

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Stream 15 Report

**Report and Recommendations of Independent Commissioners
Regarding Chapters 25, 29, 31, 38 and Visitor Accommodation**

**Report 19.1 – Introductory Report:
Procedural and Statutory Matters**

Commissioners

Denis Nugent (Chair)

Sarah Dawson

Calum MacLeod

Robert Nixon

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1. PRELIMINARY

1.1 Terminology Used in Stream 15 Reports

1. Throughout this report and Reports 19.2, 19.3, 19.4, 19.5 and 19.6 we use the following abbreviations:

Act	Resource Management Act 1991
ARHMZ	Arrowtown Residential Historic Management Zone
BMUZ	Business Mixed Use Zone
Clause 16(2)	Clause 16(2) of the First Schedule to the Act
Council	Queenstown Lakes District Council
Decisions Version	Those parts of Stage 1 of the Proposed District Plan for Queenstown Lakes District on which the Council made its decisions on 5 May 2018
FENZ	Fire and Emergency New Zealand
HDRZ	High Density Residential Zone
LDSRZ	Lower Density Suburban Residential Zone
MDRZ	Medium Density Residential Zone
NPSFWM 2014	National Policy Statement for Freshwater Management 2014
NPSUDC 2016	National Policy Statement on Urban Development Capacity 2016
NZTA	New Zealand Transport Agency
ODP	The Operative District Plan for the Queenstown Lakes District as at the date of this report
Partially Operative RPS 1998	The Partially Operative Otago Regional Policy Statement 1998
Partially Operative RPS 2019	The Partially Operative Otago Regional Policy Statement 2019

PDP (Decisions Version)	Those parts of Stage 1 of the Proposed District Plan for Queenstown Lakes District on which the Council made its decisions on 5 May 2018
PDP (Stage 1)	Those parts of Stage 1 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015 on which the Council has not made a decision and has not been varied by PDP (Stage 2)
PDP (Stage 2)	Stage 2 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 23 November 2017 as varied on 9 August 2018
Proposed RPS	The Proposed Regional Policy Statement for the Otago Region Decisions Version as amended by Environment Court decisions as of the date of this report
QAC	Queenstown Airport Corporation Ltd
QLDC	Queenstown Lakes District Council as submitter
QPL	Queenstown Park Ltd
Real Journeys Group	Real Journeys Limited ¹ ; Go Orange Limited ² ; Cardrona Alpine Resort Limited ³ ; Te Anau Developments Limited ⁴
RPL	Remarkables Park Ltd
RPS	The Operative Regional Policy Statement for the Otago Region dated October 1998 in the form it was prior to parts being revoked on 14 January 2019
SASZ	Ski Area Sub-Zone
Stage 1	Those parts of Stage 1 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015 on which the Council has not made a decision and has not been varied by Stage 2
Stage 2	Stage 2 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 23 November 2017 as varied on 9 August 2018

¹ Submission 2466
² Submission 2581
³ Submission 2492
⁴ Submission 2494

1.2 Topics Considered

2. The subject matter of the Stream 15 hearing was Chapters 25, 29, 31 and 38, and variations to the PDP (Stage 1) to insert provisions relating to visitor accommodation in Chapters 2, 7, 8, 9, 10, 11, 16, 21, 22, 23, 41, 42 and 43. Chapters 25, 29 and 31 are District Wide chapters. Various amendments to the PDP (Stage 1) were included in association with each of the proposed new chapters. These amendments were also dealt with in this hearing stream.
3. Chapter 25 deals with earthworks (Report 19.3). The provisions recognise the need for earthworks, but propose controls to minimise the adverse effects of earthworks on the environment. Associated with Chapter 25 are variations to Stage 1 provisions to:
 - a) amend definitions notified in Chapter 2 and include additional definitions in Chapter 2;
 - b) amend Rule 27.4.2 (Decisions Version) in Chapter 27; and
 - c) delete the earthworks provisions notified in Chapter 41.
4. Chapter 29 is concerned with land transport (Report 19.4). The purpose of the chapter is to manage works within roads, manage the development of transport infrastructure both on and off roads, and to manage land-use activities so they are undertaken in a manner that maintains the safety and efficiency of the land transport network. Associated with Chapter 29 are variations to Stage 1 provisions to:
 - a) amend the notified definition of “Park and Ride” and insert additional definitions in Chapter 2;
 - b) Delete notified text in Chapter 37 relating to roads;
 - c) include new provisions related to public water ferry services in Chapter 21 and Chapter 12;
 - d) amend notified policy 9.2.6.7 in Chapter 9; and
 - e) correct and update the spatial extent of roads shown on the Stage 1 Planning Maps.
5. Chapter 31 is concerned with signs (Report 19.5). The general purpose of the chapter is to manage the visual amenity effects of signs, and public safety issues in relation to signs. Associated with Chapter 31 are variations to Stage 1 provisions to:
 - a) amend or delete definitions notified in Chapter 2; and
 - b) amend notified Rule 17.5.10.1 in Chapter 17.
6. Chapter 38 proposes new open space and recreation zones throughout the District (Report 19.6). Five new zones were proposed: Nature Conservation; Informal Recreation; Active Sport and Recreation; Civic Spaces; and Community Purposes. The application of these various zones (and applicable subzones) were also dealt with in this hearing stream. Associated with Chapter 38 are variations to Stage 1 provisions to:
 - a) amend the notified definition of “Camping Ground” and insert additional definitions in Chapter 2;
 - b) delete the last paragraph of notified section 6.2 in Chapter 6;
 - c) amend notified Rules 6.4.1.2 and 6.4.1.3 in Chapter 6;
 - d) insert a new subdivision standard in Chapter 27;
 - e) amend notified Rule 35.4.7 in Chapter 35; and
 - f) insert a new standard in Table 2 of Chapter 36.

7. The visitor accommodation variation inserted provisions in the PDP (Stage 1) relating to Residential Visitor Accommodation, Homestays, and other visitor accommodation, including applying Visitor Accommodation Sub-Zones on the Planning Maps (Report 19.2).
8. The various amendments to Stage 1 provisions of the PDP means that this Hearing Panel has dealt with a number of submissions and further submissions lodged on Stage 1 which were transferred to Stage 2 due to the operation of clause 16B(1) of the First Schedule to the Act.

1.3 Appointment of Commissioners

9. By resolutions of the Council on 23 March and 3 May 2018 under section 34A of the Act, the Council appointed a panel of Hearing Commissioners to hear the submissions and further submissions on Stage 2 of the PDP, and to make recommendations to the Council on those submissions and further submissions.
10. Appointed to this Panel were: Denis Nugent (Chair), Sarah Dawson, Calum MacLeod and Robert Nixon.
11. The Council additionally delegated to Denis Nugent, as Chair, under section 34A of the Act, the authority to hear and determine procedural and jurisdictional matters in relation to the PDP.
12. By Council resolutions dated 29 October and 26 November 2015, Messrs Nugent, MacLeod and Nixon had been appointed to hear submissions lodged on Stage 1 of the PDP.

1.4 Notification and Submissions

13. Stage 2 of the PDP was publicly notified on 23 November 2017. The summary of submissions was notified on 12 April 2018. The summary of submissions was notified for an additional 5 working days on 11 May 2018 to correct an oversight in the wording of the original summary.
14. On 12 July 2018 a summary of Submission 2661 by Wanaka View Motel Limited was publicly notified after the Chair waived the time for lodgement of the submission⁵.
15. On 26 July 2018 a summary of part of Submission 2311 by Streat Developments Limited was publicly notified after it was discovered the part of the submission seeking the addition of a visitor accommodation sub-zone had been omitted from the summary notified on 12 April and 11 May 2018.
16. On 9 August 2018 a summary of part of Submission 2618 by Queenstown Airport Corporation Limited was publicly notified after was discovered to have been omitted from the summary notified on 12 April and 11 May 2018.
17. On 20 September 2018 a summary of Submission 2662 by Relax It's Done Limited was publicly notified. This submission had been lodged in time but became lost within the Council's electronic filing system.

1.5 Hearing Arrangements

18. The hearings were held in Queenstown on 4th, 5th, 6th, 7th, 17th, 18th, 19th, 24th, 25th and 27th of September 2018, and in Wanaka on 10th and 12th September 2018. An additional hearing was held in Queenstown on 24th October 2018 in relation to a submission not notified for further submissions until September 2018.

⁵ See below – Section 1.6

19. Parties heard from on Stream 15 matters were:

Council

- Sarah Scott (Counsel) in relation to Chapter 38 and Visitor Accommodation (4th and 5th September 2018)
- Heidi Baillie (Counsel) on 24th October 2018
- Christine Edgley (author of the Section 42A Report on Chapter 38)
- Jeannie Galavazi (Acting Parks Planning Manager)
- Robert Heyes
- Amy Bowbyes (author of the Section 42A Report on Visitor Accommodation – Text Provisions)
- Rosalind Devlin (in relation to Visitor Accommodation Sub Zones – Mapping)
- Michael Wakefield (Counsel) in relation to Chapters 25, 29 and 31
- Stuart Crosswell
- Michael Smith
- Victoria Jones (author of the Section 42A Report on Chapter 29)
- Trent Sunich
- Jerome Wyeth (author of the Section 42A Report on Chapter 25)
- Amanda Leith (author of the Section 42A Report on Chapter 31)

Peter Howe⁶

Clark Fortune McDonald & Associates⁷

- Nicholas Geddes

Mike Hansen⁸

- Nicholas Geddes

Barbara Fons⁹

- Inga Smith

Inga Smith¹⁰

Richard Donald¹¹

Kaye Parker¹²

Nikki Gladding¹³

Andre Simon¹⁴

⁶ Submission 2429 and Further Submission 2780

⁷ Submission 2297

⁸ Submission 60

⁹ Submission 2793

¹⁰ Submission 2361

¹¹ Submission 2001

¹² Submission 2233

¹³ Submission 2411

¹⁴ Submission 2138

Judith Bryant¹⁵

Bridgit Parker¹⁶

Hospitality NZ – Central Otago Branch¹⁷

- Bridgit Parker

Loris King¹⁸

Ella Hardman¹⁹

Andi Delis²⁰

NZTA²¹

- Anthony MacColl

Jill Gardiner²²

Trilane Industries Limited²³

- Graeme Todd (Counsel)

Willowridge Developments Limited²⁴

- Graeme Todd (Counsel)

Glen Dene Limited and Sarah Burdon²⁵

- Graeme Todd (Counsel)
- Sarah Burdon
- Duncan White

Debra Murray²⁶

- Amanda Murray

Amanda Murray²⁷

Paterson Pitts (Wanaka)²⁸

- Duncan White
- Mike Botting

15 Submission 2058
16 Submission 2152
17 Submission 2556
18 Submission 2076
19 Submission 2048
20 Submission 2174
21 Submission 2538
22 Submission 2406
23 Submission 2409
24 Submission 2408 and Further Submission 2718
25 Submission 2407
26 Submission 2486
27 Submission 2345
28 Submission 2457

Wanaka Yacht Club²⁹

- Duncan White

Bridesdale Farm Developments Limited³⁰

- Warwick Goldsmith (Counsel)
- Hayden Knight
- Stephen Skelton
- Dr Shane Galloway
- Andrew Carr
- John Edmonds

Ngai Tahu Property Limited and Ngai Tahu Justice Holdings Limited³¹

- Amanda Leith
- Andrew Carr

Heidi Ross³²

Abe Francis³³

Kellie Francis³⁴

Millbrook Country Club Limited³⁵

- John Edmonds
- Ben O'Malley

Patrick Dodson³⁶

NZSki Limited³⁷

- Sean Dent

Skyline Enterprises Limited³⁸

- Sean Dent
- Michelle Snodgrass

Bookabach³⁹ and Bachcare⁴⁰

- Diana Hartley (Counsel)
- Mark Chrisp
- Lesley Preston

²⁹ Submission 2232
³⁰ Submissions 655 and 2391
³¹ Submissions 2335 and 2336 and Further Submission 2739
³² Submission 2371
³³ Submission 2115
³⁴ Submission 2116
³⁵ Submissions 2295 and 2305
³⁶ Submission 2053
³⁷ Submission 2454
³⁸ Submission 2493
³⁹ Submission 2302
⁴⁰ Submission 2620

- Peter Miles

Young Changemakers – Wakatipu Youth Trust Youth Advisory Group⁴¹

- Sophie Thompson
- Sofia Tarquet
- Noah Bayliss
- Helena Hornbacher

Teece Irrevocable Trust No. 3⁴²

- Gerard Cleary (Counsel)
- Benjamin Espie
- Elizabeth Stewart
- Mr Lloyd (in attendance)

Mount Crystal Limited⁴³

- Sean Dent

Brian Reeve⁴⁴

Major Domo Limited⁴⁵, Touch of Spice Limited⁴⁶ and NZSIR Luxury Rental Homes Limited⁴⁷

- Joshua Leckie (Counsel)
- Ben Farrell
- Lisa Hayden (for Major Domo Ltd and Touch of Spice Ltd)
- Katie Scholes (for NZSIR Luxury Rental Homes Ltd)
- Fiona Stevens (for Major Domo Ltd)
- Jacqui Spice (for Touch of Spice Ltd)
- Charlotte Nevill (for Touch of Spice Ltd)

RPL⁴⁸ and QPL⁴⁹

- Rachel Ward
- Timothy Williams

Queenstown Central Limited⁵⁰

- Ian Gordon (Counsel)
- Gerard Thompson

The Darby Group of Submitters⁵¹

- Maree Baker-Galloway (Counsel)

⁴¹ Submission 2495

⁴² Submission 2599

⁴³ Submission 2450

⁴⁴ Submission 2443

⁴⁵ Submission 2592

⁴⁶ Submission 2600

⁴⁷ Submission 2598

⁴⁸ Submission 2468

⁴⁹ Submission 2462

⁵⁰ Submission 2460

⁵¹ Darby Planning LP (Submission 2376), Henley Downs Farm Holdings Limited and Henley Downs Land Holdings Limited (Submission 2381), Treble Cone Investments Limited (Submission 2373), Soho Ski Area

- Deborah Rowe
- Ralph Henderson
- Christopher Ferguson

Queenstown Airport Corporation Limited⁵²

- Michael Clay
- John Kyle

Heritage New Zealand Pouhere Taonga⁵³

- Denise Anderson

Matakauri Lodge Limited⁵⁴

- Vicki Morrison-Shaw (Counsel)
- Rebecca Holden

Pounamu Holdings Limited⁵⁵, Wanaka Kiwi Holiday Park Motels Limited⁵⁶, Delos Investments Limited⁵⁷, Manor Holdings Limited⁵⁸, SJE Shotover Limited⁵⁹

- Rebecca Holden

RCL Henley Downs Limited⁶⁰

- Vicki Morrison-Shaw (Counsel)
- Daniel Wells

Coherent Hotels Limited⁶¹

- Jeremy Brabant (Counsel)
- Nicholas Grala

ZIV (NZ) Limited⁶²

- Rachel Ward (Counsel)
- Jefferey Brown
- Trent Yeo

Greenwood Group Limited⁶³

- Joshua Leckie (Counsel)
- Bridget Allan

52 Limited and Blackmans Creek No. 1 (Submission 2384), Mt Christina Limited (Submission 2383), Glencoe Station Limited (Submission 2379), and Glendhu Bay Trustees Limited (Submission 2382)

53 Submission 2618

54 Submission 2446

55 Submission 2611

56 Submission 2612

57 Submission 2613

58 Submission 2614

59 Submission 2616

60 Submission 2617

61 Submission 2465

62 Submission 2524

63 Submission 2485

Submission 2552

Airbnb⁶⁴

- Christina Sheard (Counsel)
- Brent Thomas
- Ainslie McLeod

Broadview Villas Limited⁶⁵, T Rovin⁶⁶, and Escarpment Limited⁶⁷

- Jeffrey Brown

Real Journeys Group⁶⁸

- Maree Baker-Galloway (Counsel)
- Fiona Black
- Ben Farrell

Kiwi Birdlife Park Limited⁶⁹

- Vanessa Robb (Counsel)
- Paul Kavanagh

Book & Toys Wanaka Limited⁷⁰

- Vanessa Robb (Counsel)
- Brian Kreft
- Erin Quin

Go Media Limited⁷¹

- Michael Gray

Frankton Community Association⁷²

- Glyn Lewers

QMS Media Limited⁷³

- Andrew Maclennan

Otago Fish and Game Council⁷⁴

- Nigel Paragreen

20. In addition, a letter from Morgan Fallowfield of the Ministry of Education⁷⁵ dated 27 August 2018 was tabled. A letter from Herb Familton of the Department of Conservation⁷⁶ dated 15

⁶⁴ Submission 2390 and FS2768

⁶⁵ Submission 2222

⁶⁶ Submission 2228

⁶⁷ Submission 2230

⁶⁸ Real Journeys Limited (Submission 2466), Go Orange Limited (Submission 2581), Cardrona Alpine Resort Limited (Submission 2492) and Te Anau Developments Limited (Submission 2494)

⁶⁹ Submission 2569

⁷⁰ Submission 2510

⁷¹ Submission 2516

⁷² Submission 2369

⁷³ Submission 2557

⁷⁴ Submission 2455

⁷⁵ Submission 2151

⁷⁶ Submission 2242

August 201 was tabled. An email statement from Adrienne Kendall⁷⁷ dated 16 August 2018 was tabled. An undated statement from Nona James⁷⁸ was tabled on 12th September 2018.

21. Neither Mr Fallowfield, Mr Familton, Ms Kendall nor Ms James appeared at the hearing in relation to these documents.
22. Ms Reilly lodged evidence on behalf of Federated Farmers of New Zealand⁷⁹ but later found she was unable to attend the hearing. She asked that her pre-lodged evidence be tabled.
23. During the course of the hearing we asked a number of parties to supply us with additional information. Through this route we received:
 - a) From the Council:
 - i. Housing Development Capacity Assessment 2017 Queenstown Lakes District, 27 March 2018, prepared by m.e consulting;
 - ii. Business Development Capacity Assessment 2017 Queenstown Lakes District, 15 March 2018, prepared by m.e consulting;⁸⁰
 - iii. Expert witnesses' responses to specific questions put them in relation to visitor accommodation⁸¹;
 - b) For Bridesdale Farm Developments Limited:
 - i. Proposed amendments to Chapter 38 Open Space and Recreation;
 - ii. A plan of the submitter's land identifying where the submitter considered the Active Sport and Recreation Zone should apply⁸²;
 - c) For Wanaka Yacht Club, a plan showing the site boundaries overlaid over an aerial photograph, provided by Mr White;
 - d) For Bookabach, a marked up set of amendments to the proposed visitor accommodation provisions, provided by Ms Hartley;
 - e) For Ngai Tahu Property Limited and Ngai Tahu Justice Holdings Limited, supplementary evidence of Ms Leith;
 - f) For the Frankton Community Association, a report of the US Transportation Research Board entitled Transit Supportive Parking Policies and Programs, dated 2016;
 - g) For Darby Planning LP and others, supplementary evidence of Ms Rowe;
 - h) For ZJV (NZ) Limited, a legal analysis of how the notification provisions in Chapter 38 could be amended⁸³;
 - i) For ZJV (NZ) Limited, a plan showing the company's ziplines overlaid on an aerial photograph along with boundaries of the proposed Ben Lomond Sub-Zone Gondola Corridor, Lower Terminal Area, and Bobs Peak Area, provided by Mr Brown;
 - j) For Coherent Hotels Limited, supplementary legal submissions regarding notification provisions in the Act as amended by the Resource Legislation Amendment Act 2017;
 - k) For Kiwi Birdlife Park Limited, responses to two specific questions put to counsel during the hearing⁸⁴.

⁷⁷ Submission 2396

⁷⁸ Submission 2238

⁷⁹ Submission 2540

⁸⁰ Both provided electronically by Ms Scott on 5 September 2018

⁸¹ Provided under cover of a Memorandum of Counsel dated 14 September 2018.

⁸² Provided under cover of a Memorandum of Counsel dated 21 September 2018.

⁸³ Provided under cover of a Memorandum of Counsel dated 27 September 2018.

⁸⁴ Provided under cover of Memorandum of Counsel dated 27 September 2018

24. Due to a submission being inadvertently excluded from the summary of submissions notified on 12 April 2018 the hearing was reconvened on 24 October 2018 in Queenstown. At this hearing we heard from the following party:

Relax It's Done Limited⁸⁵

- Alastair McIlwrick

1.6 Procedural Steps and Issues

25. The hearings in Stream 15 proceeded on the basis of the pre-hearing general directions made in the two Procedural Minutes issued for Stage 2 Hearings⁸⁶.
26. At the time Stage 2 was publicly notified, counsel for the Council provided a memorandum⁸⁷ advising the Hearing Panel of the matters contained in Stage 2 and provided a list of submissions on Stage 1 which would, as a consequence of the notification of Stage 2, be transferred to the Stage 2 hearings⁸⁸. Relevant to Stream 15, in the memorandum the Council provided an undertaking to receive and consider submissions seeking that a Visitor Accommodation Sub-Zone be applied over land for which a zoning decision was made in Stage 1, but that had not otherwise been notified in Stage 2 with a Visitor Accommodation Sub-Zone⁸⁹. The memorandum also contained a detailed table of changes to parcels and properties affected by updated roading information⁹⁰.
27. In responding to a Minute concerning zoning submissions in Stream 12⁹¹, the Council identified that it had incorrectly rezoned two pieces of land immediately north of the Hawea Camp Ground as Open Space and Recreation: Community Purpose Camping Sub-Zone and advised that the Council officers intended to seek a decision from the Council withdrawing the zoning of that land Open Space and Recreation: Community Purpose Camping Sub-Zone under clause 8D of the First Schedule to the Act, such that the land would revert to the proposed Stage 1 zoning of Rural⁹². The proposed Open Space and Recreation: Community Purpose Camping Sub-Zone was withdrawn from applying to this land at the Council meeting on 8 February 2018⁹³.
28. In a memorandum dated 22 December 2017⁹⁴, counsel for the Council provided more detailed roading data, updating the information in Appendix I of her 23 November 2017 memorandum.

⁸⁵ Submission 2662

⁸⁶ Procedural Minute for Stage 2 Hearings, dated 1 May 2018, and Second Procedural Minute for Stage 2 Hearings, dated 27 July 2018

⁸⁷ Memorandum of Counsel on Behalf of the Queenstown Lakes District Council Advising Panel on Matters Relating to Stage 2 of the Queenstown Lakes Proposed District Plan, dated 23 November 2017

⁸⁸ Relevant to Stream 15 these were Appendix A, Appendix C, Appendix D, Appendix F, Appendix G (in part), Appendix H (in part)

⁸⁹ Op cit, paragraph 13

⁹⁰ Op cit, Appendix I

⁹¹ Third Minute Concerning Memorandum of Counsel Advising on Matters Related to Stage 2 of the PDP, dated 11 December 2017

⁹² Memorandum of Counsel on Behalf of the Queenstown lakes District Council in Response to Panel Minute of 11 December 2017 (Relating to Upper Clutha Hearing Stream 12), dated 13 December 2017, at paragraph 8

⁹³ Minutes of an ordinary meeting of the Queenstown Lakes District Council held on 8 February 2018, item 5, page 13

⁹⁴ Memorandum of Counsel on Behalf of the Queenstown Lakes District Council Providing Further Information Regarding Stages 1 and 2 of the Proposed District Plan

29. On 2 April 2018, the Chair issued a decision waiving the time for lodgement of 26 submissions received after the end of the submission period on 23 February 2018, several of which related to matters heard in Stream 15⁹⁵.
30. On 4 April 2018, the Chair waived the time for lodgement of four submissions (one of which was relevant to Stream 15) where submissions had been lodged after the end of the submission period to replace submissions lodged within the submission period⁹⁶.
31. By way of memorandum of counsel dated 8 May 2018, the Panel was advised that the summary of submissions would be renotified on 11 May 2018.
32. In a decision dated 17 May 2018⁹⁷, the Chair struck out parts of Submission 2460⁹⁸, Submission 2034⁹⁹, Submission 2199¹⁰⁰ and Submission 2325¹⁰¹ as not being “on” Stage 2 of the PDP.
33. In a decision dated 18 May 2018¹⁰² the Chair extended the time that Airbnb could lodge further submissions to Friday 25 May 2018.
34. In a decision dated 28 June 2018, the Chair granted a waiver to Wanaka View Motel Limited to lodge a submission seeking the application of a Visitor Accommodation Sub-Zone on 122 Brownston Street, Wanaka.
35. In a decision dated 2 August 2018, the Chair struck out Submissions 2103.1¹⁰³, 2325.2¹⁰⁴, 2405.1¹⁰⁵, 2451.1¹⁰⁶, 2468.25¹⁰⁷, 2492.8¹⁰⁸ and 2506.1¹⁰⁹. In the same decision, the Chair refused to strike out Submissions 2407.1¹¹⁰ and 2599.1¹¹¹ in total, but provided in both cases that the submission did provide scope. For the submitter to seek the application of a visitor accommodation sub-zone over the land identified in the submission.
36. In a decision dated 29 September 2018, the Chair struck out Submission 2462.19¹¹².

2. STATUTORY REQUIREMENTS

2.1 General Approach to Stream 15 Submissions and Further Submissions

37. Section 1.6 of Report 1 on the Stage 1 provisions of the District Plan Review summarises in some detail the statutory requirements for consideration of submissions and further

⁹⁵ Decision on Late Submissions, dated 2 April 2018
⁹⁶ Decision on Late Submissions, dated 4 April 2018
⁹⁷ Decision Relating to Submissions Not “On” Stage 2, dated 17 May 2018
⁹⁸ Lodged by Queenstown Central Limited
⁹⁹ Lodged by M Paulin
¹⁰⁰ Lodged by K Harford
¹⁰¹ Lodged by D Crawford
¹⁰² Decision Extending Time for Lodgment of Further Submissions, dated 18 May 2018
¹⁰³ Lodged by Kingston Holiday Park Limited
¹⁰⁴ Lodged by D Crawford
¹⁰⁵ Lodged by Kirimoko No. 2 Limited Partnership
¹⁰⁶ Lodged by Nirvana Trust
¹⁰⁷ Lodged by Remarkables Park Limited
¹⁰⁸ Lodged by Cardrona Alpine Resort Limited
¹⁰⁹ Lodged by Arthurs Point Partnership
¹¹⁰ Lodged by Glen Dene Limited and Sarah Burdon
¹¹¹ Lodged by Teece Irrevocable Trust No. 3
¹¹² Lodged by Queenstown Park Limited

submissions on the Proposed District Plan derived generally from the Environment Court's decision in *Colonial Vineyard Limited v Marlborough District Council*¹¹³, as supplemented by subsequent higher order decisions, including but not limited to the decision of the majority of the Supreme Court in *Environmental Defence Society v The New Zealand King Salmon Company Limited*¹¹⁴.

38. Both Report 1 and the cases it cited related to the Act as it stood prior to enactment of the Resource Legislation Amendment Act 2017. Counsel for the Council in opening the Council's case, provided us with a table summarising the updated requirements set out in the Colonial Vineyard Limited case, taking account of the 2017 amendments to the Act¹¹⁵.
39. We understand that, applying clause 16B of the First Schedule of the Act to submissions lodged on Stage 1 provisions overtaken by the notification of Stage 2, and clause 13 of Schedule 12 to the Act, the version of the Act applying, with the exception of one submission, is that at 1 October 2017, that is to say, incorporating the amendments made to the Act by virtue of the Resource Legislation Amendment Act 2017. Relevant changes resulting from the 2017 amendment are:
 - i. The incorporation of reference in Section 6(g) to "*the management of significant risks from natural hazards*" (which we are required to recognise and provide for);
 - ii. The addition of a specific function for the District Council (in Section 31(1) related to "*the establishment, implementation and review of objectives, policies and methods to ensure that there is sufficient development capacity in respective housing and business land to meet the expected demands of the district*";
 - iii. The changes to the notification provisions in sections 95 to 95E inclusive of the Act.
40. No other party drew any additional aspects of the 2017 amendments to our attention as requiring our consideration, and, having reviewed the content of 2017 Amendment Act ourselves, we did not identify any other material changes that we need to factor into our decision-making process.
41. The one submission that is not to be dealt with under the 2017 version of the Act is that lodged on Stage 1 by Bridesdale Farm Developments Ltd¹¹⁶. That submission seeks the rezoning of land south of Lake Hayes Estate. Part of the submission has been dealt with in Stream 14 and part falls to be dealt with in this Hearing Stream. It is to be dealt with under the version of the Act applying to the Stage 1 decisions, and thus the summary in Report 1 is applicable to this submission.
42. With respect to all the other submissions, we find that subject to the potential relevance of those three additional matters that we need to bear in mind when considering the provisions notified in November 2017, the principles set out in Report 1 remain applicable.
43. When applying these principles, however, we need to take account of changes that have occurred in the interim to the higher-order provisions of relevance to our task.

¹¹³ [2014] NZ EnvC55

¹¹⁴ [2014] NZSC38 ("*King Salmon*").

¹¹⁵ Opening Representations/Legal Submissions for Queenstown Lakes District Council, 31 August 2018, at Appendix 1

¹¹⁶ Submission 655

2.2 Regional Policy Statement

44. Report 1 discussed the status of the Proposed Regional Policy Statement for the Otago Region as at the date that report was finalised (28 March 2018). Paragraph 46(e) recorded that large sections of the Proposed Regional Policy Statement were the subject of unresolved appeals to the Environment Court, lessening the weight that could be placed on it.
45. When filing the rebuttal evidence for the Council, Ms Scott filed a memorandum advising the Panel of the status of the Proposed RPS¹¹⁷. She advised that Environment Court consent orders relating to the following parts of the Proposed RPS had been issued at that date:
- a) Chapter 1 (Resource Management in Otago is Integrated);
 - b) Chapter 2 (Kai Tahu);
 - c) Chapter 4.1 (Natural Hazards);
 - d) Chapter 4.2 (Climate Change);
 - e) Chapter 4.4 (Energy);
 - f) Chapter 4.5 (Urban Growth);
 - g) Chapter 4.6 (Hazardous Substances);
 - h) Chapter 5.1 (Public Access);
 - i) Chapter 5.2 (Historic Heritage);
 - j) Policy 5.3.2 and related Method 3 (Land Use Change in Dry Catchments);
 - k) Policy 5.3.3 (Distribution of Commercial Activities);
 - l) Policy 5.3.4 (Industrial Land);
 - m) New Policy 5.3.6 (Tourism and Outdoor Recreation);
 - n) Chapter 5.3 (Infrastructure);
 - o) Chapter 5.4 (Offensive or Objectional Discharges, Precautionary Approach, Pest Plants and Animals, and Activities in the Coastal Marine Area).
46. While presenting the Council's case, Ms Scott was able to provide us copies of two additional Environment Court consent orders:
- a) An amendment to the first paragraph of the section entitled "Kai Tahu" in Part A; and
 - b) Policy 5.3.1 – Rural Activities.
47. As Ms Scott observed, the effect of these orders of the Court is to amend the Proposed RPS with immediate effect. We also accept her submission that these amended provisions do not have "*full legal weight*" so as to entirely replace the previously operative RPS. At least in theory, unless and until the Proposed RPS is made operative, the relevant legal obligation is for us to have regard to the Proposed RPS as amended by the Environment Court consent orders¹¹⁸ and continue to give effect to the Operative RPS¹¹⁹, notwithstanding that in relation to those parts of the Proposed RPS the subject of consent orders, the document is effectively beyond challenge.
48. As noted in the Stage 1 Report 1, however, the fact that the Operative RPS predates all of the National Policy Statements that we also have to give effect to means that the significance of that legal difference is somewhat lessened.
49. Ms Scott also provided us with draft consent order documentation relating to one further aspect of the Proposed RPS, namely proposed amendments to Chapter 3 of the Proposed RPS (Otago has High Quality Natural Resources and Ecosystems).

¹¹⁷ Memorandum of Counsel for Queenstown Lakes District Council Advising Panel and Submitters of PORPS Status, 22 August 2018

¹¹⁸ Pursuant to Section 74(2)(a)(i) of the Act

¹¹⁹ Pursuant to Section 75(3)(c) of the Act

50. While, at the time of our hearing, the amendments proposed in that memorandum had no legal significance, the fact that they had been submitted to the Environment Court by consent meant that the likelihood was, in practice, that the Proposed RPS would be amended substantially in the manner set out in the draft consent documentation.
51. As we were finalising these reports, we were advised that the Regional Council proposed to make all those parts of the proposed RPS that had been the subject of consent orders of the Court, or the Court had made decisions on, operative on 14 January 2019¹²⁰. The effect of which is that the District Plan must give effect to those provisions, and the equivalent provisions of the formerly operative regional policy statement fall away. As we have given substantial weight to the settled provisions what is now the Partially Operative RPS 2019 in undertaking our assessment of the various provisions considered, no changes to our recommendations are required.

2.3 Strategic Directions Chapters

52. The Hearing Panel's Report 1 also considered¹²¹ the potential relevance of Chapters 3-6 as recommended by the Hearing Panel in Stage 1. Those Chapters provide strategic direction for the balance of the Proposed District Plan. The conclusion reached by the Hearing Panel in Stage 1 was that while those chapters were not 'settled', they represented the recommendations of the relevant Hearing Panels as to what was required to meet the relevant legal obligations. Accordingly, in the words of that Report:

"While reference still needs to be made to the relevant higher order documents where relevant to ensure they are given effect, absent issues of scope which might have constrained the Hearing Panel (e.g. from recommending an amendment the Panel felt was required to give effect to a relevant higher order document or to make a provision consistent with Part 2 of the Act) or genuine exceptions not covered (or not fully covered) by the strategic chapters, reference back to Part 2 of the Act, and the higher order documents noted above, is effectively a cross-check in those circumstances, to ensure that this is the case¹²²"

53. Since that Report was released the Council has confirmed the Hearing Panel's recommendations and appeals have been filed on the Strategic Chapters. We agree with and adopt the reasoning of the Stream 14 Hearing Panel in Report 18.1 regarding the approach to be taken to the objectives and policies in Chapters 3-6 of the PDP¹²³.
54. Counsel for several submitters¹²⁴ referred us to case law supporting the proposition that where two or more alternatives can meet the purpose of the Act and the objectives of the PDP, then the *most appropriate*¹²⁵ regime which should be adopted is the less restrictive¹²⁶. We agree with that proposition and have approached our assessment of the rules and other methods proposed in this manner.

¹²⁰ Memorandum of Counsel on Behalf of Queenstown Lakes District Council Regarding the Otago Regional Policy Statement, dated 7 January 2019

¹²¹ At paragraph 48

¹²² Cf *Turners and Growers Horticulture v Far North District Council* [2017] NZHC 764 at [48]

¹²³ Report 18.1, Section 2.1

¹²⁴ Ms Baker-Galloway for Submissions 2376, 2381, 2373, 2384, 2383, 2379, 2382, 2466, 2581, 2492 and 2494; Ms Harley for Submissions 2302 and 2620

¹²⁵ Under section 32(1)(b)

¹²⁶ In particular *Royal Forest & Bird Protection Society of NZ Inc v Whakatane DC* [2017] NZEnvC 51 at [59]

2.4 Zoning Considerations

55. Turning to the issue of rezoning, this also was the subject of commentary in the Stage 1 Reports. In particular, Reports 16 and 17.1 contain a discussion of general principles which we regard as equally applicable to the rezoning submissions we heard¹²⁷.

56. As with those Reports, and for the same reasons, we have taken the view that where a submission seeking rezoning of land is unsupported by evidence (either of Council or the submitter), we have no basis on which to undertake the section 32AA evaluation required of us. Accordingly, such submissions must necessarily be rejected. In those reports dealing with mapping issues (Reports 19.2 and 19.6) we have listed the submissions in this category in a separate appendix.

57. Report 17.1 also found it helpful to refer to and apply a set of zoning principles and other factors applied to the consideration of the most appropriate zoning for particular land. These were summarised at paragraph 132 of the Report as follows:

- a. whether the change implements the purpose of the PDP Strategic chapters and in particular the Strategic Direction, Urban Development and Landscape Chapters;*
- b. the overall impact the rezoning gives to the O[perative] RPS;*
- c. whether the objectives and policies of the proposed zone can be implemented on the land;*
- d. economic costs and benefits are considered;*
- e. changes to the zone boundaries are consistent with the maps in the PDP that indicate additional overlays or constraints (e.g. Airport Obstacle Limitation Surfaces, SNAs, building restriction areas, ONLs/ONF);*
- f. changes should take into account the location and environmental features of the site (e.g. the existing and consented development, existing buildings, significant features and infrastructure);*
- g. zone changes are not inconsistent with long term planning for the provision of infrastructure and its capacity;*
- h. zone changes take into account effects on the environment of providing infrastructure onsite;*
- i. there is adequate separation between incompatible land uses;*
- j. rezoning in lieu of resource consent approvals, where a portion of the site has capacity to absorb development does not necessarily mean another zone is more appropriate;*
- k. zoning is not determined by existing use rights, but these will be taken into account.”*

58. The Report also identified as relevant local context factors:

- a. the layout of streets and the location of public open space and community facilities;*
- b. land with physical challenges such as steep topography, poor ground conditions, instability or natural hazards;*
- c. accessibility to centres and the multiple benefits of providing for intensification in locations with easy access to centres; and*
- d. the ability of the environment to absorb development.”*

¹²⁷ See in particular Report 16 at Section 2 and Report 17.01 at Section 2

59. These principles and factors reflect the broad range of zoning issues that arose in Stream 13. The zoning issues in this Hearing Stream fell into the following narrow categories:
- a) The application of Visitor Accommodation Sub-Zone over urban zoned land;
 - b) The application of Visitor Accommodation Sub-Zone over land zoned Rural;
 - c) The appropriate Open Space and Recreation Zone to apply to existing Council reserves;
 - d) The application of an Open Space and Recreation Zone over Department of Conservation land; and
 - e) The application of an Open Space and Recreation Zone over private land.
60. The last two categories raise issues wider than purely zoning that are discussed in Part F.
61. Our ability to apply some of the zoning issues is hampered by lack of evidence. While the Council did produce economic evidence¹²⁸, that was directed at the issue of residential units and holiday homes being used for visitor accommodation activities rather than making specific provision for visitor accommodation within Visitor Accommodation Sub-Zones. We received no economic evidence from either the Council or any submitters on the zoning issues, thus our ability to consider costs and benefits is constrained.
62. We also received limited evidence on the availability of infrastructure for the urban sites under consideration. In the absence of evidence from the Council to the contrary, we have undertaken our consideration on the basis that adequate infrastructure is available for each of the urban sites.
63. Subject to those limitations, we have approached the rezoning issues consistent with the approach taken by the Stream 13 Hearing Panel as set out above.

3. GENERAL ISSUES

3.1 “Benefits of the Proposal” as Matter of Discretion

64. Several submissions were lodged in respect of Chapters 29¹²⁹ and 38¹³⁰ that sought that all or particular restricted discretionary activities have included as a matter of discretion “benefits of the proposal”. The issue is one with implications for all the chapters considered. Therefore we will deal with it in this report.
65. The only evidence presented on behalf of submitters on this issue was the pre-lodged evidence of Mr Farrell supporting the Real Journeys Group’s submissions. Noting that in his experience there was an inconsistent approach to considering the benefits of a restricted discretionary activity, he considered it appropriate and more effective and efficient if the PDP clarified this point for the benefit of people administering it¹³¹. He also suggested that it could be stated as a general rule applying across the entire District Plan, but that is beyond what the submissions sought and in any event, we are unable to recommend changes to those parts of the District Plan dealt with in Stage 1.

¹²⁸ That of Mr Robert Heyes

¹²⁹ Submissions 2448, 2453, 2465 (supported by FS2754, FS2755, FS2739, FS2760), 2466 (supported by FS2753, FS2754, FS2755), 2474 (supported by FS2739), 2492 (supported by FS2760), 2494 (supported by FS2760), 2552, 2560, 2581 (supported by FS2753), 2590 (supported by FS2739) and 2601

¹³⁰ Submissions 2466 (supported by FS2753, FS2778), 2494 (supported by FS2760, FS2778) and 2581 (supported by FS2753, FS2778)

¹³¹ B Farrell, EiC at paragraph 27

66. Ms Jones did not discuss the matter in her Section 42A Report but recommended in Appendix 2 to that report that the relevant submissions be rejected because *“the matters consider effects of the proposal which includes positive effects so amendment is not necessary”*.
67. Ms Edgley briefly mentioned the Real Journeys Group’s submissions in her Section 42A Report, recommending they be rejected *“as the positive effects of proposals are inherently considered as part of the resource consent process”*¹³². In her rebuttal evidence Ms Edgley returned to issue noting that the benefits of activities are appropriately evaluated through the section 32 process, the substantial use of permitted activity status for frequently occurring activities and through the careful framing of objectives and policies. She did not consider it efficient to require focused consideration of benefits over and above the consideration of actual and potential effects (including positive effects) on the environment as required by section 104 of the Act¹³³.
68. Although the legal submissions filed by counsel for the Real Journeys Group referred to the issue briefly¹³⁴, Ms Baker-Galloway did not make any particular reference to the matter at the hearing. Mr Farrell did not comment on the issue or Ms Edgley’s rebuttal evidence when he appeared at the hearing.
69. We questioned Ms Edgley on her interpretation of how a restricted discretionary activity would be assessed and whether positive effects are able to be taken account of in determining a resource consent application for such an activity. As a consequence, Ms Scott provided a legal analysis of the situation in her reply submissions for the Council¹³⁵.
70. In essence, Ms Scott’s advice was that positive effects associated with an application for a restricted discretionary activity consent can form a relevant consideration under section 104C, but in order for that to occur such positive effects must be either explicitly included as a matter of discretion, or otherwise captured by a matter discretion.
71. Relying on Ms Scott’s legal advice, Ms Edgley, in her reply evidence, stated that she had considered the restricted activities listed in the decisions version of Stage 1 and noted that none of those included benefits of the application as a separate matter of discretion. As a result she considered that to retain consistency within the PDP the *“benefits of the proposal”* should not be included as a standalone matter of discretion in any of the restricted discretionary activities listed in Chapter 38¹³⁶.
72. Ms Scott’s advice, by looking at the broader context of the issue, has been very helpful and we thank her for it.
73. We begin our discussion of this issue by noting that restricted discretionary activity consents are required in two circumstances:
- a) When an activity is listed as a restricted discretionary activity; and
 - b) When an activity is otherwise permitted (or controlled in some instances) and cannot comply with a standard for which the non-compliance requires a restricted discretionary activity consent.

¹³² C Edgley, Section 42A Report at paragraph 14.43

¹³³ C Edgley, Rebuttal Evidence at paragraph 9.2

¹³⁴ Legal submissions for Real Journeys Group, 21 September 2018, at paragraph 59

¹³⁵ Reply Representations/Legal Submissions for Queenstown Lakes District Council – Stream 15, dated 15 October 2018, at paragraph 2.2ff

¹³⁶ C Edgley, Reply Evidence at section 7

74. Taking the second circumstance first, in our view the positive effects of the particular activity would have been taken account of when the activity was classified as permitted. We understand that to be what Ms Edgley was alluding to in her rebuttal evidence¹³⁷. If such positive effects were to be considered again when considering the breach of a standard would amount to double counting. We do note, however, that Ms Scott’s analysis rightly pointed out that some matters of discretion do allow for both positive and adverse effects of an activity to be taken into account¹³⁸. As an example, Rule 38.10.5 (as notified), requiring a setback of 10m from water bodies, has as a matter of discretion “public access”. A jetty which would breach that rule may have a positive effect on public access by enabling access onto the waterbody. While that may be double counting it is clearly anticipated by the standard.
75. Turning to those activities listed as restricted discretionary activities, the matters of discretion often allow for consideration of both positive and adverse effects on the environment. For example, Rule 29.4.7 Non-accessory parking (as notified) lists the following matters of discretion which allow for consideration of positive effects of the proposal:
- Effects on the transport network, including the pedestrian and cycling environment and effects on the feasibility of public transport.
 - Effects on land use efficiency and the quality of urban design.
 - Location, design and external appearance and effects on visual amenity, the quality of the streetscape and pedestrian environment.
 - Effects on safety for its users and the employment of CPTED principles in the design.
 - Compatibility with surrounding activities and effects on the amenity of adjoining sites.
76. The difficulty we have with the matter of discretion proposed by the submitters - “the benefits of the proposal” - is its broad and indeterminable nature. Is the person assessing an application to consider the private benefits and weigh them against any adverse effect the public must bear, or is it limited to public benefits. Are they ecological benefits or economic benefits? Any assessment of such a broad nature, in our view, falls to be determined as a full discretionary activity.
77. Mr Farrell’s evidence did not provide an adequate analysis sufficient for us to undertake the type of assessment required under section 32AA. On the basis of our reasoning outlined above, we consider that it would be very difficult for the amendment sought by the submitters to satisfy that test. We therefore recommend those submissions be rejected.
78. Our specific recommendations on the submission are contained in the appendices attached to the individual topic reports .

3.2 Amendments to Chapters for Consistency

79. In each of Chapters 25, 29, 31 and 38 we are recommending minor amendments to formatting and section heading to ensure consistency with the decisions versions of the Stage 1 chapters. In summary these changes are:
- a. Under the Section “Other Provisions and Rules” the sub-section containing general rules has been entitled “Interpreting and Applying the Rules” and that sub-section is listed prior to any advice notes;

¹³⁷ C Edgley, Rebuttal Evidence at paragraph 9.2

¹³⁸ Op cit, at paragraph 2.6

- b. Where standards have a non-compliance status of controlled or restricted discretionary, we have list the matters of control or discretion in the non-compliance column;
 - c. Throughout the objectives, policies and rules we have replaced bullet points with alphanumeric lists.
80. All of these changes are minor changes with no effect on the substance of the affected provisions. We recommend they be made under Clause 16(2).

4. **FORMAT OF THE STREAM 15 REPORTS**

81. To make the report more manageable we have divided it into six documents based on the topics covered. This document, Stream 15 Report 19.1, has dealt with the procedural and statutory requirements that applied across all the topics considered. It has also dealt with the one topic the subject of evidence and legal submissions that was common to all the chapters considered in Stream 15.
82. Each of the other documents contains our report on the relevant topic and in appendices, the recommended wording of the relevant provisions for that topic and the recommendations on the individual submissions and further submissions on that topic. The remaining documents are:
- Report 19.2 – Visitor Accommodation, including Visitor Accommodation Sub-Zones;
 - Report 19.3 – Earthworks
 - Report 19.4 – Transport
 - Report 19.5 – Signs
 - Report 19.6 – Open Space and Recreation Zones
83. This report should be read in conjunction with the five reports listed above. The recommendations in each of those reports incorporate recommendations made in this report.

For the Hearing Panel



Denis Nugent, Chair
Date: 11 January 2019