176</sup>
- b. Amend to read: "*Existing indigenous biodiversity values are protected, maintained or enhanced*"<sup>1177</sup>
- c. Amend to read" "*Protect, maintain or enhance the stock of indigenous biodiversity*"<sup>1178</sup>
- d. Amend to relate to land management practices.<sup>1179</sup>

1388. In order to make the objective outcome focussed, Mr Barr recommended it be amended to read<sup>1180</sup>:

*The protection, maintenance and enhancement of indigenous biodiversity.*

1389. In his Reply Statement, Mr Barr recommended further amendment such that it would read:

*Indigenous biodiversity is protected, maintained and enhanced.*

1390. We received no evidence as to how the objective could be amended to focus on land management practices, or why it should. When Mr Barr's Reply version is compared to the other amendments sought, it has the advantage of not being limited to indigenous biodiversity existing at the date of the PDP; it allows for enhancement of that biodiversity. We recommend that the Reply version be adopted.

1391. Three submissions on Policy 33.2.1.2 supported it and sought its retention<sup>1181</sup>. DoC<sup>1182</sup> sought that this policy be deleted and that the list of threatened plant in Section 33.7 be used as part of the criteria for determining Significant Natural Areas.

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<sup>1176</sup> Submissions 339 (opposed by FS1097), 378 (opposed by FS1049, FS1095) and 706 (opposed by FS1162, FS1254, FS1287)

<sup>1177</sup> Submission 373, opposed by FS1254, FS1287, FS1313, FS1342, FS1347

<sup>1178</sup> Submission 600, supported by FS1209, opposed by FS1034, FS1040

<sup>1179</sup> Submission 806

<sup>1180</sup> C Barr, Section 42A Report, paragraph 11.5

<sup>1181</sup> Submissions 339, 600 (supported by FS1209, opposed by FS1034) and 706 (opposed by FS1254)

<sup>1182</sup> Submission 373, opposed by FS1254, FS1287, FS1313, FS1342, FS1347

1392. We heard no specific evidence on this policy and Mr Barr recommended it remain unaltered. We discuss this further below in relation to Rule 33.5.6 and Section 33.7.
1393. One submission sought that Policy 33.2.1.3 be retained<sup>1183</sup>. Three submissions sought minor wording amendments which were in the nature of clarifying the policy rather than re-orienting it<sup>1184</sup>. No evidence directed to this policy was presented by the submitters and the only amendment recommended by Mr Barr was to replace *removal* with *clearance*<sup>1185</sup>.
1394. Subject to consequential amendments arising from our recommendations below in relation to Policy 33.2.1.1, we recommend accepting Mr Barr's wording.

#### 48.3 Rule 33.5.6 and Section 33.7

1395. As notified, the standard in Rule 33.5.6 read:

*Is not clearance of a plant identified as a threatened species listed in section 33.7*

1396. There were no submissions on this standard.
1397. As stated above, list in Section 33.7 contained 120 species. One submission<sup>1186</sup> sought the inclusion of another 18 species in this list. Two submissions<sup>1187</sup> sought the list be updated and extended, one submission<sup>1188</sup> stated it was incorrect without specifying how that should be remedied, and one submission<sup>1189</sup> sought it be deleted.
1398. Mr Barr, relying on Mr Davis' advice, recommended retaining the list with the addition of the species DoC sought to have included<sup>1190</sup>.
1399. Mr Page, in his submissions for Jeremy Bell Investments Ltd, noted that many of the scheduled species were tiny, cryptic, and invisible to all but expert eyes<sup>1191</sup>. This was confirmed by Dr Espie. Mr Barr had alluded to this in his Section 42A Report where he identified the difficulties faced in South Island high country areas<sup>1192</sup>. This was in large part a repeat of issues raised in the Section 32 Report<sup>1193</sup>. We also note that the PDP recognises that there may be difficulty in identifying these plants as it contains the following statement at the commencement of Section 33.7.1:

*Assistance with the identification of threatened plants is available through the New Zealand Plant Conservation Networks' website: <http://www.nzpcn.org.nz/default.aspx>.*

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<sup>1183</sup> Submission 600, supported by FS1209, opposed by FS1034

<sup>1184</sup> Submissions 339, 373 (supported by FS1040, opposed by FS1015, FS1097, FS1254, FS1287, FS1313, FS1347) and 706 (opposed by FS1015, FS1162, FS1254, FS1287)

<sup>1185</sup> C Barr, Reply Statement, Appendix 1

<sup>1186</sup> Submission 373, supported by FS1040, opposed by FS1313, FS1347

<sup>1187</sup> Submissions 339 and 706 (opposed by FS1162, FS1254)

<sup>1188</sup> Submission 400

<sup>1189</sup> Submission 784

<sup>1190</sup> C Barr, Section 42A Report, paragraphs 13.1 to 13.5

<sup>1191</sup> Submissions of Counsel for Jeremy Bell Investments Limited, paragraph 23

<sup>1192</sup> C Barr, Section 42A Report, paragraphs 6.9 and 6.10

<sup>1193</sup> at page 9

1400. Another practical difficulty identified by Mr Cubitt<sup>1194</sup> is that the existence of a single plant of one of the species listed in Section 33.7 in an area to be, say irrigated or over-sown, would trigger the need for a resource consent. If that plant is difficult to identify, a landowner may unwittingly breach the standard. We do not consider a rule to be efficient if it requires expert advice to ensure the rule is not breached. We note that in questioning by the Panel, Mr Cubitt advised that in his experience it could cost between \$5000 and \$10,000 per farm to engage an ecologist to identify whether a threatened species was on site.
1401. We also wonder if a rule which triggers a discretionary activity consent if a single plant is found imposes an excessive burden. While we agree it is a laudable goal to limit the destruction of rare and threatened plants, the matter of national importance that the Council has to recognise and provide for is the protection of areas of significant vegetation and significant habitats of indigenous fauna. No evidence we heard suggested to us that a single plant fell into either category.
1402. We have carefully examined the Section 32 analysis for this Chapter. We could find no direct reference to Policy 33.2.1.2 or Rule 33.5.6, and no discussion of the economic implications likely to arise from their implementation. As we read the provisions, and taking into account Dr Espie's evidence and that of Mr Kane, any landowner that could potentially harm or disturb one of the 120 species in the Schedule would need to pay for a botanical study of the relevant area to prove they would not breach the rule. That private cost has not been considered in the purported section 32 evaluation.
1403. For those reasons, we recommend that Section 33.7 be deleted from the PDP. As a consequential amendment we also recommend that Policy 33.2.1.2 and Rules 33.5.6 and 33.3.3.5 be deleted. We note that while there were no submissions on rule 33.5.6, the deletion of the policy which it implements, and the Schedule which it relies upon, means that it becomes a rule with neither basis nor effect. Hence our recommendation that it be deleted.

#### 48.4 Rules 33.3.3.1 to 33.3.3.4

1404. As notified, these read:

*33.3.3.1 For the purposes of determining compliance with Rules 33.4.1 to 33.4.3, indigenous vegetation shall be measured cumulatively over the area(s) to be cleared.*

*33.3.3.2 Rules 33.5.1 to 33.5.4 shall apply where indigenous vegetation attains 'structural dominance' and, the indigenous vegetation exceeds 20% of the total area to be cleared or total number of species present of the total area to be cleared.*

*33.3.3.3 Rules 33.5.1 to 33.5.4 shall apply where indigenous vegetation does not attain structural dominance and exceeds 30% of the total area to be cleared, or total number of species present of the total area to be cleared.*

*33.3.3.4 Structural dominance means indigenous species that are in the tallest stratum.*

1405. Two submissions<sup>1195</sup> sought the rules specified vascular and non-vascular plants. These have been dealt with above in our recommendation to amend the definition of indigenous vegetation. The amendments sought by DoC were consequential on its submission seeking

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<sup>1194</sup> A Cubitt, EiC, at paragraph 15

<sup>1195</sup> Submissions 339 and 706 (opposed by FS1162, FS1254, FS1287)

there be no clearance allowed in SNAs.<sup>1196</sup> One submission<sup>1197</sup> sought that Rule 33.3.3 be retained. Submission 784<sup>1198</sup> sought reconsideration as to how structural dominance was assessed, and Submission 806 sought that the coverage percentages in 33.3.3.2 and 33.3.3.3 be revised, as they were too restrictive.

1406. Mr Barr did not directly address these provisions in his Section 42A Report. At our request, he prepared a series of examples of how these provisions would apply to various scenarios<sup>1199</sup>.
1407. Dr Espie, for Jeremy Bell Investments Ltd, suggested that to make the rules more easily understandable for a farmer, the focus should be on a plant community of say 67% or higher as it would be immediately ascertainable as to whether consent was required or not.
1408. Using Mr Barr's example of short tussock grassland, we consider that a situation of 20% structural dominance is not immediately obvious to the lay observer. The 20% structural dominance in his examples of short tussock grassland was not apparent to us. Mr Barr provided an example that exceeded 20% and an example that did not. We did not think the distinction was obvious.
1409. On the other hand, his example of kanuka and grey schrubland on a hill slope showed areas where each plant community was the dominant community and exceeded 50%.
1410. Having considered the competing evidence, we consider that to make these rules more readily usable by an average landowner, Rule 33.3.3.2 should be amended to apply when indigenous vegetation exceeds 50% of the vegetation in an area to be cleared, and Rule 33.3.3.3 amended to apply when the indigenous vegetation exceeds 67% of the area to be cleared.
1411. We will return to the rules these apply to after considering the relevant tables.

#### **48.5 Rules 33.5.4 and 33.5.5**

1412. As notified, these were Standards in Table 2 which read:

*Clearance is more than 20m from a water body.  
Is for the clearance of indigenous trees that have been windthrown and/or are dead standing as a result of natural causes and have become dangerous to life or property.*

1413. The only amendments sought to these rules were wording amendments sought by the Council<sup>1200</sup>. Two other submissions supported Rule 33.5.5<sup>1201</sup>.
1414. Rule 33.5.4 implements Policies 33.2.3.1 and 33.2.3.6, which as notified read:

*Provide standards controlling the clearance of indigenous vegetation within 20 meters of water bodies, and ensure that proposals for clearance do not create erosion, or reduce natural character and indigenous biodiversity values.*

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<sup>1196</sup> Submission 373, opposed by FS1091, FS1254, FS1313, FS1342, FS1347

<sup>1197</sup> Submission 600, supported by FS1209, opposed by FS1034

<sup>1198</sup> Supported by FS1097

<sup>1199</sup> Memorandum of Counsel on Behalf of Queenstown Lakes District Council Providing Requested Further Information, dated 16 May 2016

<sup>1200</sup> Submission 809

<sup>1201</sup> Submissions 339 and 706 (opposed by FS1162, FS1254)

*Ensure indigenous vegetation removal does not adversely affect the natural character of the margins of water ways.*

1415. One submission<sup>1202</sup> sought that Policy 33.2.3.1 be modified and moved to under Objective 3.2.2, while three other submissions<sup>1203</sup> sought various amendments to the wording. We received no evidence from the submitters on this policy. Mr Barr did not discuss it, but recommended it be amended for clarity reasons to read:

*The clearance of indigenous vegetation within the margins of water bodies does not create erosion, or reduce natural character and biodiversity values.*

1416. The three submissions on Policy 33.2.3.6 sought its deletion as unnecessary<sup>1204</sup>, or incorporation into Policy 33.2.3.1<sup>1205</sup>.

1417. Mr Barr’s rewording of Policy 33.2.3.1 went some way to incorporating Policy 33.2.3.6. However, we consider emphasis should be given in the policy to the matters in Section 6(a) and 6(c) of the Act. We agree that the matters in the two policies can be incorporated in a single policy. Consequently, we recommend Policy 33.2.3.6 be deleted and Policy 33.2.3.1 be amended to read:

*Ensure the clearance of indigenous vegetation within the margins of water bodies does not reduce natural character and biodiversity values, or create erosion.*

1418. We note that there is no explicit policy relating to notified Rule 33.5.5. We see that rule as being a logical consequence of providing standards that are practical to apply (notified Policy 33.2.1.3).

1419. In our view, each rule is easier understood if it is specified as an activity contained in Table 1 with an activity status defined. This also involves an amendment to Table 1 to make it consistent with the other approach of other chapters in the PDP by listing activities and their activity status, rather than notified approach of making the table more akin to a standards table. To this end, we recommend that notified Rules 33.4.1, 33.4.2 and 33.4.3 be amended and incorporated into a revised Rule 33.4.1 in an amended Table 1 that reads:

Table 1	<b>Any activity involving the clearance of indigenous vegetation, earthworks within SNA’s and the planting of exotic plant species shall be subject to the following rules:</b>	<b>Activity Status</b>
33.4.1	Activities that comply with the Standards in Tables 2 to 4.	P

1420. Using this format Rule 33.5.5 can be incorporated into Table 1 as a permitted activity as follows:

<sup>1202</sup> Submission 373, opposed by FS1254, FS1313, FS1347

<sup>1203</sup> Submissions 339 (opposed by FS1015, FS1097), 706, (opposed by FS1132, FS1162, FS1254, FS1287) and 806

<sup>1204</sup> Submission 373, opposed by FS1254, FS1313, FS1347

<sup>1205</sup> Submissions 339 (opposed by FS1132) and 706 (opposed by FS1132, FS1162, FS1254, FS1287)

33.4.6	Clearance of indigenous trees that have been wind thrown and/or are dead standing as a result of natural causes and have become dangerous to life or property.	P
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1421. We note that we consider Mr Barr wrongly located Rule 33.5.4 in his flow diagram. As notified this rule affected any clearance of indigenous vegetation within 20 m of a water body. We consider it should have been located prior to choosing the site size.

1422. We do agree with his recommendation that it be clarified so that the distance is set from the bed of the water body. On that basis, we recommend it be located in Table 1 as follows:

33.4.7	Any clearance of indigenous vegetation within 20m of the bed of a water body.	D
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#### 48.6 Exemption Rules 33.3.4.1, 33.3.4.2 and 33.3.4.3

1423. As notified, these read:

*33.3.4.1 Any area identified in the District Plan maps and scheduled as a Significant Natural Area that is, or becomes protected by a covenant under the Queen Elizabeth II National Trust Act, shall be removed from the schedule and be exempt from rules in Table 3.*

*33.3.4.2 Indigenous vegetation clearance for the operation and maintenance of existing and in service/operational roads, tracks, drains, utilities, structures and/or fence lines, but excludes their expansion.*

*33.3.4.3 Indigenous vegetation clearance for the construction of walkways or trails up to 1.5 metres in width provided that it does not involve the clearance of any threatened plants listed in section 33.7 or any tree greater than a height of 4 metres.*

1424. Three submissions<sup>1206</sup> sought additional exemptions. We deal with those in a later section in this report. Two submissions<sup>1207</sup> sought the deletion of Rule 33.3.4.1. Three submissions<sup>1208</sup> sought the retention of Rule 33.3.4.3, while one submission<sup>1209</sup> sought it be amended so the exemption did not apply in Significant Natural Areas.

1425. Three submissions<sup>1210</sup> sought the retention of Rule 33.3.4.2, while two sought deletion of the exemption for drains<sup>1211</sup>. Two submissions sought this rule be amended to include an exemption for irrigated land<sup>1212</sup>.

1426. Rule 33.3.4.1 as notified, implemented Policy 33.2.1.6, which read:

<sup>1206</sup> Submissions 701 (supported by FS1162), 784 and 806

<sup>1207</sup> Submissions 339 and 706 (supported by FS1097, opposed by FS1132, FS1162, FS1254, FS1287)

<sup>1208</sup> Submissions 290 (supported by FS1097), 339 and 706 (opposed by FS1162, FS1254)

<sup>1209</sup> Submission 373, supported by FS1040, opposed by FS1091, FS1097, FS1132, FS1254, FS1287, FS1313, FS1347

<sup>1210</sup> Submissions 600 (supported by FS1209, opposed by FS1034), 635 and 805

<sup>1211</sup> Submissions 339 and 706 (opposed by FS1132, FS1162, FS1254, FS1287)

<sup>1212</sup> Submissions 701 (supported by FS1162) and 784

*Encourage the long-term protection of indigenous vegetation and in particular Significant Natural Areas by encouraging land owners to consider non-regulatory methods such as open space covenants administered under the Queen Elizabeth II National Trust Act.*

1427. Three submissions<sup>1213</sup> ought this policy be retained, while two sought that it be amended by including reference to covenants under the Reserves and Conservation Acts<sup>1214</sup>.
1428. Mr Barr recommended no amendments to this policy, and we heard no evidence from submitters on it. We agree with Mr Barr that as the policy is expressed, it is not limited to QE II Trust covenants. We recommend it be renumbered and adopted as notified subject to the minor amendment of including the year of the legislation.
1429. In his Section 42A Report, Mr Barr opined that, in terms of Rule 33.3.4.1, QE II Trust covenants were generally seen as more protective than district plan rules, as they generally contemplated no or very little clearance. We also note that, while an application for resource consent can be made under the rules in Chapter 33, a QE II Trust covenant provides no ability for discretionary applications.
1430. We heard no evidence in support of the submissions seeking deletion of Rule 33.3.4.1. We generally agree with Mr Barr that a SNA protected by a QE II Trust covenant need not be controlled by the rules in Chapter 33, but we recommend two changes to the provision.. First, with minor rewording, we consider the proper location for this rule is in Table 1 as a permitted activity. Second, we consider the provision should not state “*shall be removed from the schedule*”. That statement implies an action that can only be undertaken by way of a change to the district plan. While the Council may have a policy to introduce such changes, it cannot, in our view, state categorically in a rule that the SNA shall be removed from the schedule.
1431. We heard no evidence from submitters in respect of the other changes sought to these provisions. We consider that each of Rules 33.3.4.2 and 33.3.4.3 can, with minor word changes, be incorporated into Table 1 as permitted activities. In our view, having the activities listed as permitted activities improves the clarity and usability of the chapter.
1432. Consequently, we recommend as minor, non-substantive changes that these three rules be amended and relocated into Rule 33.4 Table 1 to read:

33.4.2	Notwithstanding Table 3, activities in any area identified in the District Plan maps and scheduled as a Significant Natural Area that is, or becomes protected by a covenant under the Queen Elizabeth II National Trust Act 1977.	P
33.4.3	Indigenous vegetation clearance for the operation and maintenance of existing and in service/operational roads, tracks, drains, utilities, structures and/or fence lines, but excludes their expansion.	P

<sup>1213</sup> Submissions 373 (opposed by FS1254, FS1287, FS1313, FS1347), 600 (supported by FS1209, opposed by FS1034) and 806

<sup>1214</sup> Submissions 339 (supported by FS1097, opposed by FS1097) and 706 (opposed by FS1162, FS1254, FS1287)

33.4.4	Indigenous vegetation clearance for the construction of walkways or trails up to 1.5 metres in width provided that it does not involve the clearance of trees greater than a height of 4 metres.	P
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#### 48.7 Rules 33.5.1, 3.5.2 and 33.5.3

1433. As notified, these rules were in Table 2 which set standards for clearance of indigenous vegetation that was not located within a Significant Natural Area or within an Alpine Environment. These rules read:

33.5.1	Clearance is less than 5000m <sup>2</sup> in area of any site and, 500m <sup>2</sup> in area of any site less than 10ha, in any continuous period of 5 years.
33.5.2	Where indigenous vegetation is greater than 2.0 metres in height, clearance is less than 500m <sup>2</sup> in area of any site and, and 50m <sup>2</sup> in area of any site less than 10ha, in any continuous period of 5 years,
33.5.3	Within a land environment (defined by the Land Environments of New Zealand at Level IV) that has 20 percent or less remaining in indigenous cover, clearance is less than 500m <sup>2</sup> in area of any site and, 50m <sup>2</sup> in area of any site less than 10ha, in any continuous period of 5 years (refer to section 33.9).

1434. The submissions on these rules sought:

- a. The 5,000m<sup>2</sup> allowed in 33.5.1 is too large, change to 500m<sup>2</sup><sup>1215</sup>
- b. Change 33.5.1 to apply where indigenous vegetation is less than 2m in height<sup>1216</sup>
- c. The 50m<sup>2</sup> in Rule 33.5.2 is too small to be practicable<sup>1217</sup>
- d. Replace 33.5.3 with “*The site is not considered to be a Significant Natural Area when considered against the criteria in Section 33.10*”<sup>1218</sup>
- e. Delete Rule 33.5.3<sup>1219</sup>
- f. Support Rules 33.5.1 and 33.5.2.<sup>1220</sup>

1435. Rule 33.5.3 implemented Policies 33.2.3.4 and 33.2.3.5. As notified these read:

33.2.3.4 *When considering the effects of proposals for the clearance of indigenous vegetation, have particular regard to whether threatened species are present, or the area to be cleared is within a land environment (defined by the Land Environments of New Zealand at Level IV) identified as having less than 20% indigenous vegetation remaining; and,*

33.2.3.5 *Where indigenous vegetation clearance is proposed within an environment identified as having less than 20% indigenous vegetation remaining (defined by the Land Environments of New Zealand at Level IV), have regard to the threatened environment status, the nature and scale of the clearance, potential for recovery or the merit of any indigenous biodiversity offsets.*

<sup>1215</sup> Submissions 339 (opposed by FS1097) and 706 (opposed by FS1097, FS1162, FS1254, FS1287)

<sup>1216</sup> Submission 809

<sup>1217</sup> Submission 477

<sup>1218</sup> Submission 373, supported by FS1040, opposed by FS1097, FS1254, FS1287, FS1313, FS1342, FS1347

<sup>1219</sup> Submission 600, supported by FS1209, opposed by FS1034, FS1040

<sup>1220</sup> Submission 600, supported by FS1209, opposed by FS1034, FS1040



1436. One submission<sup>1221</sup> sought that both of these policies be deleted. Two submissions opposed use of the LENZ maps in these policies as they would create uncertainty<sup>1222</sup>.
1437. Two submissions sought that Policy 33.2.3.4 only apply in urban zones<sup>1223</sup>, while two submissions sought that policy be amended so as to avoid effects on threatened species and on land identified as having less than 20% indigenous vegetation remaining<sup>1224</sup>.
1438. Two submissions sought that Policy 33.2.3.5 be deleted and replaced with assessment matters. One submission sought that it apply only in urban zones<sup>1225</sup>, and two submissions sought that current and historical land uses should be taken account of in the policy<sup>1226</sup>.
1439. For completeness, we note that four submissions<sup>1227</sup> sought that all maps in Section 33.9 be deleted, one sought that the rural areas be removed from the maps<sup>1228</sup>, and one that Figure C2 (which covers the Upper Clutha) be deleted<sup>1229</sup>.
1440. Mr Davis explained in his evidence<sup>1230</sup> how the combination of the Land Environments of New Zealand (LENZ) classification, the Landcover Database and areas under legal protection, to assign a threat (to biodiversity) level based on the percentage of indigenous vegetation cover remaining and the area under formal protection (the Threatened Environment Classification – TEC). The TEC categories include:
- a. Acutely threatened - <10% indigenous vegetation cover remaining
  - b. Chronically threatened – 10-20% indigenous vegetation cover remaining
  - c. At risk – 20-30% indigenous vegetation cover remaining
  - d. Critically underprotected - >30% indigenous vegetation cover remaining and less than 10% protected
  - e. Underprotected - >30% indigenous vegetation cover remaining and 10-20% protected and
  - f. No threat - >30% indigenous vegetation cover remaining and >20% protected.
1441. Mr Davis advised that National Priority 1 of the draft National Policy Statement on Indigenous Biodiversity is to protect areas that are acutely or chronically threatened<sup>1231</sup>. He noted that in this District those areas are predominantly located on valley floors and lower slopes of mountain ranges. These were the areas shown on the maps included in notified Section 33.9 of the PDP.
1442. Mr Davis conceded there were some inaccuracies arising from the scale of the mapping, the inability of the imagery to distinguish between some vegetation types, and due to the temporal nature of vegetation cover, but it was his opinion that, provided it was used cautiously, it was an effective tool to assist the identification and assessment of significant vegetation and fauna habitat<sup>1232</sup>.

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<sup>1221</sup> Submission 373, opposed by FS1254, FS1313, FS1347

<sup>1222</sup> Submissions 791 and 794

<sup>1223</sup> Submissions 590 and 600 (supported by FS1209, opposed by FS1034, FS1040)

<sup>1224</sup> Submissions 339 and 706 (opposed by FS1162, FS1254, FS1287)

<sup>1225</sup> Submission 600, supported by FS1209, opposed by FS1034, FS1040

<sup>1226</sup> Submissions 701 and 784 (supported by FS1097)

<sup>1227</sup> Submissions 439, 784, 791 and 794

<sup>1228</sup> Submission 590

<sup>1229</sup> Submission 701, supported by FS1162

<sup>1230</sup> G Davis, EIC, at paragraphs 4.6 to 4.13

<sup>1231</sup> *ibid*, paragraph 4.12

<sup>1232</sup> *ibid*, paragraph 4.13

1443. We have put little weight on the draft National Policy Statement on Indigenous Biodiversity given it has been in draft since 2011.
1444. We took from Mr Barr’s Section 42A Report that he saw the classification of areas as acutely and chronically threatened as increasing the potential for any indigenous vegetation to be considered significant in terms of Section 6 of the Act<sup>1233</sup>.
1445. Mr Kelly, appearing on behalf of Lake McKay Station Ltd<sup>1234</sup>, told us that 420 ha of Lake McKay Station was included within SNAs identified in the PDP. He questioned the need for both Rule 33.5.2 and Rule 33.5.3 when, on Lake McKay Station, clearance of matagouri and kanuka outside of SNAs at altitudes below 600masl would be captured by both rules. It was his view that the rules in 33.4 and 33.5 were adequate to protect indigenous vegetation without the need for Rule 33.5.3 or Section 33.9<sup>1235</sup>.
1446. This evidence raised in our minds the question of what the Council was attempting to protect through these rules.
1447. Mr Davis provided extensive and helpful evidence on how the Significant Natural Areas in the District were identified and classified<sup>1236</sup>. This included the use of the TEC maps to determine whether representative vegetation might also meet the definition of rarity. Interestingly, the example which Mr Davis provided in his evidence of this technique being used included the area of Lake McKay Station<sup>1237</sup>.
1448. Mr Davis told us that 220 SNA sites on 55 properties were field checked. As a result of that fieldwork, that number was refined to 147. The reduction, was he said, due to the following reasons:
- a. sites that had been transferred to DoC administration through tenure review
  - b. QE II Trust covenant sites
  - c. wetlands were excluded as the Council chose to rely on the Regional Water Plan to protect them
  - d. sites that did not meet the criteria.
1449. Mr Davis did not tell us how many fell into each category. He also did not tell us what areas of land in the District were set aside for protection by other means. We did get an indication of some of these areas from Figure 6 of Dr Espie’s evidence, but that only covered a small area of the Upper Clutha. We do note also the general acceptance that all land above 1070 masl requires consent for clearance.
1450. Mr Barr provided us with examples of “Whole of Farm” consents for clearance<sup>1238</sup>. The most useful of these was the consent granted in 2015 for Alphaburn Station. From looking at the conditions applied on that consent, it was apparent the priority areas for protection were:
- a. Land above 800 masl (Condition 4(iii));
  - b. Land within 20 m of water bodies (including wetlands) (Condition 3);
  - c. Land within 20 m of protected land (covenanted or conservation land (Condition 3).

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<sup>1233</sup> C Barr, Section 42A Report, at paragraph 11.80

<sup>1234</sup> Submission 439

<sup>1235</sup> M Kelly, EIC, at paragraph 17

<sup>1236</sup> Davis, EIC, Section 6

<sup>1237</sup> *ibid*, Figure 3

<sup>1238</sup> C Barr, Reply Statement, Appendix 4

1451. It also appears from Map 7 of the Planning Maps that some of the area that consent relates to has been included SNAs in the PDP. We also note from Figure C2 in Section 33.9 that some of the consented land is within the acute or chronically threatened environments.
1452. When we consider all that in the round, we are not satisfied that Rule 33.5.3 and Section 33.9 provide any regulatory purpose which is not achieved via other rules. We agree with those submitters who complained that the maps in Section 33.9 were at a scale which created uncertainty. While Mr Barr assured us that these were available on the Council webmap system for overlaying over individual properties, we were unable to find them and verify their accuracy or otherwise.
1453. We note Mr Barr recommended that notified Policies 33.2.3.4 and 33.3.3.5 be replaced with a policy that would read<sup>1239</sup>:
- Have regard to whether the area to be cleared is within a chronically or acutely threatened land environment (defined by the Land Environments of New Zealand at Level IV), and the degree to which the clearance would maintain indigenous biodiversity, using the criteria in Policy 33.2.1.10.*
1454. As we understand notified Policy 33.2.1.10, the criteria will lead to assessment of those matters in any event. We also note that, according to Mr Davis' evidence<sup>1240</sup>, the determination of whether an environment is acutely or chronically threatened is not defined by Land Environments of New Zealand at Level IV. That is a combined with other information to determine the level of threat.
1455. We agree with Mr Barr that Policies 33.2.3.4 and 33.2.3.5 be deleted, but we do not recommend that his recommended replacement policy be included.
1456. We agree with the QLDC submission that Rule 33.5.1 should specify that it relates to indigenous vegetation less than 2 m in height. That is the effect of the combination of that rule and Rule 33.5.2 in any event. Other than that, we do not recommend any changes to the effect of Rules 33.5.1 and 33.5.2. We heard no evidence as to why the permitted clearance areas under each rule should be reduced.. What we do recommend is rephrasing of the rules under Clause 16(2) to make them clearer and more readily understood.
1457. Consequently, for the reasons set out above, we recommend:
- a. Notified Rule 33.5.3 be deleted;
  - b. Notified Section 33.9 be deleted;
  - c. Notified Policies 33.2.3.4 and 33.2.3.5 be deleted;
  - d. Notified Rules 33.5.1 and 33.5.2 be amended to read:

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<sup>1239</sup> C Barr, Section 42A Report, paragraph 11.81

<sup>1240</sup> G Davis, EIC, paragraph 4.11

33.5.1	Where indigenous vegetation is less than 2.0 metres in height: In any continuous period of 5 years the maximum area of indigenous vegetation that may be cleared is limited to: 33.5.1.1 500m <sup>2</sup> on sites that have a total area of 10ha or less; and 33.5.1.2 5,000m <sup>2</sup> on any other site.	D
33.5.2	Where indigenous vegetation is greater than 2.0 metres in height: In any continuous period of 5 years the maximum area of indigenous vegetation that may be cleared is limited to: 33.5.2.1 50m <sup>2</sup> on sites that have a total area of 10ha or less; and 33.5.2.2 500m <sup>2</sup> on any other site.	D

1458. We are satisfied that with the changes we have recommended in this section of our report, the regulatory regime in Chapter 33 will be clear and easy to use, and will be practical to apply.

#### 49 SUBMISSIONS SEEKING DELETIONS OF SPECIFIC SIGNIFICANT NATURAL AREAS

1459. Eight submissions sought the deletion of one or more Significant Natural Areas from the schedule in Section 33.8<sup>1241</sup>. A submission by QLDC<sup>1242</sup> sought removal of two SNAs from Hillend Station and modification of three others as a consent had been granted to clear those SNAs.

1460. Dealing with the last submission first, Mr Barr advised<sup>1243</sup> that neither he nor the ecological contractors involved in the SNA identification process were aware of the consent, which expires in 2029. He considered the consent likely to be implemented and therefore it would be neither fair nor reasonable to schedule the areas.

1461. We agree with Mr Barr and recommend SNAs F21C-1 and F21C-2, and F21A, F21B-1 and F21B-3 be reduced to the exclusion areas identified on the approved plan of RM090630.

1462. Turning to the other submissions, Mr Davis provided evidence supporting the retention of each SNA the submitters sought be removed<sup>1244</sup>. Other than Mr Beale, who presented ecological evidence in support of Submission 806, Mr Davis' evidence was the only ecological evidence we received.

1463. Mr Beale's evidence<sup>1245</sup> did not support the removal of the SNAs on QPL's land. Rather, his evidence explained the value of the areas identified as SNAs, the threats to them, and the opportunities for restoration and enhancement.

1464. We were satisfied that Mr Davis (and Mr Beale) established the values of these SNAs sufficiently for them to warrant remaining identified in the Schedule and on the maps. We recommend the submissions be rejected.

<sup>1241</sup> Submissions 163 (supported by FS1020), 198, 214, 315, 390, 531, 590 and 806

<sup>1242</sup> Submission 383

<sup>1243</sup> C Barr, Section 42A Report, at paragraphs 13.11 to 13.13

<sup>1244</sup> G Davis, EIC, at paragraphs 8.3, 8.9-8.19

<sup>1245</sup> S Beale, EIC dated 21 April 2016

1465. We note that submissions by Lake McKay Station Limited<sup>1246</sup> and Mr J Frost and Mr A Smith<sup>1247</sup> sought amendments to SNA boundaries and were deferred to Hearing Streams 12 and 13 respectively. We also note that QPL<sup>1248</sup> sought that if the zoning that company sought for its land was rejected, the SNAs should be removed. That submission was deferred to Hearing Stream 13.

## 50 33.1 – PURPOSE

1466. Submissions on this section sought:

- a. Support, particularly the third paragraph<sup>1249</sup>;
- b. Provide more for enhancement<sup>1250</sup>;
- c. Amend to distinguish between indigenous vegetation generally and that determined to be significant, and enabling biodiversity offsetting in appropriate circumstances<sup>1251</sup>; and
- d. Expand to make more explicit, limiting the use of biodiversity offsetting<sup>1252</sup>.

1467. Mr Barr recommended minor changes in response to these submissions<sup>1253</sup>. The most notable change was altering the sentence that read:

*Where the removal of indigenous vegetation cannot be avoided or mitigated and would diminish the District's indigenous biodiversity values, opportunities for the enhancement of other areas are encouraged to offset the adverse effects of the loss of those indigenous biodiversity values.*

to read:

*Where the clearance of indigenous vegetation would have significant residual effects after avoiding, remedying or mitigating adverse effects, opportunities for biodiversity offsetting are encouraged.*

1468. We accept Mr Barr's reasoning and with a minor amendment for grammatical purposes to the commencement of the third paragraph, we recommend Section 33.1 be adopted with those amendments as shown in Appendix 4.

## 51 33.2- OBJECTIVES AND POLICIES

### 51.1 General

1469. One submission<sup>1254</sup> supported the objectives and policies generally. We recommend that submission be accepted in part.

### 51.2 Objective 33.2.1 and Policies

1470. We have already discussed Objective 33.2.1 and Policies 33.2.1.2, 33.2.1.3 and 33.2.1.3 above. We will not repeat that discussion, but rather, focus on the remaining policies.

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<sup>1246</sup> Submission 439

<sup>1247</sup> Submission 323

<sup>1248</sup> Submission 806

<sup>1249</sup> Submission 600, supported by FS1097, FS1209, opposed by FS1034

<sup>1250</sup> Submission 313

<sup>1251</sup> Submission 373, supported by FS1040, opposed by FS1015, FS1097, FS1254, FS1287, FS1313, FS1347

<sup>1252</sup> Submissions 339 (opposed by FS1015, FS1097) and 706 (opposed by FS1015, FS1162, FS1254, FS1287

<sup>1253</sup> C Barr, Section 42A Report, Section 10 and Appendix 1

<sup>1254</sup> Submission 798, opposed by FS1287

1471. As notified the remaining policies read:

Policies

- 33.2.1.1 *Identify the District's Significant Natural Areas and schedule them in the District Plan, including the ongoing identification of Significant Natural Areas through resource consent applications, using the criteria set out in Policy 33.2.1.9.*
- 33.2.1.4 *Recognise and take into account the values of tangata whenua and kaitiakitanga.*
- 33.2.1.5 *Recognise anticipated activities in rural areas such as farming and the efficient use of land and resources while having regard to the maintenance, protection or enhancement of indigenous biodiversity values.*
- 33.2.1.7 *Activities involving the clearance of indigenous vegetation are undertaken in a manner to ensure the District's indigenous biodiversity values are protected, maintained or enhanced.*
- 33.2.1.8 *Where the adverse effects of an activity on indigenous biodiversity cannot be avoided, remedied or mitigated, consideration will be given to whether there has been any compensation or biodiversity offset proposed and the extent to which any offset will result in a net indigenous biodiversity gain.*
- 33.2.1.9 *Assess the nature and scale of the adverse effects of indigenous vegetation clearance on the District's indigenous biodiversity values by applying the following criteria:*
- a. **Representativeness**  
*Whether the area is an example of an indigenous vegetation type or habitat that is representative of that which formerly covered the Ecological District.*
  - b. **Rarity**  
*Whether the area supports*
    - i. *indigenous vegetation and habitats within originally rare ecosystems*
    - ii. *indigenous species that are threatened, at risk, uncommon, nationally or within the ecological district*
    - iii. *indigenous vegetation or habitats of indigenous fauna that has been reduced to less than 20% of its former extent, regionally or within a relevant Land Environment or Ecological District.*
  - c. **Diversity**  
*Whether the area supports a highly diverse assemblage of indigenous vegetation and habitat types, and whether these have a high indigenous biodiversity value.*
  - d. **Distinctiveness**  
*Whether the area supports or provides habitats for indigenous species:*
    - i. *at their distributional limit within Otago or nationally*
    - ii. *are endemic to the Otago region*
    - iii. *are distinctive, of restricted occurrence or have developed as a result of unique environmental factors.*
  - e. **Ecological Context**

*The relationship of the area with its surroundings, including whether the area proposed to be cleared:*

- a. *has important connectivity value allowing dispersal of indigenous fauna between different areas*
- b. *has an important buffering function to protect values of an adjacent area of feature*
- c. *is important for indigenous fauna during some part of their life cycle.*

1472. The submissions on Policy 33.2.1.1 sought:

- a. Retain the policy<sup>1255</sup>
- b. Include references to protecting SNAs<sup>1256</sup>
- c. Move to new policy under Objective 3.2.2<sup>1257</sup>
- d. Delete the policy<sup>1258</sup>.

1473. The only amendment Mr Barr recommended was for clarity by replacing “resource consent applications” with “development proposals”<sup>1259</sup>.

1474. Mr Deavoll’s evidence for DoC agreed with the policy’s intent of enabling the identification of additional SNAs through the consenting process using the significance criteria in notified Policy 33.2.1.9<sup>1260</sup>.

1475. Ms Maturin, on behalf of Forest & Bird, submitted that while the policy directed the identification of SNAs, it did not mention a regime to protect them<sup>1261</sup>. She also disagreed with Mr Barr’s recommended amendment, noting that it was the consent process that identified potential SNAs, not development proposals.

1476. Objective 33.2.2 and its policies provide the framework of a protection regime for SNAs. However, we agree with Ms Maturin that this policy would be more useful if it described the purpose of identifying and scheduling SNAs, similar to the approach taken in notified Policy 33.2.1.2. We also agree that it is the consenting process that enables further SNAs to be identified.

1477. For these reasons, we recommend Policy 33.2.1.1 be adopted with the following wording:

*Identify the District’s Significant Natural Areas, including the ongoing identification of Significant Natural Areas through the resource consent process, using the criteria set out in Policy 33.2.1.8, and schedule them in the District Plan to assist with their management for protection.*

1478. Two submissions<sup>1262</sup> sought the retention of Policy 33.2.1.4, one<sup>1263</sup> sought its deletion, and DoC sought it be rephrased<sup>1264</sup>.

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<sup>1255</sup> Submission 600, supported by FS1209, opposed by FS1034

<sup>1256</sup> Submissions 339 (opposed by FS1097) and 706 (opposed by FS1015, FS1162, FS1254, FS1287)

<sup>1257</sup> Submission 373, opposed by FS1254, FS1287, FS1313, FS1342, FS1347

<sup>1258</sup> Submission 590

<sup>1259</sup> C Barr, Section 42A Report, Appendix 1

<sup>1260</sup> G Deavoll, EiC, paragraph 35

<sup>1261</sup> Submissions on behalf of Royal Forest and Bird Protection Society, May 2016 at paragraphs 12 - 14

<sup>1262</sup> Submissions 339 (opposed by FS1097) and 706 (opposed by FS1162, FS1254)

<sup>1263</sup> Submission 806

<sup>1264</sup> Submission 373, opposed by FS1254, FS1287, FS1313, FS1347

1479. Mr Barr recommended only a minor rewording to improve the grammar<sup>1265</sup>.
1480. We agree with Mr Barr that it is appropriate to have a policy concerning Tangata whenua values in this Chapter. We consider this policy implements Objective 5.4.1 as well as Objective 33.2.1 and has a different purpose from Policy 5.4.3.1. We also note, as did Mr Barr, that neither Te Ao Marama Inc<sup>1266</sup> nor KTKO Ltd<sup>1267</sup> sought any change to this policy, although Te Ao Marama Inc had sought amendments to other policies in this chapter. DoC provided no evidence in support of the amendment it sought.
1481. We recommend the policy be renumbered and adopted as recommended by Mr Barr, so that it reads:
- Have regard to and take into account the values of Tangata whenua and kaitiakitanga.*
1482. As notified, Policy 33.2.1.5 appeared to be attempting to balance rural activities with the maintenance, protection or enhancement of indigenous biodiversity values. It was subject to seven submissions. These sought:
- a. Retain the policy<sup>1268</sup>
  - b. Delete the policy<sup>1269</sup>
  - c. Include reference to regionally significant infrastructure
  - d. Amend so rural activities are undertaken in a way protects indigenous flora and fauna and maintains and enhances indigenous biodiversity<sup>1270</sup> and
  - e. Add “*where possible*” to the end of the policy<sup>1271</sup>.
1483. Mr Barr suggested the policy was intended to assist decision-makers by acknowledging that land use activities were contemplated within areas where indigenous vegetation would be present, particularly on land in private ownership used for productive purposes<sup>1272</sup>. He then gave reasons for recommending rejection of the submissions by Mr Kane and Transpower, before recommending amendments that he considered had a better connection to section 31<sup>1273</sup>.
1484. Although Mr Deavoll did not discuss this policy in his evidence, we consider the reasons given by DoC for deleting this policy have some merit. The submission notes that the rules in Chapter 33 apply on all zoned and unzoned land in the District and questions, why, therefore, a policy specific to rural land uses is required. We note that areas zoned Rural Lifestyle, Rural Residential or Large Lot Residential can equally have indigenous vegetation on sites subject to the rules in this chapter. We also question whether the reason given by Mr Barr for the policy is consistent with the outcome set by Objective 33.2.1.

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<sup>1265</sup> C Barr, Section 42A Report, at paragraph 11.8 and Appendix 1

<sup>1266</sup> Submitter 817

<sup>1267</sup> Submitter 810

<sup>1268</sup> Submission 600, supported by FS1209, opposed by FS1034

<sup>1269</sup> Submission 373, opposed by FS1091, FS1097, FS1132, FS1254, FS1287, FS1313, FS1347

<sup>1270</sup> Submissions 339 (opposed by FS1015, FS1097) and 706 (opposed by FS1015, FS1019, FS1097, FS1162, FS1254, FS1287)

<sup>1271</sup> Submission 701, supported by FS1162

<sup>1272</sup> C Barr, Section 42A Report, paragraph 11.10

<sup>1273</sup> *ibid*, Appendix 4



1485. We consider this policy is potentially inconsistent with Objective 33.2.1, and we agree with Submission 373 that it is both unnecessary and is not implemented by the rules in the chapter. We recommend Policy 33.2.1.5 be deleted.
1486. Policy 33.2.1.7 (as notified) required that any clearance be undertaken in a way that ensured the District's indigenous biodiversity values were protected, maintained or enhanced. Submissions on this policy sought:
- Retain the policy<sup>1274</sup>
  - Limit the policy to only apply to vegetation that is not significant<sup>1275</sup>
  - Amend the policy to protect, maintain or enhance biodiversity<sup>1276</sup>
  - Provide clarification as to how the policy is to be achieved<sup>1277</sup>.
1487. Mr Barr addressed the QPL submission, suggesting it was appropriately framed for decision-makers<sup>1278</sup>. He equally saw no reason to delete 'values' from the policy as sought by Forest & Bird. He did not specifically comment on DoC's submission seeking to distinguish between general indigenous biodiversity and SNAs.
1488. We consider Forest & Bird may have a point. Section 31 of the Act sets as a Council function, *the maintenance of indigenous biological diversity*. Biological diversity is defined in Section 2 of the Act. Biodiversity is short for biological diversity<sup>1279</sup>. Including the word values when describing biodiversity in the PDP does create an ambiguity and uncertainty.
1489. We consider that with the amendment sought by Forest & Bird, the policy becomes a clear measure for decision-makers to use, thereby answering QPL's query. We also see no reason to distinguish between applications for general clearance and applications for clearance in SNAs.
1490. We note that in his Reply Statement, Mr Barr discussed what he referred to as requests by two submitters to include reference to "ecosystem services" in the first paragraph of the Purpose Statement<sup>1280</sup>. This was in response to questioning by the Panel as to whether the term should be included. Mr Barr did not recommend the inclusion of the term, but suggested that if we were minded to include reference, this policy would be the appropriate place, rather than in Section 33.1.
1491. We note that reference was made to "ecosystems services" in Section 33.1 as notified and that the two relevant submissions<sup>1281</sup> were merely repeating the notified text in their respective submissions. We also note that reference remains in our recommended version of the text.
1492. We do not consider this policy an appropriate place to include reference to ecosystem services. In any event, we doubt that there is scope to include the term within the policies.
1493. For those reasons we recommend Policy 33.2.1.7 be renumbered and adopted with the following wording:

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<sup>1274</sup> Submission 600, supported by FS1209, opposed by FS1034

<sup>1275</sup> Submission 373, opposed by FS1254, FS1287, FS1313, FS1342, FS1347

<sup>1276</sup> Submissions 339 and 706 (opposed by FS1162, FS1254, FS1287)

<sup>1277</sup> Submission 806

<sup>1278</sup> C Barr, Section 42A Report, paragraph 11.19

<sup>1279</sup> Ministry for the Environment at <http://www.mfe.govt.nz/more/biodiversity/about-biodiversity/biodiversity-new-zealand>

<sup>1280</sup> C Barr, Reply Statement at Section 9

<sup>1281</sup> Submissions 339 and 706

*Undertake activities involving the clearance of indigenous vegetation in a manner that ensures the District's indigenous biodiversity is protected, maintained or enhanced.*

1494. As notified, Policy 33.2.1.8 contemplated the provision of either compensation or biodiversity offsets where the adverse effects of an activity could not be avoided, remedied or mitigated. Submissions on this policy sought:
- a. Retain the policy<sup>1282</sup>;
  - b. Limit to biodiversity offsets with no net loss and preferably a net gain in indigenous biodiversity<sup>1283</sup>;
  - c. Replace with stepped approach to avoiding, remedying and mitigating, with offsets as the final option<sup>1284</sup>;
  - d. Delete the policy<sup>1285</sup>.
1495. Mr Barr saw merit in the DoC and Forest & Bird submissions, and in his Section 42A Report recommended word changes to delete compensation as an option and to focus the outcome on no net loss, with preferably a net gain<sup>1286</sup>.
1496. Dr Barea, Technical Advisor Ecology for Biodiversity Offsets in DoC's Science and Policy Group, provided extensive evidence on how biodiversity offsets are being implemented in New Zealand. We found this evidence to be very helpful in understanding how biodiversity offsets could be used in this District.
1497. Dr Barea recommended this policy be extensively revised to accord with the principles of biodiversity offsetting, and that definitions of *biodiversity offset*, *environmental compensation*, and *no net loss* be included in the PDP<sup>1287</sup>. Mr Deavoll supported Dr Barea's recommendations<sup>1288</sup>. This approach was also supported by Ms Maturin for Forest & Bird<sup>1289</sup>.
1498. Ms Craw, appearing for Transpower, agreed that the policy needed amending, but was more concerned to ensure the PDP did not mandate offsetting, but made it an option<sup>1290</sup>. She also referred us to policies in the Proposed RPS which, she said, supported the distinction she considered needed to be made<sup>1291</sup>.
1499. At the time of Ms Craw's evidence decisions had not been made on submissions on the Proposed RPS. We note that the decisions version (1 October 2016) contains the following policies:

*Policy 5.4.6 Offsetting for indigenous biological diversity*  
*Consider the offsetting of indigenous biological diversity, when:*

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<sup>1282</sup> Submissions 580, 600 (supported by FS1085, FS1209, opposed by FS1034) and 806  
<sup>1283</sup> Submission 373, opposed by FS1015, FS1085, FS1097, FS1254, FS1287, FS1313, FS1342, FS1347  
<sup>1284</sup> Submissions 339 (opposed by FS1015, FS1097) and 706 (opposed by FS1015, FS1085, FS1162, FS1254, FS1287)  
<sup>1285</sup> Submission 805  
<sup>1286</sup> C Barr, Section 42A Report, paragraph 11.21 to 11.29  
<sup>1287</sup> Dr L Barea, EiC, paragraphs 46 to 51  
<sup>1288</sup> G Deavoll, EiC, paragraphs 43 to 49  
<sup>1289</sup> S Maturin, Submissions, paragraph 22  
<sup>1290</sup> A Craw, Summary of Evidence dated 25 May 2016  
<sup>1291</sup> A Craw, EiC, paragraph 60

- a. *Adverse effects of activities cannot be avoided, remedied or mitigated*
- b. *The offset achieves no net loss and preferably a net gain in indigenous biological diversity*
- c. *The offset ensures there is no loss of rare or vulnerable species*
- d. *The offset is undertaken close to the location of development, where this will result in the best ecological outcome*
- e. *The offset is applied so that the ecological values being achieved are the same or similar to those being lost*
- f. *The positive ecological outcomes of the offset last at least as long as the impact of the activity.*

*Policy 4.3.3 Adverse effects of nationally and regionally significant infrastructure*

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

- a. *Giving preference to avoiding their location in all of the following:*
  - i. *Areas of significant indigenous vegetation and significant habitats of indigenous fauna*
  - ii. *Outstanding natural features, landscapes and seascapes*
  - iii. *Areas of outstanding natural character*
  - iv. *Outstanding water bodies or wetlands*
  - v. *Places or areas containing significant historic heritage*
- b. *Where it is not possible to avoid locating in the areas listed in a) above, avoiding significant adverse effects on those values that contribute to the significant or outstanding nature of those areas*
- c. *Avoiding, remedying or mitigating other adverse effects*
- d. *Considering offsetting for residual adverse effects on indigenous biological diversity.*

1500. Mr Barr sought Mr Davis' advice on the evidence from Dr Barea and Mr Deavoll. On the basis of that advice he largely agreed with the amendments sought by DoC<sup>1292</sup>.

1501. We agree with Mr Barr's reasoning and his recommended wording. We also agree that definitions of "Biodiversity offsets", "No net loss" and "Environmental compensation" be included in the PDP as recommended by Mr Barr in his Reply Statement.

1502. We do not agree with Ms Craw that offsetting should be some sort of option and we do not consider that is what the Proposed RPS requires either. If an activity is to have such significant adverse effects that avoidance, remediation or mitigation are not possible, it seems to us that

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<sup>1292</sup> C Barr, Reply Statement, Section 7

it would be inconsistent to then not require some action to ensure no net loss of biodiversity occurred.

1503. Consequently, we recommend that Policy 33.2.1.8 be renumbered and amended to read:

*Manage the effects of activities on indigenous biodiversity by:*

- a. avoiding adverse effects as far as practicable and, where total avoidance is not practicable, minimising adverse effects*
- b. requiring remediation where adverse effects cannot be avoided*
- c. requiring mitigation where adverse effects on the areas identified above cannot be avoided or remediated*
- d. requiring any residual adverse effects on significant indigenous vegetation or indigenous fauna to be offset through protection, restoration and enhancement actions that achieve no net loss and preferably a net gain in indigenous biodiversity values having particular regard to:
 
  - i. limits to biodiversity offsetting due the affected biodiversity being irreplaceable or vulnerable*
  - ii. the ability of a proposed offset to demonstrate it can achieve no net loss or preferably a net gain*
  - iii. Schedule 33.8 – Framework for the use of Biodiversity Offsets;**
- e. enabling any residual adverse effects on other indigenous vegetation or indigenous fauna to be offset through protection, restoration and enhancement actions that achieve no net loss and preferably a net gain in indigenous biodiversity values having particular regard to:
 
  - i. the ability of a proposed offset to demonstrate it can achieve no net loss or preferably a net gain;*
  - ii. Schedule 33. 8 – Framework for the use of Biodiversity Offsets.**

1504. We also recommend that a new Schedule 33.8 be included in Chapter 33 as shown in Appendix 1.

1505. We recommend to the Stream 10 Hearing Panel that the following definitions be included in Chapter 2:

<b>Biodiversity Offsets</b>	Means measurable conservation outcomes resulting from actions designed to compensate for residual adverse biodiversity impacts arising from project development after appropriate avoidance, minimisation, remediation and mitigation measures have been taken. The goal of biodiversity offsets is to achieve no net loss and preferably a net gain of biodiversity on the ground.
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<b>No net loss</b>	Means no overall reduction in biodiversity as measured by the type, amount and condition.
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<b>Environmental Compensation</b>	Means actions offered as a means to address residual adverse effects to the environment arising from project development that are not intended to result in no net loss or a net gain of biodiversity on the ground, includes residual adverse effects to other components of the environment including landscape, the habitat of trout and salmon, open space, recreational and heritage values.
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1506. As notified, Policy 33.2.1.9 set out the criteria for assessing effects on the District’s biodiversity. Submissions sought that:
- a. The policy be retained<sup>1293</sup>;
  - b. Include a stronger link to Chapter 5<sup>1294</sup>;
  - c. Amend criteria by:
    - i. Change wording of (a) Representative;
    - ii. Change title of (c) to *Diversity and Pattern*;
    - iii. Include “or” between each criterion<sup>1295</sup>;
  - d. Add a new criterion in (e) – “has significance based on the indigenous vegetation coverage of the area”<sup>1296</sup>; and
  - e. Delete and include as assessment criteria at end of Chapter<sup>1297</sup>.
1507. Mr Davis provided useful background on the use of assessment criteria to determine the significant natural areas in the District<sup>1298</sup>. The significance criteria in this policy appear to have been largely derived from this earlier work.
1508. Mr Barr relied on Mr Davis’ evidence in recommending minor changes to the policy in partial response to the Forest & Bird submission<sup>1299</sup>. Ms Maturin supported the amendments proposed by Mr Barr<sup>1300</sup>.
1509. Mr Deavoll’s evidence, for DoC, assessed Mr Barr’s explanation supporting the retention of the criteria in a policy rather than assessment criteria and made the important point that the criteria are appropriate to determine the significance of a subject area of indigenous vegetation, rather than the adverse effects of a proposed activity on such an area<sup>1301</sup>. He also made the point in his evidence that the criteria in this policy can be used to determine whether an area is a SNA.
1510. We agree with Mr Deavoll that the wording of the policy limits its usefulness as an assessment tool. We also note that it is derived from assessment criteria used to assess the significance of areas of indigenous vegetation in the District and that Mr Barr recommended amending notified Policy 33.2.2.1 to make it clear that the criteria in notified Policy 33.2.1.9 determined the significance of SNAs.

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<sup>1293</sup> Submission 806  
<sup>1294</sup> Submission 817  
<sup>1295</sup> Submissions 339 and 706 (opposed by FS1091, FS1162, FS1254, FS1287)  
<sup>1296</sup> Submissions 701 (supported by FS1162) and 784  
<sup>1297</sup> Submission 373, opposed by FS1254, FS1287, FS1313, FS1347  
<sup>1298</sup> G Davis, EIC, paragraph 6.3 and Appendix G  
<sup>1299</sup> C Barr, Section 42A Report, paragraph 11.45  
<sup>1300</sup> S Maturin, Submissions dated May 2016,m at paragraph 24  
<sup>1301</sup> G Deavoll, EIC, paragraph 72

1511. We heard no evidence in support of the additional criteria sought by submitters.

1512. We agree with Mr Davis' appraisal of the value of the criteria and consider that the minor amendments proposed by Mr Barr bring this policy more in line with the assessment criteria referred to by Mr Davis. We do, however, consider the introductory wording needs to be changed to make it clear, as Mr Deavoll pointed out, the criteria determine the significance of vegetation areas, not the effects of activities. Thus, we recommend Policy 33.2.19 be renumbered and read as follows:

*Determine the significance of areas of indigenous vegetation and habitats of indigenous fauna by applying the following criteria:*

**a. Representativeness**

*Whether the area is an example of an indigenous vegetation type or habitat that is representative of that which formerly covered the Ecological District;*

*OR*

**b. Rarity**

*Whether the area supports:*

- i. indigenous vegetation and habitats within originally rare ecosystems;*
- ii. indigenous species that are threatened, at risk, uncommon, nationally or within the ecological district;*
- iii. indigenous vegetation or habitats of indigenous fauna that has been reduced to less than 10% of its former extent, regionally or within a relevant Land Environment or Ecological District;*

*OR*

**c. Diversity and Pattern**

*Whether the area supports a highly diverse assemblage of indigenous vegetation and habitat types, and whether these have a high indigenous biodiversity value, including:*

- i. indigenous taxa;*
- ii. ecological changes over gradients;*

*OR*

**d. Distinctiveness**

*Whether the area supports or provides habitats for indigenous species:*

- i. at their distributional limit within Otago or nationally;*
- ii. are endemic to the Otago region;*
- iii. are distinctive, of restricted occurrence or have developed as a result of unique environmental factors;*

*OR*

**e. Ecological Context**

*The relationship of the area with its surroundings, including whether the area proposed to be cleared:*

- i. has important connectivity value allowing dispersal of indigenous fauna between different areas;*
- ii. has an important buffering function to protect values of an adjacent area or feature;*
- iii. is important for indigenous fauna during some part of their life cycle.*

### 51.3 New Policies Sought

1513. Four submissions sought the inclusion of new policies under Objective 33.2.1. One, Submission 373, has been deal with in Section 47.2 above.

1514. Submissions 339<sup>1302</sup> and 706<sup>1303</sup> sought that the following be included as a policy:

*Facilitate and support restoration of degraded natural ecosystems and indigenous habitats using indigenous species that naturally occur and/or previously occurred in the area.*

1515. Mr Barr supported the intent of the policy, but considered it was unnecessary as for the most part it was provided for by (renumbered) Policy 33.2.1.6. Ms Maturin noted that there was no policy that encouraged the use of appropriate indigenous species when enhancing indigenous biodiversity<sup>1304</sup>.

1516. We did not consider this was a matter that required an additional policy. We recommend those submissions be rejected.

1517. Submission 806 sought this inclusion of the following as a policy:

*To recognise that activities that by necessity result in indigenous vegetation clearance can result in long term sustainable management benefits.*

1518. No reasons for this were provided in the submission and no reference was made to it in the submissions or evidence presented on behalf of QPL.

1519. In the absence of any evidence supporting its inclusion, we recommend the submission be rejected.

### 51.4 Significant Natural Areas – Objective, Policies and Rules

#### Objective 33.2.2 and Policies

1520. As notified, these read:

#### Objective

*Protect and enhance Significant Natural Areas.*

#### Policies

33.2.2.1 *Avoid the clearance of indigenous vegetation within Significant Natural Areas that would reduce indigenous biodiversity values.*

33.2.2.2 *Allow the clearance of indigenous vegetation within Significant Natural Areas only in exceptional circumstances and in circumstances where these activities will have a low impact or offer compensation commensurate to the nature and scale of the clearance.*

33.2.2.3 *Recognise that the majority of Significant Natural Areas are located within land used for farming activity and provide for small scale, low impact indigenous vegetation removal, stock grazing, the construction of fences and small scale farm tracks, and the maintenance of existing fences and tracks.*

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<sup>1302</sup> opposed by FS1097

<sup>1303</sup> opposed by FS1254

<sup>1304</sup> S Maturin, Submissions dated May 2016, paragraph 25

1521. As this objective and its policies are directed at Significant Natural Areas, it is appropriate to consider them and the standards applying to Significant Natural Areas together. As notified, these standards read as follows:

<b>Table 3</b>	<b>Activities within Significant Natural Areas identified in Schedule 33.8 and on the District Plan maps:</b>
33.5.7	Earthworks shall: <b>33.5.7.1</b> be less than 50m <sup>2</sup> in any one hectare in any continuous period of 5 years; <b>33.5.7.2</b> not be undertaken on slopes with an angle greater than 20°.
33.5.8	The clearance of indigenous vegetation shall not exceed 50m <sup>2</sup> in area in any continuous period of 5 years.
33.5.9	Does not involve exotic tree or shrub planting.

1522. Submissions on the objective sought:

- a. Replace “Natural Areas” with “indigenous vegetation and habitats of indigenous fauna, including rare or threatened indigenous species”<sup>1305</sup>
- b. Replace with “Areas of significant indigenous biodiversity are recognised and protected from development activities in the Queenstown Lakes District as a matter of national importance”<sup>1306</sup>
- c. Replace “Protect” with “Maintain” and include “where appropriate” before “enhance”<sup>1307</sup>
- d. Change to encourage protection and enhancement<sup>1308</sup>.

1523. Mr Barr did not consider any of these amendments appropriate<sup>1309</sup>. The only amendments he recommended were to make the objective more outcome focussed.

1524. Ms Maturin accepted that there was no need for the amendments sought by Forest & Bird<sup>1310</sup>. Mr Deavoll did not discuss the amendments sought by DoC.

1525. In his Reply Statement, Mr Barr recommended further revision of the wording of this objective such that it read:

*Significant Natural Areas are protected maintained and enhanced.*

1526. We agree with Mr Barr that it is not appropriate to weaken this objective by either replacing protect with maintain, or changing the emphasis to encourage. This objective applies to areas that fall within the ambit of Section 6(c) of the Act which requires the Council to recognise and provide for the protection of such areas. We also note that Policy 3.2.2 in the Proposed RPS is to “protect and enhance” such areas.

1527. We recommend that Mr Barr’s wording be adopted with a minor grammatical change so that the objective reads:

<sup>1305</sup> Submissions 339 (opposed by FS1015) and 706 (opposed by FS1015, FS1162, FS1254, FS1287)

<sup>1306</sup> Submission 373, opposed by FS1015, FS1097, FS1254, FS1287, FS1313, FS1342, FS1347

<sup>1307</sup> Submission 635

<sup>1308</sup> Submission 806

<sup>1309</sup> C Barr, Section 42A Report, paragraphs 11.48 to 11.53

<sup>1310</sup> S Maturin, Submissions dated May 2016, at paragraph 27



*Significant Natural Areas are protected, maintained and enhanced.*

1528. Submissions on Policy 33.2.2.1 sought:
- Retain the policy<sup>1311</sup>;
  - Include reference to the criteria in (notified) Policy 33.2.1.9<sup>1312</sup>;
  - Only avoid clearance where it would significantly reduce values<sup>1313</sup>;
  - Change so that test is an overall test<sup>1314</sup>;
  - Make avoidance “where practical”<sup>1315</sup>;
  - Allow option to remedy or mitigate where not practical to avoid<sup>1316</sup>.
1529. Mr Barr agreed with Forest & Bird that a reference to Policy 33.2.1.9 would be useful in this policy<sup>1317</sup>.
1530. Ms Craw, for Transpower, opined that the words “remedy or mitigate” should be included in the policy to make it consistent with the wording of the Act. We have discussed this issue in other reports. In our view, the purpose of including policies in district plans is to provide guidance as to the extent to which options should be available to address the adverse effects of activities in order to appropriately implement the objective. An unthinking repetition of Section 5(2)(c) will in very few instances provide decision-makers with any such guidance.
1531. In this instance, the purpose of the policy is to implement an objective of protecting, maintaining and enhancing areas whose protection, under section 6(c) of the Act, the council is obliged to provide for. Remedying or mitigating, presumably the adverse effects of, the clearance of vegetation in significant natural areas would not be fulfilling that obligation, notwithstanding the policies in the NPSET<sup>1318</sup>. We note that the NESETA 2009 requires consent as a restricted discretionary activity for any “trimming, felling or removing” of trees and vegetation in an area identified as a SNA. An avoid focussed policy is not, in our view, inconsistent with that requirement.
1532. We agree with Mr Barr that there is value in amending this policy to incorporate non-scheduled sites as requested by Forest & Bird. However, we consider the amendment recommended is ambiguous and could be taken to mean that some areas identified as SNAs do not meet the criteria in recommended Policy 33.2.1.8.
1533. For those reasons, we recommend Policy 33.2.2.1 be amended to read:

*Avoid the clearance of indigenous vegetation within scheduled Significant Natural Areas, and those other areas that meet the criteria in Policy 33.2.1.8, that would reduce indigenous biodiversity values.*

1534. Submissions on notified Policy 33.2.2.2 sought:

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<sup>1311</sup> Submission 373, opposed by FS1254, FS1287, FS1313, FS1347

<sup>1312</sup> Submissions 339 (opposed by FS1097) and 706 (opposed by FS1162, FS1254, FS1287)

<sup>1313</sup> Submission 806

<sup>1314</sup> Submission 600, supported by FS1209, opposed by FS1034, FS1040

<sup>1315</sup> Submission 635

<sup>1316</sup> Submission 805

<sup>1317</sup> C Barr, Section 42A Report, paragraph 11.55

<sup>1318</sup> Refer *Day et al v Manawatu-Wanganui RC* [2012] NZEnvC 182 at 3-127 and the related discussion in Report 3 at Section 2.11.

- a. Retain the policy<sup>1319</sup>;
- b. Provide a choice between exceptional circumstances and provision of compensation<sup>1320</sup>;
- c. Remove the exceptional circumstances proviso<sup>1321</sup>;
- d. Remove compensation option and limit adverse effects to no more than minor<sup>1322</sup>;
- e. Replace with policy providing for stepped approach to avoiding, remedying, mitigating or offsetting adverse effects<sup>1323</sup>.

1535. Mr Barr did not agree with the amendments proposed, but did consider that an amendment to ensure any clearance retained the values of the area would go some way to meet the concerns of DoC and Forest & Bird<sup>1324</sup>.

1536. Ms Maturin agreed in part with Mr Barr, but considered the policy should also ensure that significant adverse effects were avoided. On the whole though, she remained of the view that the wording proposed in the Forest & Bird submission to be preferable<sup>1325</sup>.

1537. In his Reply Statement, Mr Barr further clarified the policy so that his recommended version read:

*Allow the clearance of indigenous vegetation within Significant Natural Areas only in exceptional circumstances and ensure that clearance is undertaken in a manner that retains the indigenous biodiversity values of the area.*

1538. We are satisfied that this wording appropriately implements the objective. It only allows clearance within SNAs in exceptional circumstances, and when those circumstances exist, any clearance must retain the indigenous biodiversity values of the SNA. We consider that to avoid any ambiguity, the final word should be replaced by Significant Natural Area to ensure it is the biodiversity values of that area that is being retained, not some wider and less natural area.

1539. Therefore, we recommend that Policy 33.2.2.2 be amended to read:

*Allow the clearance of indigenous vegetation within Significant Natural Areas only in exceptional circumstances and ensure that clearance is undertaken in a manner that retains the indigenous biodiversity values of the Significant Natural Area.*

1540. The submissions on Policy 33.2.2.3 sought:

- a. Retain the policy<sup>1326</sup>;
- b. Amend reference to farming use<sup>1327</sup>;
- c. Amend to limit to existing uses<sup>1328</sup>; and
- d. Delete<sup>1329</sup>.

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<sup>1319</sup> Submission 635,

<sup>1320</sup> Submission 600, supported by FS1097, FS1209, FS1342, opposed by FS1034, FS1040

<sup>1321</sup> Submission 806

<sup>1322</sup> Submission 3737, opposed by FS1015, FS1097, FS1254, FS1287, FS1313, FS1342, FS1347

<sup>1323</sup> Submissions 339 (opposed by FS1015, FS1097, FS1121) and 706 (opposed by FS1015, FS1097, FS1162, FS1254, FS1287)

<sup>1324</sup> C Barr, Section 42A Report, paragraph 11.59

<sup>1325</sup> S Maturin, Submissions dated may 2016, paragraphs 31 to 34

<sup>1326</sup> Submissions 600 (supported by FS1209, opposed by FS1034), 791 and 794

<sup>1327</sup> Submission 806

<sup>1328</sup> Submissions 339 (opposed by FS1097) and 706 (opposed by FS1097, FS1162, FS1254, FS1287)

<sup>1329</sup> Submission 373, opposed by FS1132, FS1254, FS1287, FS1313, FS1342, FS1347

1541. Mr Barr explained that the intent of the policy was to acknowledge that many of the SNAs were located within working farms and covered extensive areas<sup>1330</sup>. He therefore considered it reasonable to allow the continuation of established farming activities provided the values of the SNA were maintained. He stated that policy included activities that would be reasonably expected to occur within those areas. He did not see any benefit in limiting the activities allowed to existing uses as sought by Forest & Bird<sup>1331</sup>.
1542. Mr Brown, appearing for QPL, considered the policy should be amended to reflect that some properties may not be farms, and that small low impact clearance should not be limited to being for farming purposes<sup>1332</sup>.
1543. Ms Maturin maintained her view that the construction of new fences and tracks could have significant effects on biodiversity and not maintain the values of SNAs. She noted that those effects could arise not solely from the clearance of indigenous vegetation, but also by creating passage for pests and weeds.
1544. In his Reply Statement, Mr Barr agreed with Mr Brown that recognition of activities other than farming would be appropriate and recommended the inclusion of “or recreational areas” in the policy<sup>1333</sup>.
1545. The final form of the policy recommended by Mr Barr was not drafted as a clear policy. In addition, we consider this policy cannot be inconsistent with the previous two policies. On the face of it, Mr Barr’s recommended version suggests that stock grazing, the construction of fences and small scale farm tracks, and the maintenance of existing fences and tracks is an exceptional circumstance (as stated in Policy 33.2.2.2). We consider that none of those are particularly exceptional circumstances in rural areas.. We do consider a case can be made for small amounts of clearance for maintenance of existing fences and tracks as sought by Forest & Bird. While they may not be exceptional, it is certainly reasonable to allow such maintenance.
1546. We agree with Mr Brown that not all rural land in the District is used for farming. We consider the appropriate way to recognise this is to refer to rural activities rather than try and specify the particular types of activities that may be involved.
1547. For those reasons, we recommend that Policy 33.2.2.3 be amended to read:
- Provide for small scale, low impact indigenous vegetation removal to enable the maintenance of existing fences and tracks in recognition that the majority of Significant Natural Areas are located within land used for rural activities.*
1548. Submitters sought the inclusion of six additional policies under this objective.
1549. Submissions 339<sup>1334</sup> and 706<sup>1335</sup> sought to include a policy intended to protect significant bird areas. Mr Barr did not consider it appropriate to locate the policy proposed under Objective

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<sup>1330</sup> C Barr, Section 42A Report, paragraph 11.62

<sup>1331</sup> *ibid*, paragraph 11.64

<sup>1332</sup> J Brown, EiC, paragraph 5.9

<sup>1333</sup> C Barr, Reply Statement, paragraph 5.13

<sup>1334</sup> opposed by FS1015, FS1097, FS1132

<sup>1335</sup> opposed by FS1015, FS1162

33.2.2, but did consider there was value in including a policy aimed at protecting the habitats of indigenous fauna under Objective 33.2.1<sup>1336</sup>. He recommended this policy read:

*Protect the habitats of indigenous animals and in particular birds in wetlands, beds of rivers and lakes and their margins for breeding, roosting, feeding and migration.*

1550. Ms Maturin supported the inclusion of this policy<sup>1337</sup>.

1551. Mr Barr also recommended an amendment to Rule 3.5.8 which we discuss below.

1552. Having considered Mr Barr's section 32AA assessment for this policy, we agree that with minor amendment it is suitable for inclusion. We think it more appropriate for it to refer to indigenous fauna than indigenous animals.

1553. We recommend a new Policy 33.2.1.7 which reads:

*Protect the habitats of indigenous fauna and, in particular, birds in wetlands, beds of rivers and lakes and their margins for breeding, roosting, feeding and migration.*

1554. Submission 373<sup>1338</sup> sought the inclusion of a policy to identify SNAs and schedule them. This was part of the overall approach of DoC to restructure the Chapter. This was not discussed by either Mr Barr or Mr Deavoll. However, we consider Policy 33.2.1.1 covers the matters raised by the submission. Therefore we recommend this submission be rejected.

1555. Submission 373<sup>1339</sup> also sought a policy be located under Objective 33.2.2 to require the use of biodiversity offsetting. We consider this has been given effect to by our recommended Policy 33.2.1.6 so discuss it no further.

1556. Submission 788<sup>1340</sup> sought the inclusion of the following policy:

*Avoid the clearance or alteration of tussock grassland where it will have adverse effect on water yield values in dry catchments.*

1557. Mr Wilson, for Otago Fish and Game Council, referred us to relevant policies in the proposed RPS<sup>1341</sup> and suggested that minimising the conversion of tall tussock grasslands to pasture needed attention.

1558. Mr Barr addressed this in his Reply Statement<sup>1342</sup>.

1559. We consider the proposed policy addresses a regional council function (Section 30(1)(c)(iii)) rather than a territorial function. We do note however that the objective, policies and rules relating to alpine areas do deal with the clearance of tussock grasslands in areas over 1070 masl.

1560. We recommend this submission be rejected.

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<sup>1336</sup> C Barr, Section 42A Report, paragraphs 11.30 to 11.32

<sup>1337</sup> S Maturin, Submissions dated May 2016, at paragraph 23

<sup>1338</sup> supported by FS1040, opposed by FS1254, FS1287, FS1313, FS1347

<sup>1339</sup> opposed by FS1015, FS1097, FS1254, FS1287, FS1313, FS1342, FS1347

<sup>1340</sup> opposed by FS1097, FS1132, FS1254, FS1287

<sup>1341</sup> Policy 3.1.9 in Decisions Version

<sup>1342</sup> C Barr, Reply Statement, Section 10

1561. Submission 806 sought the addition of two policies under this objective:

*Recognise the importance of providing public access to areas of significant indigenous vegetation and increasing the understanding of the values associated with these areas.*

*Assist landowners in the management of SNA, recognising the importance of pest management in the sustainable management of these areas.*

1562. In his evidence in support of this submission, Mr Brown did not discuss these proposed policies. In the absence of evidence supporting them, we recommend the submissions be rejected.

#### **51.5 Rule 33.5.7**

1563. Two submissions<sup>1343</sup> on notified Rule 33.5.7 sought that the standard be replaced with a standard that did not allow any earthworks other than for the maintenance of existing roads, tracks, drains, utilities, structures and/or fencelines, but excluding their expansion. The only other submissions sought the rule be adopted<sup>1344</sup>.

1564. Mr Barr considered the permitted parameters to be very conservative and that the earthworks allowed would not compromise the values of SNAs<sup>1345</sup>. Ms Maturin did not specifically discuss this rule.

1565. Earthworks falls within the definition of clearance of vegetation due to the inclusion of “soil disturbance” in that definition. Thus, in considering this rule, we must consider it as a subset of the general clearance provisions and subject to the policies relating to clearance.

1566. The first point we note is that there is an inconsistency between this rule and notified Rule 33.5.8. Earthworks can amount to 50m<sup>2</sup> per hectare per 5 years, while other forms of clearance are restricted to 50m<sup>2</sup> in area, presumably per SNA, per 5 years. We were not advised what the size of the various SNAs were, but Mr Barr had commented (in relation to notified Policy 33.2.2.3) that some were extensive. Thus, we take from that the use of this rule could amount to multiple areas of 50m<sup>2</sup> per 5 year period in a SNA.

1567. We also note that quantities of earthworks are usually expressed in cubic metres. This rule appears to place no limit on the depth of any earthworks. It is unclear if this is intentional.

1568. When this rule is considered in the context of the policies it is to implement, particularly those under Objective 33.2.2, we do not see how this rule, as notified, implements Policy 33.2.2.2. There is no requirement in the rule for exceptional circumstances to exist, nor is there any method to ensure the indigenous biodiversity values of the SNA are retained.

1569. If the intention is that this rule enables the small-scale, low impact clearance envisaged by Policy 33.2.2.3, then we consider that should be reflected in the wording of the rule. If the rule is limited to enabling the maintenance of existing fences and tracks, then the areal limit of 50m<sup>2</sup> per hectare per 5 year period appears to be an effective and efficient means of achieving the objective of protecting, maintaining and enhancing Significant Natural Areas.

1570. Consequently, we recommend notified Rule 33.5.7 be renumbered and reworded to read:

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<sup>1343</sup> Submission 339 (opposed by FS1097) and 706 (opposed by FS1097, FS1162, FS1254, FS1287)

<sup>1344</sup> Submission 600, supported by FS1209, opposed by FS1034

<sup>1345</sup> C Barr, Section 42A Report, paragraph 12.50

33.5.3	Earthworks must: 33.5.3.1 be to enable the maintenance of existing fences and tracks; and 33.5.3.2 be less than 50m <sup>2</sup> in any one hectare in any continuous period of 5 years; and 33.5.3.3 not be undertaken on slopes with an angle greater than 20°.	D
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## 51.6 Rule 33.5.8

1571. Notified Rule 33.5.8 allowed for 50m<sup>2</sup> of indigenous vegetation clearance within SNAs over a 5 year period.
1572. Two submissions<sup>1346</sup> sought that it be replaced with a standard that did not allow any indigenous vegetation clearance other than for the maintenance of existing roads, tracks, drains, utilities, structures and/or fencelines, but excluding their expansion. Submission 373<sup>1347</sup> sought that the standard be amended to not allow any permitted indigenous vegetation clearance.. Submission 809 sought that the standard only apply to indigenous vegetation below 2m in height. Submission 600<sup>1348</sup> sought the rule be adopted.
1573. Mr Barr made the same comment on this rule as he made on Rule 33.5.7<sup>1349</sup>. He also recommended, to implement the policy he recommended provide for protecting the habitats of indigenous fauna, the inclusion of the phrase “*with the exception of specified indigenous animal habitat within exotic vegetation*”.
1574. Mr Deavoll discussed the relief sought by DoC in terms of the non-compliance status being a non-complying activity rather than the detailed wording of the rule. We return to the non-compliance status below.
1575. We heard no evidence from QLDC in support of its submission. Given that the effect of allowing it would be to permit clearance of indigenous vegetation exceeding 2m in height in SNAs without limit, we consider it to be misdirected.
1576. We accept Mr Barr’s opinion that this rule contains very conservative parameters. We also agree with him, and accept his Section 32AA analysis, that a specific standard should apply to exotic vegetation that provides habitat for indigenous fauna. We just consider that Mr Barr’s amendment did not satisfactorily achieve the outcome sought. For those reasons, we recommend notified Rule 33.5.8 be renumbered and reformatted, but otherwise be unaltered, and that a new Rule 33.5.5 be included, with both rules reading as follows:

33.5.4	The clearance of indigenous vegetation must not exceed 50m <sup>2</sup> in area in any continuous period of 5 years.	D
33.5.5	The clearance of exotic vegetation that is specified indigenous fauna habitat must not exceed 50m <sup>2</sup> in area in any continuous period of 5 years	D

<sup>1346</sup> Submissions 339 (opposed by FS1097, FS1340) and 706 (opposed by FS1097, FS1162, FS1254, FS1287)  
<sup>1347</sup> supported by FS1040, opposed by FS1097, FS1132, FS1254, FS1287, FS1313, FS1342, FS1347  
<sup>1348</sup> supported by FS1209, opposed by FS1034  
<sup>1349</sup> C Barr, Section 42A Report, paragraph 12.50

## 51.7 Rule 33.5.9

1577. As notified Rule 33.5.9 restricted the planting of exotic trees or shrubs in SNAs.
1578. Submissions on this rule sought:
- Also restrict the establishment of pasture or crop<sup>1350</sup>
  - Specify a degree or scale of size of the planting<sup>1351</sup>.
1579. Mr Barr supported the amendment sought by Forest & Bird in part as he considered the deliberate establishment of pasture or crops in a SNA would not be consistent with the Council's role of recognising and providing for their protection under Section 6(c) of the Act<sup>1352</sup>. Mr Barr revised his recommended wording in his Reply Statement. Mr Barr did not support the submission by Federated Farmers.
1580. We agree with Mr Barr in a broad sense. We also note that the definition of clearance of vegetation we are recommending includes the purposeful over-sowing of pasture or crop species. This perhaps overcomes the potential lacuna Mr Barr identified if an area of pasture establishment were specified in the rule. We also consider that restricting planting of all exotic species is appropriate given the purpose identifying and managing SNAs is to protect the indigenous species and habitats they provide.
1581. For those reasons, we recommend notified Rule 33.5.9 be renumbered and reworded to read as follows:

33.5.6	There must be no planting of any exotic species.	D
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1582. DoC<sup>1353</sup> and Forest & Bird<sup>1354</sup> sought that the non-compliance status of the activities in Table 3 be changed from discretionary to non-complying.
1583. Mr Barr discussed these submissions in his Reply Statement<sup>1355</sup>. Mr Deavoll opined that the relevant policies supported a non-complying activity status, and that it would be the most effective method available to the Council to carry out its functions under Section 31 of the Act<sup>1356</sup>.
1584. We consider that little or no regulatory gain would be made from changing the non-compliance status from discretionary to non-complying. An application for a discretionary activity must still satisfy the objectives and policies of the PDP and show that any effects would be acceptable within that assessment framework. The addition of the test under Section 104D would not, in our view, lead to any different assessment outcomes.

## 51.8 Objective 33.2.3 and Policies

1585. We have already discussed Policies 33.2.3.1, 33.2.3.4, 33.2.3.5, 33.2.3.6. We will not repeat that discussion. As notified the objective and the remainder of the policies read:

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<sup>1350</sup> Submissions 339 (supported by FS1132) and 706 (opposed by FS1162, FS1254, FS1287)

<sup>1351</sup> Submission 600, supported by FS1209, opposed by FS1034

<sup>1352</sup> C Barr, Section 42A Report, paragraphs 12.52 to 12.54

<sup>1353</sup> Submission 373

<sup>1354</sup> Submission 706

<sup>1355</sup> at Section 12

<sup>1356</sup> G Deavoll, EiC, paragraphs 58 - 76

Objective

*Ensure the efficient use of land, including ski-field development, farming activities and infrastructure improvements, do not reduce the District's indigenous biodiversity values.*

Policies

33.2.3.2 *Where the permanent removal of indigenous vegetation is proposed, encourage the retention or establishment of the same indigenous vegetation community elsewhere on the site.*

33.2.3.3 *Encourage the retention of indigenous vegetation in locations that have potential for regeneration, or provide stability, particularly where productive values are low, or in riparian areas or gullies.*

33.2.3.7 *Have regard to any areas in the vicinity of the indigenous vegetation proposed to be cleared, that constitute the same habitat or species which are protected by covenants or other formal protection mechanisms.*

1586. The submission on Objective 33.2.3 sought:

- a. Retain the objective<sup>1357</sup>;
- b. Amend to refer to all forms of land development<sup>1358</sup>;
- c. Amend to relate to land management practices<sup>1359</sup>;
- d. Replace with objective encouraging protection and enhancement of biodiversity values<sup>1360</sup>.

1587. Mr Barr assessed these submissions and agreed in part with those seeking to amend the objective<sup>1361</sup>. He recommended the objective be simplified to read:

*Land use and development maintains indigenous biodiversity values.*

1588. No evidence presented on behalf of the submitters disagreed with Mr Barr's appraisal and recommendation.

1589. We accept and adopt Mr Barr's reasoning and recommend Objective 33.2.3 be reworded as he recommended.

1590. Submissions on Policy 33.2.3.2 sought that it be:

- a. Retained<sup>1362</sup>; or
- b. Deleted<sup>1363</sup>.

1591. Those submissions which sought the policy be deleted considered a new planted habitat would not be replacement for loss of an existing mature community. They noted that the policy

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<sup>1357</sup> Submission 378, opposed by FS1049, FS1095

<sup>1358</sup> Submissions 339 (opposed by FS1097) and 706 (opposed by FS1097, FS1132, FS1162, FS1254, FS1287)

<sup>1359</sup> Submission 806

<sup>1360</sup> Submission 373, supported by FS1040, opposed by FS1091, FS1097, FS1132, FS1254, FS1287, FS1313, FS1342, FS1347

<sup>1361</sup> C Barr, Section 42A Report, paragraphs 11.66 to 11.70

<sup>1362</sup> Submissions 378 (opposed by FS1049, FS1095) and 600 (supported by FS1209, opposed by FS1034)

<sup>1363</sup> Submissions 339, 373 (opposed by FS1254, FS1313, FS1347) and 706 (opposed by FS1162, FS1254, FS1287)



providing for offsets (recommended Policy 33.2.1.6) provided the outcome this policy appeared to be aimed at.

1592. Mr Barr's Section 42A Report was not helpful in this respect as he had misinterpreted the submissions as seeking the policy be made an assessment criterion.

1593. We received no direct evidence on this policy. Mr Barr did recommend it be reworded to read:

*Encourage opportunities to remedy adverse effects through the retention, rehabilitation or protection of the same indigenous vegetation community elsewhere on the site.*

1594. While it technically is the case that Policy 33.2.1.6 provides for the outcomes anticipated, we consider Mr Barr's recommended wording would provide useful guidance for decision-makers. We recommend Policy 33.2.3.2 be adopted with that wording.

1595. Submissions on notified Policy 33.2.3.3 sought:

- a. Retain the policy<sup>1364</sup>;
- b. Amend the policy to widen the circumstances in which it could apply<sup>1365</sup>.

1596. Mr Barr provided no particular discussion of this policy in his Section 42A Report, but did recommend that it be amended as sought by Submissions 339 and 706.

1597. We agree with the reasoning provided in the submissions that the amendments are necessary so as to not limit the scope of the policy to specific circumstances. Therefore, we recommend that Policy 33.2.3.3 be amended to read:

*Encourage the retention and enhancement of indigenous vegetation including in locations that have potential for regeneration, or provide stability, and particularly where productive values are low, or in riparian areas or gullies.*

1598. Submissions on notified Policy 33.2.3.7 sought:

- a. Retain the policy<sup>1366</sup>;
- b. Delete as it is an assessment matter<sup>1367</sup>;
- c. Delete as it is provided for by the criteria for determining biodiversity significance and provisions for biodiversity offsetting<sup>1368</sup>.

1599. Mr Barr made the valid point that district plans are not required to contain assessment matters and that policies guide decision-making<sup>1369</sup>. He recommended no change to this policy.

1600. Although not addressed directly in the context of this policy, evidence in support of submissions, including that of Dr Espie, considered that it was relevant to consider on an application for indigenous vegetation clearance, whether the same or similar vegetation communities existed and were protected in the near vicinity. While this may be a matter which can be determined

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<sup>1364</sup> Submissions 373 (opposed by FS1254, FS1313, FS1347), 600 (supported by FS1209, opposed by FS1034), 791 and 794

<sup>1365</sup> Submissions 339 and 706 (opposed by FS1162, FS1254, FS1287)

<sup>1366</sup> Submissions 378 (opposed by FS1049, FS1095) and 600 (supported by FS1209, opposed by FS1034)

<sup>1367</sup> Submissions 339 and 706 (opposed by FS1162, FS1254, FS1287)

<sup>1368</sup> Submission 373, opposed by FS1254, FS1313, FS1347

<sup>1369</sup> C Barr, Section 42A Report, paragraph 11.72

in applying the significance criteria under recommended Policy 33.2.1.9, we consider this policy would provide helpful guidance to decision-makers.

1601. For those reasons, we recommend that this policy be renumbered as Policy 33.2.3.4 but otherwise be adopted as notified.
1602. DoC sought the inclusion of a new policy under this objective which would encourage the use of non-regulatory methods such as open space covenants to protect indigenous vegetation. In reality, this submission was only seeking to move notified Policy 33.2.1.6 to under Objective 33.2.3. We have discussed notified Policy 33.2.1.6 above and recommended its adoption as recommended Policy 33.2.1.5. We recommend this submission be rejected.

### 51.9 Objective 33.2.4 and Policies

1603. As notified, these read:

#### Objective

*Protect the indigenous biodiversity and landscape values of alpine environments from the effects of vegetation clearance and exotic tree and shrub planting.*

#### Policies

33.2.4.1 *Recognise that alpine environments contribute to the distinct indigenous biodiversity and landscape qualities of the District and are vulnerable to change from vegetation clearance or establishment of exotic plants.*

33.2.4.2 *Protect the alpine environment from degradation due to planting and spread of exotic species.*

1604. Three submissions on Objective 33.2.4 sought that it be retained<sup>1370</sup>. QPL<sup>1371</sup> sought that it be amended by appending a section recognising the importance of providing access to the Remarkables Alpine Recreation Area.
1605. Mr Barr recommended rejecting the QPL amendment<sup>1372</sup>. In his evidence in support of Submission 806, Mr Brown did not refer to the amendment sought. Rather, he suggested that “adverse” be included before effects<sup>1373</sup>.
1606. Mr Young’s legal submissions on behalf of QPL confirmed that it was the amendments in Mr Brown’s evidence that the submitter was pursuing<sup>1374</sup>.
1607. The only changes Mr Barr recommended be made to the objective were grammatical to ensure it was outcome focussed.
1608. We agree that Mr Barr’s wording is more outcome focussed than the notified version. We see no need to include adverse in the objective. We note that Mr Brown did not explain what positive effects on indigenous biodiversity and landscape values would arise from vegetation clearance in the alpine areas, and none are immediately apparent to us.

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<sup>1370</sup> Submissions 339, 373 (opposed by FS1254, FS1313, FS1347) and 706 (opposed by FS1162, FS1254)

<sup>1371</sup> Submission 806

<sup>1372</sup> C Barr, Section 42A Report, paragraph 11.88

<sup>1373</sup> J Brown, EIC, paragraph 5.10

<sup>1374</sup> Submissions on Behalf of Queenstown Park Limited and Queenstown Wharves (GP) Limited, 27 May 2016 at Section 4

1609. For those reasons we recommend that Objective 33.2.4 be worded as follows:

*Indigenous biodiversity and landscape values of alpine environments are protected from the effects of vegetation clearance and exotic tree and shrub planting.*

1610. The submissions on notified Policy 33.2.4.1 sought:

- a. Retain the policy<sup>1375</sup>;
- b. Amend to protect the alpine environments from change<sup>1376</sup>.

1611. Mr Barr recommended the policy be amended so that it recognised the vulnerability of the alpine environment and that those environments required protection.

1612. We agree that the policy should include protection as the action to be taken, as sought by Submissions 339 and 706, but we consider Mr Barr's wording read more as a statement than a policy. Consequently we recommend that Policy 33.2.4.1 be worded as follows:

*Protect the alpine environments from vegetation clearance as those environments contribute to the distinct indigenous biodiversity and landscape qualities of the District, and are vulnerable to change.*

1613. All the submissions on Policy 33.2.4.2 sought its retention<sup>1377</sup>.

1614. We recommend the policy be adopted as notified.

1615. QPL<sup>1378</sup> sought the inclusion of a new policy which read:

*Recognise the importance of providing public access to the Remarkables Alpine Area, and the benefits associated with increasing use and understanding of the alpine environment.*

1616. Mr Brown, in his evidence in support of this submission, did not mention this proposed policy. Instead he proposed a new policy which read<sup>1379</sup>:

*Encourage land use practices that enable rehabilitation through replanting and pest control.*

1617. Scope for including such a policy could be partially founded in a policy sought under Objective 3.2.2 in Submission 806, which sought recognition of the importance of pest management.

1618. Mr Brown's evidence did include a useful summary of incentives used in other district plans to protect indigenous biodiversity and recommended additional policies emphasise the positive benefits to indigenous biodiversity that could arise from some activities<sup>1380</sup>.

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<sup>1375</sup> Submission 373, opposed by FS1254, FS1313, FS1347

<sup>1376</sup> Submissions 339 (opposed by FS1015, FS1097, FS1340) and 706 (opposed by FS1015, FS1097, FS1132, FS1162, FS1254, FS1287)

<sup>1377</sup> Submissions 339, 373 (opposed by FS1254, FS1313, FS1347), 706 (opposed by FS1162, FS1254), 791 and 794

<sup>1378</sup> Submission 806

<sup>1379</sup> J Brown, EIC, paragraph 5.10

<sup>1380</sup> *ibid*, paragraphs 5.4 to 5.6

1619. Mr Barr discussed Mr Brown's evidence and suggested policies in his Reply Statement<sup>1381</sup> and recommended a hybrid policy which he considered should be located under Objective 33.2.1.
1620. We can see the value in district plans containing incentive provisions to ensure long term protection of indigenous biodiversity, and some members of the Panel have had professional experience in utilising such provisions. However, the difficulty we have with both Mr Brown's suggested policies and Mr Barr's recommendation, is that they are not founded in the submissions. Thus, we consider there is no scope for the Council to include those policies in the PDP. We do recommend, however, that the Council investigate the feasibility of including objectives, policies, rules and other methods in the PDP to provide incentives to ensure the long-term protection and maintenance of areas of indigenous biodiversity.

## 52 SUMMARY OF OBJECTIVES AND POLICIES

1621. We have set out in Appendix 4 the recommended objectives and policies. In summary, we regard the combination of objectives recommended as being the most appropriate to achieve the purpose of the Act in the context of this zone, while giving effect to, and taking into account, the relevant higher order documents, the Strategic directions chapters and the alternatives open to us. The recommended new or amended policies are, in our view, the most appropriate way to achieve those objectives.

## 53 33.3 – OTHER PROVISIONS AND RULES

### 53.1 33.3.1 – District Wide

1622. We recommend the changes to this section as described in Section 1.10 of Report 1. We show the recommended wording in Appendix 4.

### 53.2 33.3.2 – Clarification

1623. As notified this read:

*33.3.2.1 Compliance with any of the following standards, in particular the permitted standards, does not absolve any commitment to the conditions of any relevant land use consent, consent notice or covenant registered on the site's computer freehold register.*

*33.3.2.2 Where an activity does not comply with a Standard listed in the Standards table, the activity status identified by the 'Non-Compliance Status' column shall apply. Where an activity breaches more than one Standard, the most restrictive status shall apply to the Activity.*

*33.3.2.3 The rules apply to all zones in the District, including formed and unformed roads, whether zoned or not.*

*33.3.2.4 Refer to part 33.7 for the schedule of threatened species.*

*33.3.2.5 Refer to the planning maps and part 33.8 for the schedule of Significant Natural Areas.*

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<sup>1381</sup> C Barr, Reply Statement, paragraphs 5.11 to 5.12

33.3.2.6 Refer to Part 33.9 for the District’s land environment (defined by the Land Environments of New Zealand at Level IV) that has 20 percent or less remaining in indigenous cover.

33.3.2.7 Refer to the Landcare Research Threatened Environment Classification: [http://www.landcareresearch.co.nz/\\_\\_data/assets/pdf\\_file/0007/21688/TECUserGuideV1\\_1.pdf](http://www.landcareresearch.co.nz/__data/assets/pdf_file/0007/21688/TECUserGuideV1_1.pdf)

33.3.2.8 The following abbreviations are used in the tables. Any activity that is not permitted (P) or prohibited (PR) requires resource consent.

P	Permitted	C	Controlled
RD	Restricted Discretionary	D	Discretionary
NC	Non Complying	PR	Prohibited

1624. Submissions on this section sought:

- a. Retain the provisions<sup>1382</sup>
- b. Delete 33.3.2.4, 33.3.2.5, 33.3.2.6 and 33.3.2.7<sup>1383</sup>
- c. Consequently amend 33.3.2.6<sup>1384</sup>
- d. Delete 33.3.2.3<sup>1385</sup>
- e. Add a new point excluding ONLs and SNAs from ‘natural areas’ for the purposes of the NESETA 2009<sup>1386</sup>.

1625. Our recommendations above in Section 47 means that we consequentially recommend that 33.3.2.4, 33.3.2.6 and 33.3.2.7 be deleted as the provisions they refer to will have been deleted.

1626. Consistent with our approach in other chapters, we recommend this section be renamed as “Interpreting and Applying the Rules”.

1627. DoC have sought that the reference to the schedule of SNAs be deleted as it is covered by the policies. We recommend it be moved and become an advice note following Section 33.3.3.

1628. QPL have suggested that 33.3.2.3 should be deleted as the rules cannot apply to unzoned roads. We do not agree with that proposition.. While roads may not have zoning rules applied to them, it is possible for other rules to apply to that land, so long as the PDP explicitly states that they apply. Rule 33.3.2.3 fulfils that role. We recommend it remain.

1629. The submission by Transpower, seeking to avoid the constraints in the NESETA 2009, was discussed by Mr Barr in the Section 42A Report<sup>1387</sup>. He recommended rejecting the submission as ONLs and SNAs appeared to meet the meaning of ‘natural areas’ in the NESETA 2009.

1630. Ms Craw explained in her evidence<sup>1388</sup> for Transpower that the submission was an attempt to avoid an inconsistency in administration of the PDP. As notified, provision 33.3.4.2 provided an exemption from the indigenous vegetation clearance rules for the operation and maintenance

<sup>1382</sup> Submissions 339 and 706 (opposed by FS1162, FS1254)

<sup>1383</sup> Submission 373, opposed by FS1254, FS1313, FS1347

<sup>1384</sup> Submission 784

<sup>1385</sup> Submission 806

<sup>1386</sup> Submission 805

<sup>1387</sup> C Barr, Section 42A Report

<sup>1388</sup> A Craw, EiC, paragraphs 74 to 77

of existing utilities, but under the NESETA 2009, Transpower would require a restricted discretionary activity consent if such work was within an ONL or a SNA.

1631. In her reply, Ms Scott noted that amending the PDP to provide for Transpower to undertake tree trimming/vegetation removal within a SNA as a permitted activity would be *ultra vires* as Section 43B(3) does not allow a rule more lenient than the NESETA.

1632. We accept that is the legal position and recommend the submission be rejected.

1633. Consequently, we recommend that Section 33.3.2 be adopted as shown in Appendix 1.

### 53.3 33.3.4 – Exemptions

1634. We have already dealt with the notified provisions in this section. There were also four submissions seeking additional exemptions be included.

1635. Two submissions<sup>1389</sup> sought an exemption from the clearance of indigenous vegetation rules for the purpose of irrigating new farm areas. We have discussed the issue of irrigation being a form of clearance in some detail above. In addition, we have made various recommendations to the rules around vegetation clearance. Having considered the evidence presented in the light of the various changes we have recommended, we can see no reason why one form of clearance should be given an exemption when other forms of clearance are regulated. We recommend these submissions be rejected.

1636. QPL<sup>1390</sup> sought an exemption from the indigenous vegetation clearance rules for clearance required for the purposes of constructing a gondola linking Remarkables Park, Queenstown Park and the Remarkables ski area. No evidence was provided to establish why such an exemption should be included. In addition, we note that the Stream 13 Hearing Panel is recommending other submissions seeking bespoke provisions for such a gondola be rejected. We note also that the matters of discretion for Passenger Lift Systems located outside of Ski Area Sub-Zones includes: “Ecological values and any proposed ecological mitigation works”. We recommend this submission be rejected.

1637. Two submissions<sup>1391</sup> sought an exemption as follows:

*Indigenous vegetation clearance undertaken on land managed under the Conservation Act in accordance with a Conservation Management Strategy or Concession; Under the Land Act, in accordance with a Recreation Permit; or the Reserve Act in accordance with a Reserve Management Strategy.*

1638. Although not a submission on this provision, NZ Ski<sup>1392</sup> sought that a rule be included in Table 4 allowing the clearance of indigenous vegetation in a Ski Area Sub-Zone located on Public Conservation land. The same submission also sought the inclusion of additional policies under Objectives 33.2.3 and 33.2.4 to support this rule.

1639. In his Section 42A Report, Mr Barr recommending rejecting these submissions as he considered such an exemption would not result in the Council fulfilling its functions under Section 31 of the

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<sup>1389</sup> Submissions 701 (supported by FS1162) and 784

<sup>1390</sup> Submission 806

<sup>1391</sup> Submissions 610 (supported by FS1229) and 613 (supported by FS1229)

<sup>1392</sup> Submission 572, supported by FS1329, FS1330, opposed by FS1080

Act<sup>1393</sup>. Following the partial withdrawal by DoC<sup>1394</sup> of its further submission in opposition to the NZ Ski submission, Mr Barr noted in his Summary of Evidence<sup>1395</sup> that he could support an exemption in relation to Ski Area Sub-Zones on land administered by DoC.

1640. Given Mr Barr's change in position, we asked that he prepare a draft rule which he considered would enable such an exemption. This was provided by Memorandum of Counsel on 16 May 2016<sup>1396</sup>. Counsel advised that the drafted rule did not form part of the Council's position at that time<sup>1397</sup>. The draft rule read as follows:

*33.3.4.4 Indigenous vegetation clearance within the Ski Area Sub Zones on land administered under the Conservation Act 1987 is exempt from Rules 33.4.1 and 33.4.3 where the relevant approval has been obtained from the Department of Conservation, providing that:*

- a. The indigenous vegetation clearance does not exceed the approval by the Department of Conservation*
- b. Prior to the clearance of indigenous vegetation, persons shall provide to the Council the relevant application and the approval from the Department of Conservation; and*
- c. The Council is satisfied that the additional information submitted to the Department of Conservation adequately identifies the indigenous vegetation to be cleared and the effects of clearance.*

1641. Mr Dent, appearing for NZ Ski Limited<sup>1398</sup>, explained in his pre-lodged evidence<sup>1399</sup> the nature of Concessions required from the Department of Conservation for work which involved the clearance of indigenous vegetation at the Remarkables Ski Area Sub-Zone, and that the information requirements and conditions attached to resource consents required from the Council were virtually identical. In his view, there was no greater level of assessment undertaken by the Council and the process resulted in the Council imposing a subset of the Concession conditions. It was his view that, rather than the Council reneging on its statutory responsibilities under the Resource Management Act, the Council should consider, recognise and accept the assessments of biodiversity values undertaken by DoC in issuing concessions.

1642. In his Evidence Summary, Mr Dent raised concerns that the draft rule prepared by Mr Barr created no certainty by requiring material be lodged with the Council for some form of approval<sup>1400</sup>. He considered the rule lodged in the submission to be more appropriate.

1643. In evidence presented on behalf of the Submitters 610 and 613, Mr Ferguson considered that the approvals required under the Conservation Act, the Land Act or the Reserves Act for vegetation clearance for ski areas subject to such legislation, were alternative means able to be

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<sup>1393</sup> C Barr, Section 42A Report, paragraph 12.35

<sup>1394</sup> Confirmed in an email from Mr Deavoll to the Hearing Administrator dated 21 December 2017

<sup>1395</sup> C Barr, Summary of Evidence – Chapter 33, dated 2 May 2016, at paragraph 7

<sup>1396</sup> Memorandum of Counsel for Queenstown Lakes District Council Providing Requested Further Information, 16 May 2016

<sup>1397</sup> *ibid*, paragraph 3

<sup>1398</sup> Submission 572

<sup>1399</sup> S Dent, EiC, page 21

<sup>1400</sup> S Dent, Executive Summary of Evidence dated 25 May 2016, paragraphs 1.8 and 1.9

considered by the Council<sup>1401</sup>. Ms Baker-Galloway set out for us the permit regime under each piece of legislation<sup>1402</sup>.

1644. Mr Barr confirmed in his Reply Statement that he considered the rule filed on 16 May 2016 to be appropriate without modification<sup>1403</sup>. He also commented on requests made in evidence presented on behalf of Cardrona Alpine Resort Limited<sup>1404</sup> for such an exemption to be provided on private land. We note that while the evidence did allude to incidental clearance of indigenous vegetation occurring due to artificial snow-making and other skiing-related activities, Submission 615 did not seek any changes to Chapter 33.
1645. We agree that there is little to be gained from duplicating the approval process under the Conservation Act with consent requirements under the Resource Management Act in the manner outlined by Mr Dent. No evidence was presented to give us confidence that any approvals required under the Land Act or the Reserves Act would amount to duplication of RMA processes.
1646. We do consider that if reliance to be placed on an approval granted by DoC, the application made and approval granted must be provided to the Council so it has full knowledge of the extent of works and the conditions to be met. We do not, however, consider there should be any requirement to approve such documentation in the manner proposed by Mr Barr. Clause (c) of Mr Barr’s draft rule appears to grant the Council a discretion which is not provided for in the Act.
1647. We also find Mr Dent’s proposed rule in Table 4 to be problematic. That does not require that any Concession approval be held, or that the Council be informed of the work to undertaken. We also consider the location of a rule permitting something does not fit well in a table setting standards for activities.
1648. Consequently, we recommend that a new permitted activity rule be included in Table 1 which reads:

33.4.5	Indigenous vegetation clearance within the Ski Area Sub Zones on land administered under the Conservation Act 1987 where the relevant approval has been obtained from the Department of Conservation, providing that: <ul style="list-style-type: none"> <li>a. The indigenous vegetation clearance does not exceed the approval by the Department of Conservation;</li> <li>b. Prior to the clearance of indigenous vegetation, the Council is provided with the relevant application and approval from the Department of Conservation.</li> </ul>	P
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1649. For completeness, as the rule does not exempt the ski field operator from obtaining any approvals, we consider it implements Objective 332.4 and Policy 33.2.4.1. We do not consider the policies sought by NZ Ski Limited should be included as they are unnecessary and as drafted suggest that no approval is required.

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<sup>1401</sup> C Ferguson, EIC, page 36  
<sup>1402</sup> Supplementary Legal Submissions dated 25 May 2016  
<sup>1403</sup> C Barr, Reply Statement, Section 3  
<sup>1404</sup> Submission 615



### 53.4 33.4 Rules – Clearance of Vegetation

**Table 1**

1650. As notified, this table contained three rules which read:

<b>Table 1</b>	<b>Any activity involving the clearance of indigenous vegetation shall be subject to the following rules:</b>	<b>Non-Compliance</b>
33.4.1	The clearance of indigenous vegetation complying with all the standards in Table 2 shall be a permitted activity.	D
33.4.2	Activities located within Significant Natural Areas that comply with all the standards in Table 3 shall be a permitted activity.	D
33.4.3	Activities located within alpine environments (any land at an altitude higher than 1070m above sea level) that comply with Table 4 shall be a permitted activity.	D

1651. The submissions on this table sought:

- a. Delete this table and include non-compliance status in Tables 2, 3 and 4<sup>1405</sup>;
- b. Make the non-compliance status for all three rules non-complying<sup>1406</sup>;
- c. Retain Rule 33.4.1 as notified<sup>1407</sup>;
- d. Retain Rules 33.4.2 and 33.4.3 as notified<sup>1408</sup>;
- e. Change the non-compliance status of Rules 33.4.2 and 33.4.3 to non-complying<sup>1409</sup>.

1652. In discussing the rules relating specifically to Significant Natural Areas we have also considered the submissions seeking that non-compliance with those rules require a non-complying activity consent<sup>1410</sup>. For the same reasons we consider the non-compliance status for the other standards should remain discretionary.

1653. Turning to the form of this table and those following, we recommend changing Table 1 to a list of activities. We have already recommended that several matters listed as exemptions under notified 33.3.4 be moved into this table as permitted activities. We also recommend that notified Rules 33.4.1, 33.4.2 and 33.4.3 be condensed into a single permitted activity which reads:

33.4.1	Activities that do not breach any of the Standards in Tables 2 to 4.	P
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1654. We also recommend a column showing the non-compliance of each standard be inserted into Tables 2, 3 and 4. Thus, we recommend Submission 806 be accepted in part.

### 53.5 33.5 Rules – standards for Permitted Activities

1655. We have dealt with Tables 2 and 3 in our earlier discussions.

<sup>1405</sup> Submission 806

<sup>1406</sup> Submission 373, opposed by FS1254, FS1313, FS1342, FS1347

<sup>1407</sup> Submissions 339, 600 (supported by FS1209, opposed by FS1034) and 706 (opposed by FS1162, FS1254)

<sup>1408</sup> Submission 600, supported by FS1209, opposed by FS1034

<sup>1409</sup> Submissions 339 (opposed by FS1097, FS1121, FS1340) and 706 (opposed by FS1097, FS1162, FS1254, FS1287, FS1340)

<sup>1410</sup> See Section 52.7 above

**53.6 Table 4 – Activities within Alpine Environments**

1656. As notified, this Table read:

<b>Table 4</b>	<b>Activities within Alpine Environments – land 1070 metres above sea level:</b>
33.5.10	Does not involve the clearance of indigenous vegetation, the planting of shelterbelts, or any exotic tree or shrub planting.
	Clarification: For the purpose of the clearance of indigenous vegetation by way of burning, the altitude limit of 1070 metres shall mean the average maximum altitude of any land to be burnt, averaged over north and south facing slopes

1657. Submissions on this Table sought:

- a. Retain the rule<sup>1411</sup>;
- b. Amend the altitude limit to 800m<sup>1412</sup>;
- c. Change “*exotic tree or shrub planting*” to “*planting of exotic species*”<sup>1413</sup>;
- d. Delete the rule<sup>1414</sup>.

1658. Mr Barr discussed these submission in his Section 42A Report<sup>1415</sup>. He recommended accepting Submissions 373 and 706, and rejecting Submissions 784 and 817. We heard no other specific evidence on this Table and agree with Mr Barr’s reasoning. We recommend some slight rewriting of the rule to make it more certain, and renumbering, such that it reads:

33.5.7	<p>The following rules apply to any land that is higher than 1070 meters above sea level:</p> <p>33.5.7.1 indigenous vegetation must not be cleared; 33.5.7.2 exotic species must not be planted.</p> <p>Except where indigenous vegetation clearance is permitted by Rule 33.4.5</p> <p>Clarification: For the purpose of the clearance of indigenous vegetation by way of burning, the altitude limit of 1070 metres means the average maximum altitude of any land to be burnt, averaged over north and south facing slopes</p>	D
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**54 33.6 RULES – NON-NOTIFICATION OF APPLICATIONS**

1659. As notified, this read:

*The provisions of the RMA apply in determining whether an application needs to be processed on a notified basis. No activities or non-compliances with the standards in this chapter have been identified for processing on a non-notified basis.*

<sup>1411</sup> Submission 373, opposed by FS1313, FS1347

<sup>1412</sup> Submission 817

<sup>1413</sup> Submissions 339 and 706 (opposed by FS1091, FS1097, FS1162, FS1254, FS1287)

<sup>1414</sup> Submission 784

<sup>1415</sup> at paragraphs 12.56 to 12.61

1660. The only submissions on this section sought its retention<sup>1416</sup>. We recommend those submissions be accepted.

## 55 33.8 SCHEDULE OF SIGNIFICANT NATURAL AREAS

1661. We have already dealt with those submissions which sought the deletion of specific SNAs from this schedule. Additional submissions sought:

- a. Retain the schedule<sup>1417</sup>;
- b. Combine into a single schedule<sup>1418</sup>;
- c. List the Bullock Creek Spring as a SNA<sup>1419</sup>;
- d. Only include SNAs where the land owner agrees<sup>1420</sup>.

1662. Other than Mr Barr's discussion of these points in his Section 42A Report<sup>1421</sup>, and Mr Davis' evidence on Submissions 115 and 260<sup>1422</sup>, we heard no evidence on these submissions. In the absence of evidence we are not prepared to recommend any substantive changes to the schedule.

1663. As will be evident from our discussion above of the objective, policies and rules applying to SNAs, we recommend Schedule 33.8 be retained, combined into a single schedule, and renumbered as 33.7.

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## 56 SUMMARY WITH RESPECT TO RULES

1664. We have set out in full in Appendix 4 the rules we recommend the Council adopt. For all the reasons set out above, we are satisfied that these rules are the most effective and efficient means of implementing the policies so as to achieve the objectives of Chapter 33, and those in the Strategic Directions chapters. Where we have recommended rules not be included, that is because, as our reasons above show, we do not consider them to be efficient or effective.

## 57 SUBMISSIONS ON DEFINITIONS NOT OTHERWISE DEALT WITH

1665. Submissions were made on the definitions of "Nature conservation values"<sup>1423</sup> and "Margin"<sup>1424</sup>. No evidence was presented by the submitters in support of their submissions on these definitions. We note that the Stream 1B Hearing Panel has recommended an amendment to the definition of "Nature conservation values"<sup>1425</sup>. We support the recommendation of that Hearing Panel to the Stream 10 Panel.

1666. We recommend to the Stream 10 Panel that the submissions on "Margin" be rejected.

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<sup>1416</sup> Submissions 339 and 706 (opposed by FS1162, FS1254)

<sup>1417</sup> Submissions 339 (opposed by FS1097), 373 (opposed by FS1313, FS1347) and 706 (opposed by FS1097, FS1162, FS1254)

<sup>1418</sup> Submission 383

<sup>1419</sup> Submissions 115 and 260

<sup>1420</sup> Submissions 791 and 794

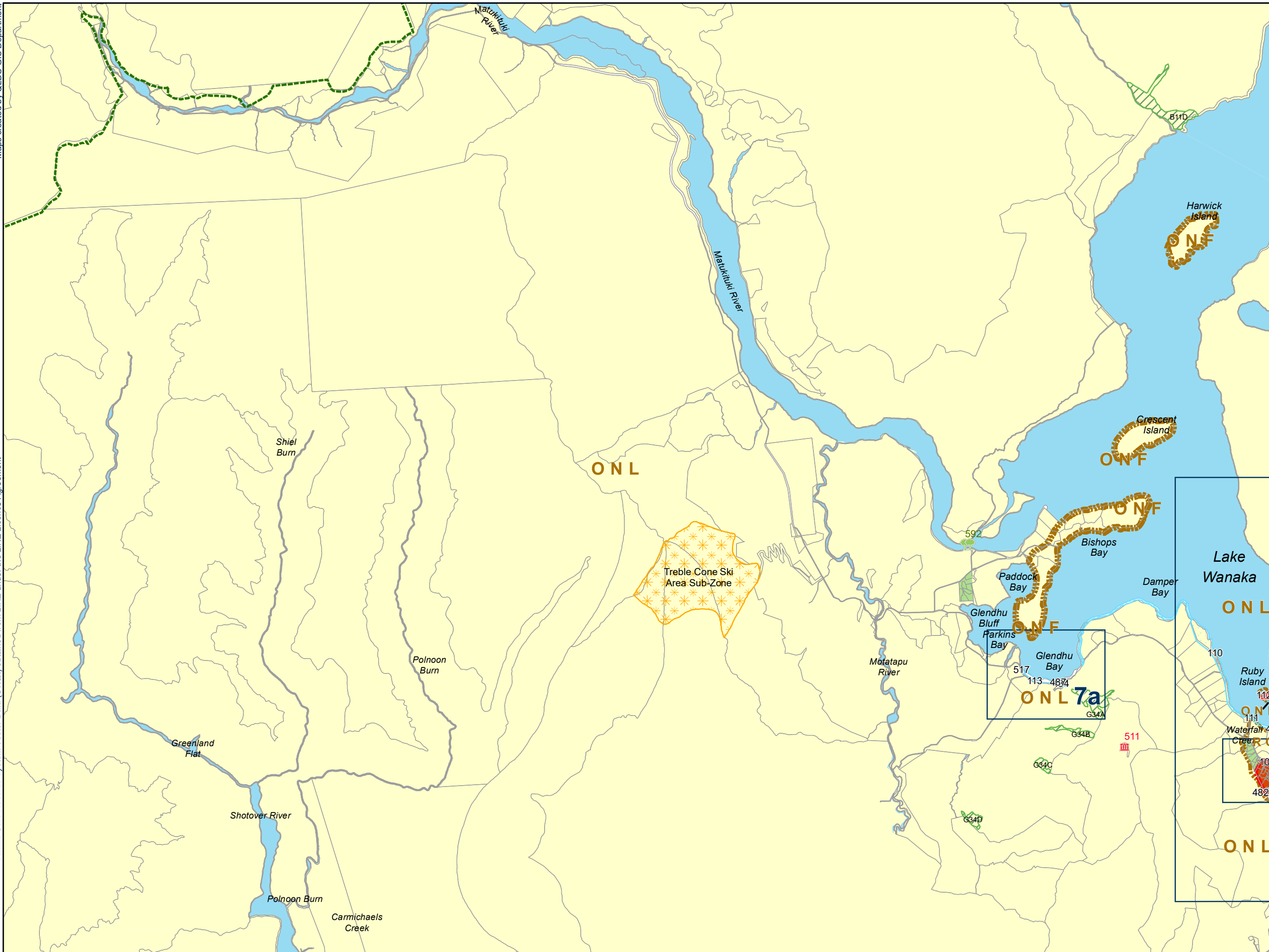
<sup>1421</sup> C Barr, Section 42A Report, paragraphs 13.6 to 13.25

<sup>1422</sup> G Davis, EIC, paragraphs 8.2 and 8.20

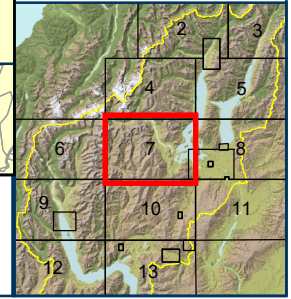
<sup>1423</sup> Submissions 243, 339 and 600, 706 and 836

<sup>1424</sup> Submissions 339 and 706

<sup>1425</sup> Recommendation Report 3, Section 2.3



- Legend**
- Historic Heritage Features
  - Protected Tree
  - Mount Aspiring National Park
  - Parcel/Road Boundary
  - Landscape Classification (ONF, ONL, RCL)
  - Urban Growth Boundary
  - Significant Natural Area
  - Unformed Roads
  - Designated Areas
  - Ski Area Sub-Zone
  - Large Lot Residential A
  - Lower Density Suburban Residential
  - Rural
  - Rural Lifestyle
  - Water (zoned Rural unless otherwise shown)



# QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on the Proposed District Plan

Report 15

Report and Recommendations of Independent Commissioners Regarding  
Ski Area Sub-Zones

Commissioners

Denis Nugent(Chair)

Greg Hill

Scott Stevens

## 8. TREBLE CONE INVESTMENTS LIMITED – SUBMISSION 613

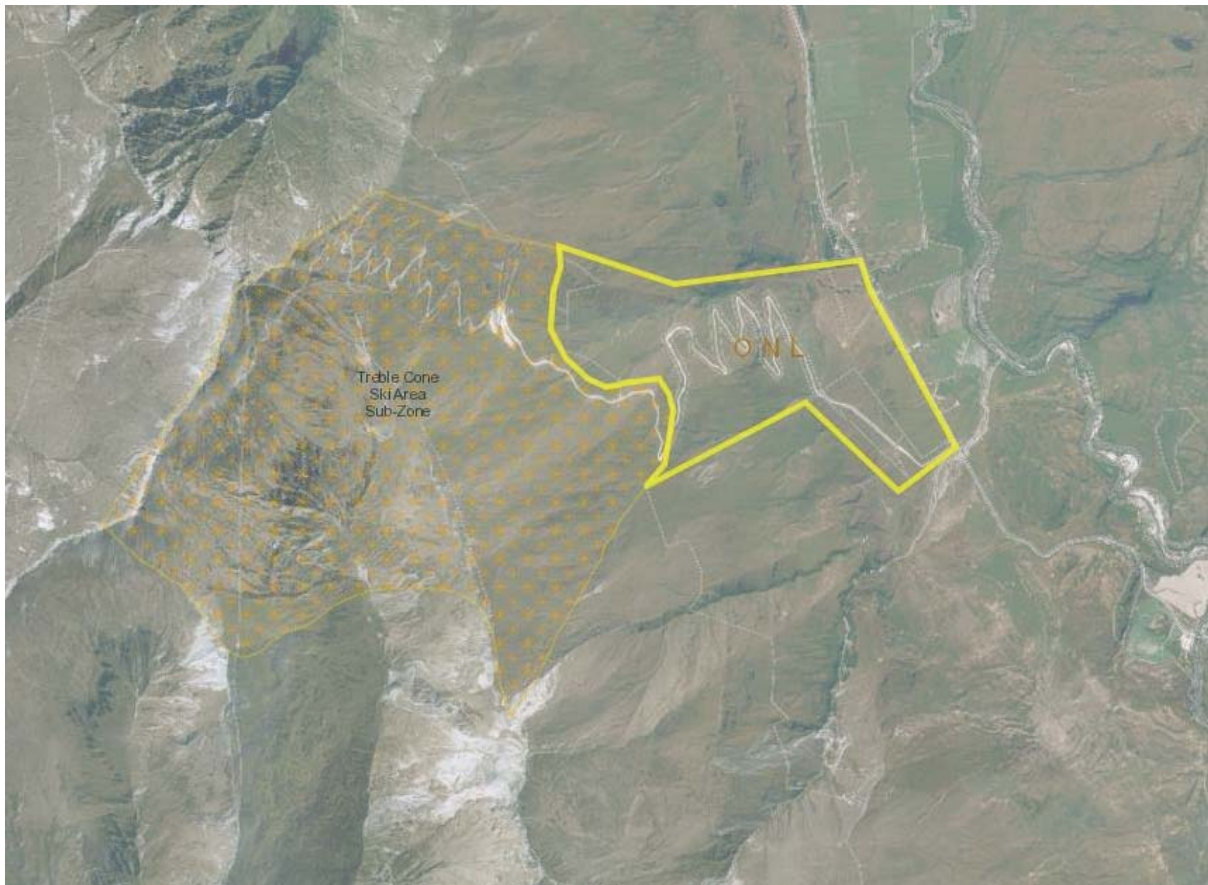


Figure 10: Notified Treble Cone SASZ with the extension sought outlined in yellow

### 8.1. Overview

171. TCI sought to extend the SASZ, as shown in the image above. It was to include the land from the beginning of the ski field access road to the lowest elevation of the notified extent of the SASZ at approximately 1100 masl. The submission was supported by NZSki (FS1229), however the support was primarily identified for the provisions applying to the SASZ (addressed through Stream 2 – Rural) and was unrelated to the rezoning extent.

172. At the hearing TCI offered an alternative approach that would satisfy their concerns. This was to largely to agree with the Council's reply position as presented at the Rural hearings and in these hearing specifically in relation to SASZs. The 'offer' was that PLS and other transportation systems (eg roading) be Restricted Discretionary Activities (RDA) outside of SASZs. On this basis no extension to the Treble Cone SASZ would be sought.

173. Ms Baker- Galloway set out in her legal submissions for TCI that<sup>41</sup>

*Having now had the benefit of reviewing the Council's position as set out in its rebuttal evidence lodged 20 April 2017, along with the "full package" set out in Council's replies to other relevant hearing streams, the Submitters have carefully considered the points made*

<sup>41</sup> Ms Baker- Galloway, paras 9 and 10, pg 3.



*and can now largely support the position advanced by Council as another option that achieves the Submitters' objectives. To be of assistance the Submitters have therefore refined the package in support of Council's position that involves ..... no extension to the Treble Cone SASZ, along with consequential changes to the plan provisions. It is submitted this option could equally achieve the Submitters' objectives in respect of enabling access to the SASZs in a manner that meets the relevant tests and that gives effect to the objectives and policies of the PDP.*

*To be clear, the Submitters' relief package submitted in their experts' evidence in chief is not being withdrawn, and is still supported as one suitable alternative to achieve sustainable management and the Submitters' core objectives. However to be of assistance, the Submitters can also now support the alternative promoted by Council, subject to minor changes.*

174. Mr Ferguson, in this supplementary evidence dated 5 May 2017 stated:

*In light of the Council's Rebuttal Evidence Soho and Treble Cone have considered further the mapping of these SASZs. The main objective for Treble Cone and Soho with respect to the mapping of the SASZs has been to secure through an appropriate rule framework the provision of land based vehicle access and/or passenger lift access to both ski areas. This objective stems from the clear direction provided within the Proposed District Plan ('PDP') to encourage the growth, development and consolidation of ski area activities and the disconnect in planning terms with the provision of the necessary access to such areas through the rural zone.<sup>42</sup>(emphasis added)*

175. He further set out<sup>43</sup>

*In the event the Panel find that the approach outlined in this Supplementary Evidence to the management of access to the SASZs is the most appropriate method to achieve the objectives of the plan relating to the growth development and consolidation of the Treble Cone and Soho ski areas, the revised relief contained within Appendix 2 sets out the basis under which this could be achieved ..."*

176. Mr Ferguson's supplementary evidence then went on to set out the wider framework of provisions relating to the SASZs which were part of the earlier hearing streams. He also included (in Appendix 2 to his evidence) a set of revised provisions that he considered appropriate. For the purpose of this report, he included an RDA rule for "Passenger Lift Systems or other transportation system or land based vehicle access used to convey passengers to and from a Ski Area Sub Zone"<sup>44</sup>

177. Ms Banks, in her Reply Statement largely agreed with the submitters and provided a set of provisions similar to those proposed by Mr Ferguson, but in a different format (for example Ms Banks provided two separate RDA rules for PLSs and other transportation system or land based vehicle access used to convey passengers to and from a Ski Area Sub Zone, where as Mr Ferguson had them as one). Ms Banks, as part of the wider amendments to the SASZ provisions, recommended the deletion of Rule 21.4.19 which stated that SAA outside the SASZ

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<sup>42</sup> C Ferguson, Supplementary evidence para 4, pg 2.

<sup>43</sup> *ibid* para 10, page 3.

<sup>44</sup> *ibid*, Appendix 2 - rule 24.1.19

are a non-complying activity; a necessary change given the recommended changes in the Rural and SASZ hearing recommendations.

178. We note here that we agree with TCI that what it has proposed would achieve TCI's main objective of securing an appropriate rule framework to provide for land based vehicle access and/or passenger lift access to both ski areas. This approach would give effect to the clear direction provided in the PDP to encourage the growth, development and consolidation of ski area activities and the disconnect in planning terms with the provision of the necessary access to such areas through the rural zone.
179. The Rural Hearing Panel has addressed the issue of the appropriate plan provisions for SASZ's (see that report). To 'support' the position by more specifically providing or PLS and other forms of access to and from the SASZ's, that Panel has recommended the additional policy below

*Provide for appropriate alternative (non-road) means of transport to and within Ski Area Sub Zones, by way of passenger lift systems and ancillary structures and facilities.<sup>45</sup>*

180. This policy, along with the 'package' of recommended changes made to the Rural and SASZ provisions better ensure that SASZs can function as the PDP envisages they should. It will also 'achieve' other strategic objectives of enabling economic development, enhancing recreational use, while also protecting/managing outstanding and other landscapes.
181. In terms of the SASZ hearings, we find that having heard all of the evidence, which we briefly addresses below, not extending the SASZ but providing for PLS and other access as an RDA with appropriate matters of discretion is a more efficient approach and method in section 32 terms. This approach avoids establishing SASZ's on the lower slopes (generally below 1100masl), and the potential adverse effects of enabling SAA's at these lower altitudes.
182. We also accept the evidence (Mr Darby and others) that the consent held by TCI for a gondola is likely to be exercised, and we have considered this within the context of the existing environment. We address this briefly below also.

## 8.2. Landscape

183. Dr Read's evidence described the location of the proposed rezoning as a combination of valley floor and mountain side landscapes. She noted the valley floor was modified pasture whereas the mountainside landscape is steep with indigenous grasses and shrubs with patches of remnant beech in gullies. Dr Read considered that the area has high natural character and is highly memorable, but that the ski field access road was a prominent visual feature on the mountainside which detracted from its natural character and aesthetic coherence.
184. Dr Read was of the opinion that the range of activities and physical works anticipated in the SASZ could have significant adverse effects on the landscape. She also considered that the existing consent for the gondola, as opposed to extending the SASZ, was a better way to mitigate any adverse effects. On this basis Dr Read opposed the proposed rezoning.
185. Ms Pflüger's landscape evidence for TCI provided a detailed description of the existing landscape character and values found within the existing Treble Cone SASZ and the proposed

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<sup>45</sup> Recommended Policy 21.2.6.4



extension to it. Her assessment, unlike Dr Read's, concluded that the landscape's ability to absorb change within the Treble Cone extension area was relatively high. This was due to the existing modifications in the ski areas and the existing access to the ski areas. In coming to this view, she had taken into account the existing access road and the consented gondola alignment including an identified base station area, as part of the existing environment.

186. We agree with Ms Pflüger that the landscape could absorb some change for the reasons she set out, including the consented gondola as part of the existing environment.

### 8.3. Ecology

187. Mr Davis, Council's ecologist, identified the extent of the rezoning to be highly modified, having being subject to extensive pastoral activity including oversowing and top dressing, with indigenous beech forest and shrubland habitat in a defined area at the northern area of the proposed rezoning. Mr Davis was of the opinion that this area of beech forest and shrubland should be excluded from any SASZ, but otherwise did not oppose the proposed rezoning.

188. No other expert ecological evidence was provided. Given our acceptance of not expanding the SASZ but providing for PLS's as a RDA with ecology as one of the matters of discretion, we are satisfied that any ecological issues would be adequately addressed.

### 8.4. Findings

189. We have set out our recommendation already above. However we wish to record that we accept Mr Darby's evidence that it is likely that the existing gondola consent will be given effect to, and how important the gondola access is to the future of the Treble Cone ski field.

190. This is encapsulated in Mr Darby's summary statement, where he states<sup>46</sup>:

*The consented gondola to the Treble Cone ski area is a critical part of the development plan for the long terms security of the ski area. It is anticipated that the current access road will reach carrying capacity, and the gondola is the solution to addressing the growth and safety matters arising from that carrying capacity. Also the consented gondola is necessary to reduce the current risk associated with access being dependant on the ski access road, which is vulnerable to closure from time to time.*

191. As already mentioned above, we accept the gondola consent forms part of the existing environment.

192. As part of the 'package' of controls sought by TCI, Mr Ferguson proposed the following matters of discretion for the PLS and other access methods:

- a. The route of the passenger lift system and the extent to which the passenger lift system breaks the line and form of the landscapes with special regard to skylines, ridges, hills and prominent slopes.
- b. Impacts on landscape values from the alignment, surface treatment and design of any vehicle access, including measures that can mitigate effects on visual quality and amenity values of the landscape.
- c. Whether the materials and colours to be used are consistent with the rural landscape of which the passenger lift system will form a part.
- d. Whether the geotechnical conditions are suitable for the passenger lift system or vehicle access and the extent to which they are relevant to the route.

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<sup>46</sup> Mr Darby, Summary Statement, para 10, pg 3.

- e. Lighting.
  - f. The ecological values of the land affected by vehicle access, structures and activities and any proposed ecological mitigation works.
  - g. Balancing environmental considerations with operational requirements and economic viability of Ski Area Activities.
  - h. The positive effects arising from directly linking settlements the District's transportation network with ski area sub zones and providing alternative non-vehicular access.
193. Ms Banks proposed a similar set of provisions (worded differently) but also included light reflectivity and erosion and sediment control.
194. We have recommended a rule more similar to Mr Ferguson's provisions, particularly having one rule addressing both PLS and other access methods, whereas Ms Banks had them as two rules. The recommended plan provisions are set out at the end of this report and in Chapter 21 – Rural as shown in Appendix 1 to Report 4A.
195. It was discussed at the hearing if the phrase "and economic viability of Ski Area Activities" - should remain in the matters of discretion. In a different context, Mr Goldsmith, for MCSL, set out in his legal submissions (at Appendix 2) matters about financial and commercial viability, and why these were not relevant. We agree.
196. Mr Darby considered that this phrase was important (along with other matters of discretion, including the positive effects of any development of PLS's). He stated:<sup>47</sup>
- "...I recommend the matters of discretion include reference to important matters such as operational requirements, positive effects, and implications for the economic viability of ski area activities, to ensure the restricted discretionary assessment of any proposal covers matters that are critical to the development of a ski area. We are operating in an international market and to ensure long term sustainability of the ski are industry in this district, we need to ensure the ski areas continue to develop and remain attractive and viable".*
197. While we understand what is being sought - i.e. that the overall viability of a ski field may well be enhanced by a PSL, we do not think a Council should have to 'inquire' into the economic viability (balancing or otherwise with other factors). We find that it is appropriate to consider the positive effects of the proposal, and applicants may provide information that shows that one of the positive effects is the greater viability of the ski area.
198. We also support, Ms Banks' suggestion of the inclusion of earthworks provisions (erosion and sediment control). As has been addressed earlier in this report, the Council has now notified, as part of Variation 2, Chapter 25 - Earthworks, and that we recommend the inclusion of earthworks as a matter of control and discretion with reference to Chapter 25.
199. Overall we agree that PSLs and other access options outside of SASZs, where they provide access to and from a SASZ should be more enabled than the notified PDP. The submitter and the Council both agree that this can be achieved by an appropriately draft RDA rule, along with the other 'package' of amendments to the PDP as have been addressed in the Rural recommendation report and this report.

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<sup>47</sup> Mr Darby, Summary Statement, para 13, pg 4

**8.5. Recommendation**

200. We recommend the following:

- a. Accept in Part the submission by TCI (407)
- b. Accept in Part the submission by TCI (407).
- c. Accept in Part the further submission of NZSki (1153)

201. Insert the Rule 21.4.24 in Chapter 21 as set out below:

Rule Number	Activity	Activity Status
21.4.24	<p>Passenger Lift Systems not located within a Ski Area Sub Zone</p> <p>Discretion is reserved to:</p> <ul style="list-style-type: none"> <li>a. The Impact on landscape values from any alignment, design and surface treatment, including measures to mitigate landscape effects including visual quality and amenity values.</li> <li>b. The route alignment and the whether any system or access breaks the line and form of skylines, ridges, hills and prominent slopes.</li> <li>c. Earthworks associated with the construction the Passenger Lift System.</li> <li>d. The materials used, colours, lighting and light reflectance.</li> <li>e. Geotechnical matters.</li> <li>f. Ecological values and any proposed ecological mitigation works.</li> <li>g. Balancing environmental considerations with operational requirements of Ski Area Activities.</li> <li>h. The positive effects arising from providing alternative non-vehicular access and linking ski area sub zones to the roading network.</li> </ul>	RD