BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Rezoning Hearing Stream 12 – Upper Clutha mapping

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LEGAL SUBMISSIONS ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL AS PART OF COUNCIL'S RIGHT OF REPLY

Hearing Stream 12 – Upper Clutha mapping

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TABLE OF CONTENTS

1. INTRODUCTION

1.1 The purpose of these legal submissions is to assist the Hearing Panel (**Panel**) regarding legal issues that have arisen during the course of Hearing Stream 12 (Upper Clutha), and to provide the Council's position on specific issues.

1.2 Filed alongside this right of reply are the planning replies of Mr Craig Barr and Ms Vicki Jones. Having considered matters raised and supplementary evidence produced during the course of the hearing, Mr Barr and Ms Jones' replies represents the Council's position. Attached to Mr Barr's reply is an updated table that sets out the rezoning or planning map annotation changes that reflect the Council's position in reply. This is an update to Exhibit 1, which was provided during the Council's opening.

1.3 In addition, the following expert witnesses for the Council have also provided reply evidence, which is filed alongside these legal submissions:

(a) Mr Phillip Osborne (economics);
(b) Mr Timothy Heath (economics);
(c) Mr Glenn Davis (ecology);
(d) Ms Wendy Banks (transport);
(e) Dr Marion Read (landscape); and
(f) Ms Helen Mellsop (landscape).

1.4 These reply submissions first address higher level strategic matters that apply to all of the rezoning submissions, and then consider specific matters, where reply legal submissions are considered necessary.

1.5 The Panel issued a Minute dated 20 June 2017, which sets out some 50-odd issues (both general and submitter specific) that it suggested the Council respond to in its reply (**Reply Minute**). Some of these issues are addressed in these legal submissions, while others are addressed by specific witnesses in their reply evidence and are not repeated in these legal submissions to avoid unnecessary

duplication, unless further comment is required. For the convenience of the Panel, **Appendix 1** to these submissions is a table confirming where each of the Panel Minute questions are addressed.

2. ANNOTATIONS ON PLANNING MAPS WHERE LAND WITHDRAWN FROM PDP PROCESS

2.1 The Panel queried in para 4 (ii) of its Reply Minute (shortened extract):

> *In relation to the geographical areas withdrawn from the PDP by virtue of Council's 16 March 2017 resolution, how is it that the PDP maps might continue to show notations such as ONL and ONF lines over that land (as suggested in opening submissions for Council)?*

2.2 The Panel also issued a Minute on this matter dated 12 June 2017, with the Council providing a response via memorandum dated 30 June 2017. The Council refers to the approach set out in that memorandum (which is included in **Attachment 2** for this Panel's convenience).

2.3 The Council's witnesses, where relevant, have set out in their Reply Evidence which part of their evidence in chief relates to planning map annotations that were notified in Stage 1, over Stages 2-4 or Volume B land.

2.4 For the avoidance of any doubt, Council confirms its earlier submission, which is that submissions 'on' land notified in Stage 1, no matter what zone type they are pursuing, are within this Panel's jurisdiction.

3. LEGAL TEST – RESORT TO PART 2 OF RMA

3.1 The Panel questioned whether it would be correct for it, in light of the *King Salmon* principle (ie, that resorting to Part 2 is not appropriate to give effect to a higher order document, unless one of the three

exceptions apply),[1] to not go beyond the objectives and policies of the PDP, in particular the PDP 'strategic' objectives and policies (being Chapters 3 to 6) in making recommendations on rezoning submissions.

PDP Objectives and Policies

3.2 While the Council submits that its 'strategic' approach is deserving of considerable weight and respect, there is no authority that counsel are aware of that the Panel should apply the *King Salmon* approach with reference to the PDP's strategic provisions, in the context of Stage 1 of the PDP. The short answer is because the objectives and policies of the PDP are not *established* (ie, no Council decision has been made on them and they are not beyond appeal), so as a matter of law they cannot be assumed to fully give effect to Part 2 of the RMA. For that reason, they most probably also fall within the *uncertain* exemption category and hence it is permissible, and in fact probably mandatory, for the Panel to have regard to superior planning instruments and potentially Part 2. More detailed reasons follow, and it is noted that this is consistent with the Glendhu Bay Trustees (**GBT**) Legal Submissions (Part 2, Appendix 1, paragraphs 52(a)-(g)).

3.3 Prior to *King Salmon,* the 'overall judgement' approach was widely used in the context of changes to lower-order plans. Decision-makers closely considered how a plan change gave effect to Part 2. This approach required specifically assessing proposed plans or changes against the various *Colonial Vineyards* factors *and* the different values expressed in sections 5, including assessing the proposed plan or change against sections 6-8 of the RMA.

3.4 In light of the Council's opening submissions regarding *King Salmon*, the Panel asked about the implications of *Thumb Point Station Ltd v Auckland Council* [2015] NZHC 1035 and *RJ Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81, on its recommendations. Also of some relevance is the *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 139 decision.

1 Where there is illegality, incomplete coverage of an issue, or uncertainty of meaning in a higher order planning document, Part 2 will still be relevant. *King Salmon* at [88].

3.5 In *Appealing Wanaka*, the Environment Court applied the *King Salmon* principle, confirming that there is a rebuttable presumption that higher order documents give effect to Part 2. The Court held that there was no need to refer to any higher order document, provided the plan (in this instance, the Queenstown Lakes Operative District Plan) was certain and not complete or invalid. The Environment Court followed a three-step process:

(a) the starting point, is *settled* higher order objectives and policies of the plan;

(b) if there is any uncertainty, illegality or incompleteness, then consider higher order document immediately above plan, and so on until the issue is cured; and

(c) also consider any new relevant higher order documents since the higher order objectives and policies of the plan became settled.

3.6 The *Thumb Point* decision is consistent with the *Appealing Wanaka* process, with the High Court concluding that there was no deficiency in the plan in that instance, so no need to consider Part 2 and other higher order documents. Importantly however, both cases involved settled objectives and policies.

3.7 In relation to *Davidson*, it is submitted that this has little bearing on the Panel's decision-making in the present instance. It is a decision relating specifically to section 104 of the RMA. The substance of the High Court's decision on the application of *King Salmon* in the context of resource consent applications is outlined at paragraphs [76] – [78] of the judgment, where in summary the Court held that, notwithstanding section 104 being expressly "subject to Part 2", the *King Salmon* principle applies to section 104(1) because the relevant provisions of the planning documents have already given substance to Part 2. Leave to appeal the High Court's decision has been granted. The appeal means that the application of *King Salmon* to resource consent applications has been called into question and

could potentially be overturned.[2] In the interim its application to the plan change context means that there is a heightened importance on settled objectives and policies given their potential impact on resource consent decision-making.

3.8 The more detailed analysis of these cases confirms the position set out in paragraph 2.18 of the Council's opening legal submissions; that is that the *King Salmon* presumption applies where higher order planning documents (or indeed, objectives and policies of the same plan under consideration) are established and certain. There is no authority that the *King Salmon* principle applies to proposed objectives and policies where they are subject to submissions, no decision has been made on them, and they are not beyond appeal. That is, one cannot assume that the PDP 'Strategic' objectives or policies give effect to Part 2 of the RMA (or any higher order document), before a decision has been made on them, and any appeals resolved.

3.9 This submission is entirely consistent with Mr Barr's evidence to the Panel on 17 May 2017 in response to questions of the Panel, that *if* the PDP was to become operative tomorrow, based on the Council's reply position, then the Panel would only need to look to the Strategic objectives, and not beyond. Mr Barr gave one exception, the Beresford submission, which is addressed below.

RPS and PRPS

3.10 Because the PDP strategic objectives are neither established nor certain, the Panel must then consider the next higher order document immediately above the PDP, being the RPS. It remains the Council's position that the RPS, although established, is of little assistance in this regard as although the relevant objectives must be given effect, they are neither highly specific nor directive (in the *King Salmon* sense), and in any event are subject to change through its review and the PRPS decisions version. Which provisions of the RPS/ PRPS

2 Some days after the *Davidson* decision was released, the Environment Court sidestepped the High Court's decision, stating in *Envirofume Ltd v Bay of Plenty Regional Council* [2017] NZEnvC 12 at [143] that "*Part 2 is still relevant ... as an overview or check that the purpose of the Act and that Part 2 issues are properly covered and clear*".

need to be given effect to will be a timing issue depending upon when recommendations are made and whether PRPS provisions become operative in the meantime.

National Policy Statement on Urban Development Capacity (NPSUDC)

3.11 The NPSUDC is also a policy document that the Panel is required to give effect to. The Council's evidence is that the Council's proposed zoning pattern (without additional land beyond the Council's recommendations), combined with the provisions in those zones, will enable the NPS to be given effect to. The Council's evidence also indicates that additional zones and/or more permissive zones (for example by enabling increased density or relaxing built form standards) are not required in order to enable the NPS to be given effect to, in the Upper Clutha. The NPS is enabling policy in that it requires the Council to ensure that at any one time, there is sufficient housing and business land capacity. Although it is accepted that the NPS is established, complete and valid (ie, it does not fall within one of the *King Salmon* exceptions), the NPS does not include any 'environmental bottom lines' as was the case with the NZCPS. For example, it does not include any 'avoid' policies.

3.12 In addition, the NPS states in its preamble that:

> *This national policy statement does not anticipate development occurring with disregard to its effect. Local authorities still need to consider a range of matters in deciding where and how development is to occur, including the direction provided by this national policy statement.*

3.13 Although the NPS requires the Council to provide a certain amount of development capacity, the NPS gives Council a discretion to decide where and how. If the evidence was that the Council could not meet the NPS targets (which is not the case in any event), where and how it should provide additional development is a question for the Council (ie, the up or out decision). It follows that the NPS cannot be an environmental bottom line, in that it cannot be determinative as to whether various rezoning submissions should be approved,

particularly where the Council's evidence is that there is sufficient *realisable* development capacity in the Upper Clutha to give effect to the NPS.

Summary regarding Part 2

3.14 Council reiterates its earlier legal submission that it is permissible that the Panel has regard to Part 2 in its evaluation of relief. The question of weight as between the Strategic Direction chapters, higher order planning instruments, and Part 2 of the RMA is submitted to be a matter for the Panel's discretion, bearing in mind *Colonial Vineyards* and the relevant statutory tests including sections 32 and 75.

3.15 Putting to one side the legal position, it is the Council's evidence (including through Hearing Streams 1-10 on the text of the PDP) that its reply version of the chapters do give effect to Part 2 of the RMA, and therefore give substance to Part 2 of the Act. It is also the Council's submission that no significant challenge to the Council's strategic approach was made in the earlier hearing streams, in terms of the need for the Council to protect its nationally important landscapes in section 6(b), significant indigenous vegetation and significant habitats of indigenous fauna section 6 (c), and maintain its s(7) landscapes, which is at the heart of a large portion of the rezoning submissions before this Panel. It is also submitted that, with regards to its urban development approach, this was not seriously challenged (except for arguably, within the Wakatipu Basin which was the consequence of the Panel's Minute recommending the Council initiate a further Landscape Study, on the Basin.

3.16 In relation to the Beresford submission, Part 2 is primarily relevant because of the unique circumstances as specifically set out in opening submissions. Mr Barr's evidence, both in chief, rebuttal, confirmed orally at the hearing and in his reply, is that he does not consider that Chapter 5 of the PDP (nor any other relevant chapters) covers the issues at hand, and therefore resorting to Part 2 of the Act (in particular Section 8) is appropriate.

4. ARE ZONES METHODS?

4.1 The Panel asked for confirmation of whether a zone is a method under the RMA. The Panel framed the question in the Reply Minute as follows:

> *Please provide clarification on the application of the Section 32 tests to zoning requests. In particular, is zoning a method to achieve the broader objectives and policies of the Plan, or is it a method to achieve the zone/sub-zone (as applicable) objectives and policies (which presumably should reflect those broader objectives and policies). In other words, what is the correct reference point for the section 32 analysis?*

4.2 First, it is accepted and submitted that a zone or sub-zone is a method in that it allocates certain provisions of a plan to a particular area of land, and that zoning should reflect that particular zone and sub-zone's objectives and policies. In terms of the structural approach of the PDP, those particular zone and sub-zone's objectives and policies should in turn reflect the broader objectives and policies set out in the 'Strategic' objectives and policies located in Chapters 3-6.

4.3 This question of the Panel cannot be answered in isolation from the issue of whether it would be correct for it, in light of the *King Salmon* principle, to not go beyond the PDP 'Strategic' objectives and policies in making recommendations on rezoning submissions. The 'Strategic' chapters are not settled nor established, and although a separately constituted Panel heard the evidence on those chapters (with the Chair of this Panel being the common denominator), that cannot be separated out from the rezoning submissions at hand. Further, a large proportion of the 'Zone' specific objectives are not settled nor established, and therefore fall into the same category.

4.4 Therefore the following submissions are made with the express qualifier, that the Council has answered the first question of the Panel's in the negative – that there is no authority that the Panel

should not go beyond the 'Strategic' objectives because they are not established and are not beyond challenge.

4.5 Under section 31 of the RMA, a function of territorial authorities is, through the establishment of objectives, policies and *methods*, to achieve integrated management of the effects of the use, development or protection of land and natural resources. Alongside rules, matters of control and discretion and, for example, assessment matters, zones are also methods. Through section 32, a *provision* includes a method that implements the policies of the proposed plan.

4.6 Section 32 is not explicit as to which objectives of the PDP a zone must give effect to. For the purpose of the Panel's question, it is respectfully submitted to be overly simplistic to suggest that there is only one 'reference point' for its section 32 analysis.

4.7 As the zone specific objectives should reflect the over-arching strategic objectives, Council submits that the appropriate objectives to measure the alternative zones against, are the 'Strategic' objectives located in Chapters 3 - 6 of the PDP. However, as also set out above, it is permissible and in fact probably mandatory, for the Panel to have regard to superior planning instruments and potentially Part 2 (beyond the 'Strategic' objectives).

4.8 The key reason in support of this submission is that this approach provides one 'reference point' – in that two alternative zones (ie, Rural vs. Low Density Residential) can be compared against the one set of 'strategic' objectives. The question then is, is the Rural or the Low Density Residential zone, the most appropriate way to achieve the 'Strategic' objectives?

4.9 It is submitted that it is not practical to use the zone objectives as the 'reference point' in this example, as that would create two reference points, rather than just one (ie, the Council may be arguing that the Rural zone better achieves the Rural objectives, whereas the submitter may be arguing that the LDR zone better achieves the LDR objectives) for a particular area of land. The correct approach is to instead compare each zone against the Strategic objectives (although

again it must be acknowledged that the Strategic objectives are not settled).

4.10 That is not to say that there may be exceptions to this approach. An example is a comparison as to whether a notified zone, and that same zone with a sub zone or overlay, is more appropriate. In this instance there may be some value in going first to the zone specific objectives, in for example determining whether a Rural, or Ski Area Sub Zone (of the Rural zone), is more appropriate. That is not to say that the Strategic objectives are then irrelevant.

4.11 Consistent with our submissions in Section 3 above, the Panel should bear in mind that the majority of objectives and policies in the PDP (whether in chapters 3, 4, 5 (where relevant) and 6, or within a zone specific chapter) are subject to submissions, and therefore are not 'certain' or established in the *King Salmon* sense. It is also relevant that a number of submitters are seeking site specific objectives and /or policies within a zone / sub-zone, in order to achieve the RMA tests in sections 31, 32, 75 and Part 2.

4.12 Council also submits that a comparison of two (or in some instances more) zones cannot be undertaken in isolation from the package of measures that sit within a zone, for example in terms of density and development controls which are relevant to outcomes. Although earlier Panels have heard submissions and will be making recommendations on the PDP text (ie. objectives, policies and rules), it is not always a straight choice between two different zones, but that the package of rules that come with the zones also needs to be carefully considered. This is consistent with counsel's oral confirmation during the Council's opening, that if the Panel recommends site specific rules for a particular rezoning site, it is entitled to include that site specific (text) provision in its recommendations. In addition, various submitters are seeking new sub zones that include objectives and policies for the underlying zone.

4.13 This is consistent with there being no presumption in favour of any particular zoning of a site, and the Panel being required to determine

the most appropriate zoning for the land, which can be anything between the *status quo* (ie. as notified) and the zoning sought, based on the evidence before it.[3] Any variant within those benchmarks is within scope, albeit that this may require changes to objectives, policies and rules. If however the Panel makes any recommendation that differs from the notified zone, it must include a section 32AA evaluation of the new zone, and therefore although there is no presumption in the favour of any particular zoning of a site, there still needs to be an evidential foundation to support a change in zoning away from a notified zone.

5. RELEVANCE OF INFRASTRUCTURE TO RECOMMENDATIONS

5.1 The Panel asked legal counsel to consider in its reply submissions, the relevance of the views given in the Council's infrastructure evidence, to overall decision making. This was framed in the Reply Minute as follows:

> *Please clarify the interrelationship between infrastructure provision and rezoning. Specifically, where an Urban Zone is sought but no/insufficient capacity currently exists in the infrastructure network and no LTP provision is made for the relevant infrastructure upgrade, is that a fatal flaw for the submitter such that the submission cannot be granted (in the Council's view) or is the absence of infrastructure provision relevant but not determinative?*

5.2 Council's position is that a rezoning request should be declined where an urban zone is sought but no or insufficient capacity currently exists in the infrastructure network and no LTP provision is made for the relevant infrastructure upgrade. There are three exceptions in that the Council does not consider it to be a fatal flaw in relation to the Rural, Rural Residential and Rural Lifestyle zones, where on-site infrastructure can be privately provided and the zonings are not anticipated to connect to the Council network. This is consistent with Mr Glasner's evidence. The policy framework for the Rural Lifestyle zone addresses on-site servicing, as does the Rural residential zone,

3 *Infinity Group v Queenstown Lakes District Council* Environment Court, C010/05

noting that the Council expresses unease with these zones being located on the periphery of urban areas because of the expectation that they will be serviced. However overall, the Rural Residential and Rural Lifestyle Zones can be and are self-sufficient in most locations.

NPS-UDC

5.3 A district plan's 'life', or the life of a provision within a plan is generally referred to as ten years, as at that point a council must commence a review of it under section 79(1) of the RMA. This ten year date is encapsulated in the NPS through the medium term definition, which is used in Policy PA1. This provides context for the Panel's question to various witnesses during the course of the hearing of whether the Council could use the NPS as a determinative reason to reject an urban zoning, when either no or insufficient capacity currently exists in the infrastructure network, or no LTP provision is made for the relevant infrastructure upgrade.

5.4 This is not the Council's position; it is not relying on PA1 (ie short, up to three years; and medium term, up to ten years) as a determinative reason to reject a rezoning request. Instead, the relevance of PA1 to the Council is that, in order to give effect to this policy, it must ensure that sufficient development capacity in the short term is serviced, and in the medium term there is sufficient development capacity that is either serviced, or the funding for the development infrastructure required to service that development capacity is identified in the LTP.

5.5 The policy is enabling rather than an 'environmental bottom line'. Mr Osborne and Mr Barr's evidence is that there is sufficient (realisable) development capacity within the notified Wanaka UGB and existing townships of Luggate and Lake Hawea. The relevance of the Council's evidence is that submitters cannot use the NPS as a 'lever' to require the Council to release (ie rezone) additional land for urban development purposes, as there is already sufficient (realisable) capacity under the Council's recommendations. The Council is already giving effect to the NPS under its recommended position, including that it has factored in realisable capacity, as required by PA 1 and PC1.

Integrated management of the effects of the use of land

5.6 Council's position on this issue is that the strategic objectives and policies give effect to Part 2 of the RMA and that infrastructure constraints, as identified in the Strategic Directions Chapter, are a good reason for not rezoning (particularly if land is outside the UGB), for the reasons provided in the Council's evidence to the Strategic Directions hearing supporting the introduction of a UGB into the PDP. Also of relevance is Council's evidence that additional urban zoning to enable urban development, beyond what is recommended by the Council in reply, is not required in order to achieve and give effect to the NPSUDC. In addition:

(a) under section 31, the broad functions of the Council are the establishment, implementation and review of objectives, policies and methods (which includes zones) to achieve the *integrated management of the effects of the use, development* or protection *of land* and associated natural and *physical resources* of the District; and

(b) this approach is embedded within the objectives and policies of the Strategic chapters, including that Council's objective is to ensure urban development occurs in a logical manner that promotes a compact, well designed and integrated form, manages the cost of infrastructure, and protects the District's rural landscapes from sporadic and sprawling development.[4] Chapter 4 also addresses the need for integrated development, and provides that urban development be integrated with infrastructure and services. Objective 4.2.3 also seeks that efficiency of infrastructure operation and provision be maximised, and Policy 4.2.3.4 is particular directive – *Urban development occurs in locations that are adequately serviced by existing public infrastructure, or where infrastructure can be efficiently upgraded*, as is Policy 4.2.8.2- 4th bullet point – Wanaka.

4 Objective 3.2.2.1.

Case law supporting the Council's position

5.7 During the Council's case, the Panel asked if there was case law supporting the Council's position. In *Foreworld Developments Ltd v Napier City Council*[5] the Environment Court held that it is contrary to the purpose of the Act to zone land for an activity, when the necessary infrastructure to allow that activity to occur without adverse environmental effects does not exist and there is no commitment to provide it. In coming to that conclusion, the Court noted that under the operative plan, parts of the subject land were zoned 'deferred residential', which meant that residential use was deferred pending the availability of adequate infrastructure, and in the Court's view, the deferred zoning "*appears to have given rise to expectations that were not fulfilled and probably will not be for some time, if at all*".[6]

5.8 Also of note in that decision is paragraph [20], which is quoted below for convenience:

> *It does not answer the point to say, as Mr Peterson does, that if there is some form of deferred zoning, issues about the provision of infrastructure for more intensive levels of development can be considered as part of any necessary resource consent application. If there is a deferred zoning, by whatever name, and no intention on the part of the Council to provide infrastructure within the life of the Plan, the problems identified in* McIntyre v Tasman District Council *immediately emerge. Unmeetable expectations are raised and the Council is put under pressure to spend money it has decided, as a matter of managing the City in an integrated fashion, to commit elsewhere. That is the antithesis of the function of integrated management of resources imposed on territorial authorities by the RMA. Mr Peterson wants, in essence, a return to the contents of the existing Plan and its provisions for the deferred zoning of parts of the settlement. The short answer to that wish is that time has moved on, and the lessons of giving land deferred zoning where there can be no commitment to providing the necessary*

5 *Foreworld Developments Ltd v Napier City Council* EnvC Wellington W8/2005, 2 February 2005.
6 At paragraph [3].

infrastructure to be considered before more intensive zoning might be appropriate.

5.9 The *McIntyre v Tasman District Council*[7] 'problems' referred to in this extract from *Foreworld* are summarised in the following extract from the *McIntyre* Case (Mr Robinson being the council's engineer):[8]

> *We agree with Mr Robinson that in this case the extension of services such as the sewage system and roading should be carried out in a co-ordinated progression. We hold that if developments proceed on an ad hoc basis they cannot be sustainably managed by the Council – an aspect which is not commensurate with section 5 of the Act.*

5.10 In *McIntyre* the submitter was seeking to, through a plan change, intensify an area of land that had slope stability issues and that was not connected to the Council's sewage system. The provisions of the zone being pursued included a policy that all new residential development was to be connected to a reticulated water and sewage system.[9]

5.11 In coming to its conclusion to not accept the intensified zone, the Court held that the expense of connecting the land to the sewage system was *a very expensive exercise to expect the community to bear*.[10]

5.12 In *Prospectus Nominees v QLDC*[11] the Court was faced with a section 116(1) application where the appellant was seeking a determination that a resource consent could commence immediately, despite an appeal on whether the assessed monetary contribution to the sewerage system was fair and reasonable. This was all in the context of a subdivision consent objection rather than a plan change or plan review. Of relevance is that Judge Jackson accepted that

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7 *McIntyre v Tasman District Council* Planning Tribunal Nelson W083/94, 2 September 1994.
8 At page 17.
9 The Council notes that only a reticulated water supply was required for land with a proposed Sub-Area A Restricted notation. While the submitter's land was notified with this notation, the Court held that the Sub-Area A Restricted notation could not stand on the subject site (page 17). Therefore, the key issue discussed by the Court was *if we allow the appeal, any new residential subdivision on the McIntyre property should be connected to a sewerage system before the subdivision takes place* (page 13).
10 At page 17.
11 *Prospectus Nominees v Queenstown Lakes District Council* EnvC Christchurch C074/97, 17 July 1997.

there are at least two stages where a council may refuse to promote a private person's wishes on grounds of expense to the public purpose and the ratepayers. The first is was explicitly, that it was open to QLDC to have refused the plan change[12] promoted by the applicant on the grounds that it would cause unnecessary expense to the ratepayers. However unfortunately QLDC did not oppose the plan change at that time, instead allowing the plan change whereby residential development became a non-notifiable controlled activity, creating the issues that were being addressed in the Court's judgment.

5.13 Another example within the District, again a subdivision consent appeal (also directly relevant to water infrastructure), is *Willowridge Developments Limited v Queenstown Lakes District Council* [1996] NZRMA 488, where the Planning Tribunal stated at 496:

> *It is plain that the sewerage and water services at Wanaka need upgrading and that they have been in this state for some time. It is unfortunate that the appellant's land was zoned residential .. The reality is that without the upgrading, future development such as those proposed by the appellants will not be adequately serviced.*

5.14 Based on the case law outlined above it is respectfully submitted that the question of capacity or even existence of any infrastructure is entirely relevant to the question of whether an urban zone is appropriate, and can and should be a decisive factor in Panel's recommendations. Whether relevant infrastructure or upgrades to existing infrastructure is planned by the Council in its LTP, which is of course reviewed every three years through a public process, is relevant, and can also be determinative, of whether the Panel should recommend approving or declining rezonings where that infrastructure is not planned. The Environment Court has clearly stated that rezoning land for urban purposes, where there is insufficient capacity, creates unmeetable expectations and is the antithesis of the function of integrated management of resources imposed on territorial authorities by the RMA. This approach is also

12 The zoning of the land was considered and confirmed through *Bell v Central Otago District Council* EnvC Christchurch C04/97, 24 January 1997.

encapsulated in the Council's 'Strategic' chapters, in particular in Chapter 4.

Long Term Plan

5.15 The preparation of an LTP is governed by the Local Government Act 2002 (**LGA**) and involves an extensive process including LGA consultation. The LTP sets the budget for future development, replacement and upgrade of infrastructure, services and assets.[13] Through this process, the Council gives all-encompassing consideration and analysis into where it will spend its money to support future growth. As Mr Glasner described it in his evidence filed in the Strategic Directions hearing:[14]

> *The balance between meeting service demands of the community, while balancing financial requirements are highly relevant factors in the LTP. Specifically, the LTP strategically manages the growth in Queenstown Lakes area, including the location and timing of that growth.*

5.16 In addition, the LTP sets out the agreement between the Council and the community as to the infrastructure and services to be provided and how they will be funded.[15] Mr Glasner also goes on to comment that consistency in these decisions required a *coherent strategic growth management framework*, which is the subject of extensive community consultation as required by the LGA.[16] Further:[17]

> *Commitments to investment through the LTP process in land, consents, buildings and operations rely on the predictable emergence of communities and developments. Sporadic unanticipated development, or development considered on a site by site basis only, risks undermining the delivery of these services, by increasing the likelihood of misplaced assets, and the genuine unaffordability of additional unplanned and*

13 Evidence of Ulrich Glasner on behalf of the Council dated 19 February 2016, filed in Hearing Streams 1A and 1B, at paragraph 4.2.
14 Evidence Mr Glasner dated 19 February 2016, at paragraph 4.2.
15 Evidence Mr Glasner dated 19 February 2016, at paragraph 4.3.
16 Evidence Mr Glasner dated 19 February 2016, at paragraph 4.3.
17 Evidence Mr Glasner dated 19 February 2016, at paragraph 4.5.

inefficient assets to support development in unplanned localities being required.

5.17 It is respectfully submitted that these decisions about how the Council will spend its available funds on development infrastructure to service land is one for the Council to make. The Council has a right to decide its priorities, which is decided through the extensive community consultation required under the LGA. These decisions are ones for which the Council is politically accountable, however they are not ones that the Panel (through the RMA, not the LGA) has any power to investigate or rule upon. Therefore, while the Panel may disagree with the Council's financial decisions that feed into the LTP,[18] the resulting LTP is relevant to the RMA District Plan process, and this has recently been reinforced through its relevance to urban development capacity, in the NPS.

Relevance of this case law to Transport issues

5.18 This case law and discussion is submitted to apply equally to transport. Paragraph 21 of the *Foreworld* case is of particular relevance, where the Environment Court confirmed that its reasons, including that unmeetable expectations are raised and the Council is put under pressure to spend money it has decided to commit elsewhere, were directly relevant to [then] Transit's concern about the potential for unintegrated development to place State Highway 2 under capacity and access pressure. The Environment Court confirmed this to be "a valid concern".

5.19 It is accepted that the NZ Transport Agency (through its powers under the Government Roading Powers Act 1989) has control over all accesses (existing and proposed) between land and any State Highways. It will therefore need to be consulted for any change in land-use and potential intersection upgrades that may be required to accommodate increased traffic associated with various rezonings. However, it is still preferable from the Council's perspective (and it is understood from the Agency's perspective, given its evidence filed in the Queenstown rezoning hearing stream) that the PDP include clear

18 The Council notes that LTP decisions are also based on submissions from the community.

rules regulating access directly onto State Highways, and that zoning takes into account both current and planned future State Highway operations.

5.20 The Council has however accepted that there are some instances where site specific rules are appropriate. We turn to this in section 6 below.

6. COUNCIL POSITION ON SITE SPECIFIC RULES

6.1 Council refers to its opening submissions at paragraph 2.17. The Panel has asked for the Council's position to be confirmed, in terms of whether it is appropriate for the likes of a site specific rule, or structure plan, or deferred zone, to be included in the PDP. This would mean that development under the zone type would be contingent on a certain event occurring.

6.2 Council's position is that site specific rules, structure plans and deferred zones are not supported where there is no evidence that the relevant infrastructure required to service the enabled capacity (waters and transport) are to be either upgraded or constructed, or where there is no desire or likelihood to commit to funding within the LTP for that project. This is for the reasons set out in Section 5 above.

6.3 However, a site specific rule of this nature, or use of a deferred zone, however phrased, which provides that no development can go ahead until a certain work had been completed, may be appropriate in circumstances where there is an anticipated upgrade required to the roading network. Ms Wendy Banks has provided a list of rezoning submissions in her Reply Evidence that she could support, if a mechanism ensuring such works will be completed prior to any development, and Mr Barr in his Reply Evidence has considered what planning mechanism could work.

7. RECOMMENDATIONS ON A GROUP OF SUBMISSIONS THAT ARE OF SIMILAR LOCATION

7.1 On 15 May the Panel asked counsel if the Panel can make recommendations on a group of submissions that requires an integrated solution. The positive answer given at the hearing is confirmed. However, the Panel would need to ensure that there is scope provided within each individual submission, to provide for that integrated solution over that particular area of land.

8. NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT CAPACITY

Upper Clutha 'Urban Environment'

8.1 The Panel in its Reply Minute sought clarification of the Council's view as to the ambit of the urban environment(s) in the Upper Clutha. Mr Barr addresses this particular issue in his Reply Evidence.

Housing Affordability

8.2 The Panel asked legal counsel what the issue of housing affordability means within the context of the NPS-UDC. In the Reply Minute the Panel framed the question as:

> *If the Council's view is that the NPSUDC requires provision to be made for 'affordable' housing (please advise), is the Council satisfied that the PDP as currently framed meets any such obligation, and if not, advise the process and timescale within which it will be addressed?*

8.3 Achieving housing affordability is part of the overall aim of the NPS-UDC. The steps that a council must take to give effect to the NPS, will contribute to overall housing affordability. The Preamble states:[19]

> *This national policy statement aims to ensure that planning decisions enable the supply of housing needed to meet demand. This will contribute to minimising artificially inflated*

19 At pages 2-3 of the NPSUDC.

house prices at all levels and contribute to housing affordability overall.

8.4 This is different from requiring that provision be made for 'affordable housing'. There is no definition of 'housing affordability' in the NPS (nor in the RMA for that matter), and no specific requirement in the NPS that a Council provide for 'affordable housing'.

8.5 Other than the preamble, the only other specific reference to 'housing affordability' in the NPS is in PB6. To ensure that the Council is well informed about demand for housing and business development capacity, urban development activity, and outcomes, it must monitor a range of indicators on a quarterly basis including (amongst others) indicators of housing affordability. This is a very recent requirement, having come into effect on 1 June 2017. Then through PB7, by 31 December 2017 the Council must be using information provided by indicators of price efficiency in their land and development market, such as price differentials between zones, to develop an understanding of how the market is functioning and how planning may affect this, and when additional capacity might be needed.

8.6 Indicators of housing affordability will therefore feed, in the future, into the Council's understanding of demand for housing development capacity, including specifically into the three-year full assessment, required under PB1. The Council is working towards the NPS deadline of December 2018 for that full assessment.

8.7 As mentioned the NPS nor the RMA does not define or provide examples of indicators of housing affordability, but MfE has recently developed guidance to support local authorities in giving effect to evidence and monitoring requirements.[20] For housing affordability, the 'guidance' suggests the data should include the Housing Affordability Measure published by MBIE, and other metrics (ratio of dwelling sales prices to rents; dwelling sales volumes as a percentage of total residential stock; and land value as a percentage

20 NPSUDC: Guide on Evidence and Monitoring (MfE 1310, June 2017). The guidance package includes an Excel spreadsheet model, available at: http://www.mbie.govt.nz/info-services/housing-property/national-policy-statement-urban-development/?searchterm=national%20policy%20statement%2A

of capital value).[21] The guidance document does not have legal effect.

8.8 The NPS and its requirements is however, a vehicle to achieve affordability through ensuring sufficient capacity and providing 'choice' and range of dwelling types (OA2). In addition to the references to 'housing affordability', the NPS includes within the definition of 'demand' in relation to housing, the demand for dwellings in an urban environment in the short, medium and long-term, including the demand for different price points. This is not specifically a 'housing affordability' requirement, but there is a suggestion in the NPS that the council must ensure sufficient opportunities for the development of housing land, to meet demand for different price points, which arguably could include an 'affordable house'. However, what is or is not affordable is largely subjective, and the NPS is not directive in that respect. For completeness, the term 'demand' is used in the following places in the NPS:

(a) Objective OA2: urban environments that have sufficient opportunities for the development of housing and business land to meet demand;

(b) Policy PB1: requirement to carry out at least on a three-yearly basis, a housing and business development capacity that assessment that (amongst other things) estimates the demand for dwellings, including the demand for different types of dwellings, locations and price points, and the supply of development capacity to meet that demand, in the short, medium and long-terms. The Council must complete its first assessment by 31 December 2018;

(c) Policy PB2: the assessment under PB1 shall use information about demand, including future changes in the business activities of the local economy and the impact this might have on demand for housing and business land, and market indicators monitored under PB6 and PB7);

(d) Policy PB4: the assessment under PB1 shall estimate the additional development capacity needed if any of the factors in PB3 indicate that the supply of development capacity is

21 See in particular pages 92-93 of the Guide on Evidence and Monitoring (MfE 1310, June 2017).

not likely to meet the demand in the short, medium and long-term;

(e) Policy PB6: the requirement for monitoring, where one of the reasons is to ensure that local authorities are well-informed about demand for housing and business development capacity;

(f) Policy PC1: local authorities shall provide an additional margin of feasible development capacity over and above projected demand; and

(g) Policy PC4: a local authority shall consider all practicable options available to it to provide sufficient development capacity and enable development to meet demand in the short, medium and long-term.

8.9 In summary, Council is required to monitor housing affordability and is currently undertaking a work stream for this purpose. That work stream will feed, in particular, into the December 2018 full housing assessment.

8.10 In summary, the NPS is not directly about housing affordability and does not 'direct' housing affordability, but is a vehicle to achieve affordability through ensuring sufficient capacity and providing 'choice' and range of dwelling types. Indicators of housing affordability will also feed, in the future, into the Council's understanding of demand for housing development capacity, including specifically into the three-year full assessment, required under PB1, which is to be completed by December 2018.

Contribution of Rural Land and / or self-serviced land (private infrastructure)

8.11 The Panel during the hearing questioned whether Rural land contributes to dwelling capacity, and whether self-serviced urban development contributes to meeting the NPS targets.

8.12 The NPS is focused largely on the capacity of land intended for urban development. For example the definition of 'demand' is limited to demand within 'urban environments'. However, other parts of the

NPS expressly state that the application of various policies is not restricted to the boundaries of a particular 'urban area', and the Council therefore needs to consider dwelling capacity at a district-level, given there is a high-growth urban area within the District's boundaries. This in particular includes PB1, which is the requirement for the three-yearly housing and business development capacity assessment.

8.13 A strict interpretation of PA1 arguably requires the Council to compare capacity against demand, within the bounds of the 'urban environment' only. This was addressed in Council's evidence, for example in Mr Barr's Summary Evidence at [6]:

> *The Council's amended dwelling capacity model outputs incorporating both feasibility and realisable capacity considerations, as explained by Mr Osborne, provide for an overall capacity in the Upper Clutha of 6,615 dwellings against a projected demand of approximately 5000 dwellings out to 2048. This shows that there is more than sufficient capacity for urban development available within the Upper Clutha in appropriate locations. The majority of capacity is within the Wanaka UGB and in my view there is no need to amend the Wanaka UGB or rezone additional land for residential purposes to meet the estimated demand.*
> [footnotes excluded]

8.14 Any existing development capacity within the District, whether private or reticulated within the Council's infrastructure, should contribute to NPS targets (particularly if comparing against District-wide population growth estimates, otherwise there would be no like for like comparison). Council also considers that any capacity that has not yet been taken up, but where the private infrastructure exists, should also contribute to NPS targets.

8.15 Council however accepts that the definition of 'development infrastructure' in the NPS, suggests that the Council should not be contributing development from a particular zone type to NPS targets, where that private infrastructure has not yet been built. For example, the capacity for any *new* Rural Lifestyle or Rural Residential zone,

where such infrastructure doesn't yet exist, should not contribute to NPS targets. Another example is Parkins Bay, if the submitter's rezoning request is accepted, which includes residential (GBT are pursuing 50 houses, compared to the consented 42, along with various commercial activities).

9. SUBMITTERS SEEKING OPERATIVE ZONES

9.1 The Panel has queried through the Reply Minute:

> *Is the Council still of the view (as expressed in opening submissions) that where a submitter seeks to apply an 'operative' zone to land within the PDP, the Hearing Panel should recommend to Council that the land in question be notified as part of Stage 2, but that the status quo zoning should be retained in the interim, given the lack of certainty that it provides to submitters?*
>
> *Is it relevant that some sites the subject of submissions (e.g. at Hawea) have both an operative zone and a PDP zone over them?*

9.2 This question relates to how the Council's recommendations on submissions seeking to apply an ODP zone (or some variation of) to land notified in Stage 1.

9.3 To clarify, the Council's position (recommending re-notification or a variation of the zone alongside a full review of the relevant chapter (depending on timing of Stage 1 decisions/ appeal periods, and Stages 2-4 notification)), is only intended to apply where the Council's recommendations are in support of a zone in the nature of the 'operative' zone being pursued. Where the Council's recommendations are that the notified Stage 1 zone is the most appropriate, Council's position is that the Panel should simply recommend rejecting the rezoning submission, and the notified Stage 1 zone type will remain for the land in question.

9.4 Given the analysis below and Mr Barr's Reply Evidence, Council doesn't consider that a recommendation for a variation is required in relation to any of these submission points.

9.5 The submitters seeking an Operative zone in this hearing stream, and the Council's recommendations are:

RELIEF SOUGHT	SUBMITTER	QLDC RECOMMENDATION
Rural Visitor		
Rural to Rural Visitor Zone:	Sarah Burdon (282) and Jeff Rogers (2)	Reject (note further commentary below)
Visitor Accommodation		
LLRZ (A) to Visitor Accommodation sub zone	Wanaka Kiwi Holiday Park and Motel Ltd (592)	Reject (note further commentary below)
LDR to LDR with Visitor Accommodation sub zone	Weir (111) and Satomi Enterprises Limited (619)	Reject
LDRZ to Visitor Accommodation sub zone	Stonebrook Properties Ltd (62)	Reject

LDRZ to MDRZ with Visitor Accommodation sub zone	Varina Propriety Ltd (591)	Accept MDRZ, Reject Visitor Accommodation sub zone
Township		
RRUZ to Township Zone	Streat Developments (697)	Reject
RRZ to Lake Hawea Township	460 (Jude Battson) and 462 (Joel Van Riel)	Reject the Township zone, but accept a bespoke rule to allow a density of 2000m^2 for the RRZ land at Lichen Lane, Same John Place and Grandview Road, rather than Township zone
RRZ to Lake Hawea Township	697 (Streat Developments)	Reject
Three Parks		
Rural to Three Parks Zone with a Tourism and Community Facilities subzone.	Skeggs (Ranch Royale) (412) and Winton Partners Fund Management No. 2 Ltd (653)	Both Council and submitter Ranch Royale support Large Lot Residential B zoning and the imposition of a BRA area.
Industrial B		
Rural to Industrial B	Willowridge Developments Ltd (249)	Reject

Separate Minute from the Panel

9.6 Of relevance, the Council accepts the view expressed by the Panel (in two minutes relating to the Queenstown Hearing Stream 13 dated 29 May 2017[22] and 8 June 2017[23]) that where a submitter has chosen to pursue an ODP zoning, such as the Rural Visitor Zone, the test of

22 http://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/Hearings-Page/Memorandums/General/General-Submissions-Seeking-ODP-Zones-29-5-17.pdf
23 http://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/Hearings-Page/Memorandums/General/General-Further-Minute-re-ODP-zones-8-6-17.pdf

giving effect to and implementing the strategic directions chapters remains relevant. In addition, the two matters raised by the Panel in paragraph 5 of the 29 May 2017 minute are agreed with:

(a) there is no evidence that those ODP zones will become part of the PDP; and

(b) the Panel would need to understand the entire objective, policy and rule framework proposed, so the Panel can understand what actual and potential effects on the environment the rezoning would have and whether that was consistent with the overall objectives and policies of the PDP.

9.7 Council's position is aligned with the final comment in paragraph of the 29 May 2017 minute; which is that the Chair of the Panel can foresee difficulties in this regard, if a submitter seeks to rely on ODP provisions unaltered, as the entire structure of the PDP is different.

9.8 In this hearing stream on the Upper Clutha, it is submitted that no submitter has satisfied the necessary evidential threshold. It is acknowledged that Mr White in his supplementary brief of evidence and summary for evidence for Sarah Burdon (282, the rezoning of the Hawea Campground), has undertaken an analysis against the Council's s42A version of Chapter 3. However, Mr White appears to have assessed PDP Chapter 3 against the specific proposal (ie, a top down approach), and has not considered how the Operative Rural Visitor Zone objective is the most appropriate way to give effect to PDP Chapter 3 and meet the purpose of the Act. It is submitted that the evidence falls well short in terms of evaluating the entire policy and rule framework and anticipated environmental results as they relate to all provisions within the new proposed zone, both internally and against the wider Strategic chapters, and also in terms of how the chapter would 'fit' within the new PDP structure.

9.9 This can be compared against the Stage 1 zones that have been notified with section 32 reports, and have been subject to a public process of submissions and further submissions, and then

comprehensive briefs of evidence and a hearing, through the earlier 'text' hearing streams.

9.10 Mr White also filed supplementary evidence on 12 June 2017, where he recommended some modifications to the ODP Rural Visitor Zone, largely to "manage the effects of development within the Lake Hawea Campground". Again, it is submitted that this does not address nor meet the statutory tests reflected in paragraph 9.4 above. It remains the Council's position that the Rural Visitor Zone framework provides no assurance that development would both give effect to the Strategic Directions chapters 3-6, and enable the PDP to give effect to section 6 of the Act.

9.11 In relation to the other submission points listed in the table above, Council submits that no evidence of this nature is before the Panel, and therefore the Council's recommendations to reject the rezoning requests and confirm the notified zones, is the most appropriate option.

9.12 If a submitter had brought the necessary level of evidence and satisfied the Council that an ODP zone type, with the necessary amendments to allow it to 'fit' into the PDP structure and give effect to and implement the Strategic chapters, as well as satisfying the Council that the zone chapter itself met the statutory tests, then the Council would need to consider that evidence on its face. It would need to do this in the same way it has assessed other bespoke zones such as the proposed Glendhu Station Zone. The unfortunate outcome of this, given the staged process, is that there is a possibility that a site may end up with a bespoke zone in the PDP, as the Council will still continue to review the Rural Visitor Zone, the Visitor Accommodation Sub Zone, the Township and the Industrial B Zone in their entirely (for example), through Stages 2-4.

9.13 A possible avenue is for the Council to consider notifying a variation in a later stage, to ensure consistency of provisions in Volume A of the land.

Explanation of why not recommendation for variation is required in this hearing

9.14 The Council is investigating an alternative zoning and management regime, to that of the designation process for land that is owned by the Council and used for parks and reserves. A 15.6 ha portion of the land subject to Sarah Burdon's submission that also contains the existing Lake Hawea Camping Ground Designation (175), is a Council reserve. It is submitted that in this instance the Panel can recommend the status quo, being Rural, because the door is not shut for visitor accommodation activity in the Rural Zone in the meantime. That is because the Rural zone provisions includes a fully discretionary activity rule for visitor accommodation activities, which would enable the submitter to seek a consent in the meantime. There is also policy support for visitor accommodation activities. This can be compared to the urban zones, where the activity status would be non-complying.

9.15 As part of the review of withdrawing the provisions from the PDP Residential Zones that relate to Visitor Accommodation, the Council will also need to review whether to include visitor accommodation subzones, both for those that exist in the ODP and also for any new areas. The submission of Wanaka Kiwi Holiday Park (592) falls into this category, subject to the Council being satisfied that the scale and intensity of the activity are appropriate in terms of infrastructure, natural hazards and traffic.

9.16 As part of the review of the ODP Township Zone, the Council are also open to reviewing the Rural Residential Zoned land located on the northern side of Cemetery Road that is subject to the Willowridge (249) and Streat Developments Ltd (697) submissions. It is the case with the Streat Development's (697) submission they can give effect to a resource consent that reflects Township zoning, rather than Rural Residential.

9.17 It is accepted that there is some inherent uncertainty in the Council's recommendation of a future variation for these submission points. However, Council submits that in no instance does the Panel have a

sufficient level of evidence to make a recommendation that any of the ODP zones comes into the PDP, through this particular hearing stream.

Submission sites partly notified in Stage 1

9.18 The Panel Minute questions asks what the Council's position is on these types of submission points. It is understood that in all instances, the Council has recommended the notified zone type as the most appropriate.

9.19 That will not stop the Council, if it chooses to at the time, considering the site as a whole in a later stage (at notification). This will be of particular relevance to the Willowridge (249) submission at Lake Hawea.

10. SUBMISSION IN STAGE 2 SEEKING STAGE 1 PDP ZONE

10.1 The Panel has queried through the Reply Minute:

> *Projecting forward to Stage 2 of the PDP process, how does Council see submissions seeking rezoning of current ODP Zones, where the relief sought is a Stage 1 PDP Zone e.g. land currently zoned Township where a submitter seeks a Low Density Residential Zone.*
> *Will that be possible, or is it the Council's view that such a submission would be out of scope? Would it make a difference if the future rezoning application seeks some local variation to the zone provisions the outcome of the PDP Stage 1 process (e.g. with additional standards)?*

10.2 In later stages of the PDP process, submitters would be entitled to request a Stage 1 PDP zone (e.g. notified Township zone to LDRZ) or any other zone, that would be clearly be within scope, and becomes an evidential test. In fact, depending on timing, there could be significantly more certainty than what exists in Stage 1, if Stage 1 decisions have been released.

10.3 A submitter would be entitled to seek any zone type for its land, whether included in the PDP at any stage or not (ie, as the Glendhu Bay Trustees are seeking in this hearing). If they seek a Stage 1 zone, they are entitled to seek variations to those Stage 1 zone provisions, but it submitted that such variations would need to be specific to the land in question. This may be by way of site specific standards, or possibly a site specific objective and policies, if justified under the statutory tests.

11. IDENTIFICATION OF ONLs AND ONFs

11.1 Question 4 (xii) of the Panel's Minute is:

> *Is it the Council's view that ONLs and ONFs should be determined on landscape advice irrespective of zoning or current use? If not, please provide authority supporting the Council's position.*

11.2 This question has been well traversed during the course of the hearing. The Court of Appeal in *Man o' War Station Limited v Auckland Council* [2017] NZCA 24; [2017] NZRMA 121 has recently addressed the classification process and whether existing authority in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* [2000] NZRMA 59 ***(WESI)*** has been affected by *King Salmon*. The Court of Appeal confirmed the 'top-down' approach in which environmental facts are established first, and the consequences of those facts (ie, the appropriate plan provisions) then flow from those findings. The Court of Appeal confirmed that there is no logical link between identification of an ONL and the activities contemplated by the relevant planning instrument within that ONL. The Court did not overturn the Environment Court and High Court's application of *WESI* factors in its landscape classification assessment, and confirmed at [61] and [62] that:

> *[61] However, the issue of whether land has attributes sufficient to make it an outstanding landscape within the ambit of s 6(b) of the Act requires an essentially factual assessment based upon the inherent quality of the*

landscape itself. The direction in s 6(b) of the Act (that persons acting under the Act must recognise and provide for the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development) clearly intends that such landscapes be protected…

[62] The questions of what restrictions apply to land that is identified as an outstanding natural landscape and what criteria might be applied when assessing whether or not consent should be granted to carry out an activity within an ONL arise once the ONL has been identified. ..

11.3 The Court of Appeal also confirmed that it is not a consequence of *King Salmon* that a higher threshold should be applied to the identification of an ONL.

11.4 It is submitted that the Council's approach has largely been consistent with *Man o War Station.* For example:

(a) Mr Barr's evidence is that where an ONF or ONL is located within a zone other than the Rural Zone, there should be objectives or provisions that manage the respective landscape values and issues to the extent contemplated by the Zone.

(b) for the proposed Glendhu Station Zone (**GSZ**), both experts agree the land is an ONL, and therefore the Council's evidence is that the provisions need to reflect that ONL status;

(c) there are other examples in the Queenstown area, such as the Jacks Point Zone, where the zone provisions includes specific zoning overlays, policies and rules that manage the ONL. Also located in the Wakatipu area, in the ODP, are specific provisions to manage the ONF where it is in the ODP Meadow Park Special Zone.[24]

11.5 In making this submission, it is acknowledged that there are some exceptions within the Upper Clutha area, where the Council has not

24 Craig Barr Strategic Evidence, Section 20.

strictly followed this approach (ie, ONL/ ONF identification first, zoning second), and a degree of pragmatism has been necessary because of previous planning decisions have resulted in ODP Rural Lifestyle and Rural Residential zones over section 6 land. For example:

(a) Mr Barr has made recommendations in response to the Universal Developments Limited (177) submission in his Strategic s42A to amend the ONL line outside of two sites (an area of LDR zoned land on the western base of Mt Iron on map 18, and an area of Rural Lifestyle zoned land on map 22 adjacent to Wanaka-Mt Aspiring Road).

11.6 The correct approach would have been to start with identifying whether the land met the ONL threshold, and then recommending that the land is zoned Rural because the LDRZ framework does not give effect to the PDP Landscapes Chapter. In this instance, this land is identified as being within the Mt Iron ONF, however the LDRZ and Rural Zone boundaries were rolled over from the ODP.

11.7 While there are not any specific rules relating to the ONL for the Rural Lifestyle Zone, the location of the ONL boundary at this location is helpful, and would assist with the application of the Assessment Matters for subdivision in the Rural Lifestyle Zone (22.5.7). The land at this location is also steep and subject to natural hazards.

11.8 The submission of Universal Developments (177) sought that the ONL lines only apply to Rural Zoned land, and does not provide scope to rezone the land. Mr Barr has reversed his recommendations, and how recommends that the ONL lines are not moved.

11.9 Mr Barr also acknowledges that a portion of Mt Iron is zoned Large Lot Residential, is located within the Wanaka UGB and is not shown on the planning maps as an ONF. This is for precedent reasons and the Council has decided not to "down-zone" that land, and there is no submission asking for that through this plan review.

HAWTHENDEN LIMITED (776)

11.10 Mr Barr's Reply Evidence addresses the three areas subject to this rezoning. These submissions focus on the submission point relating to the amendment to the ONL line.

11.11 The unsigned legal submissions for Hawthenden Limited traverse a number of previous Environment Court judgments, making various criticisms of the position reached by the Environment Court (ie, "Court appears to have completely ignored", "hard to comprehend", "extraordinary finding", and "Further of concern is that the Court was quite critical of the evidence of .."), and ultimately submitting that the Council's approach regarding the degree of naturalness (relating to the Alpha Fan) in this hearing, is inappropriate. With respect, the correct time to challenge an earlier decision of the courts is an appeal to a higher court at that time. In the context of the Panel's recommendations, it is submitted that the task for this Panel is to make a recommendation based on the evidence before it, rather than give weight to a critique of evidence provided to earlier Environment Court proceedings (which is not before this Panel), and the subsequent judgments of the Court.

11.12 From a landscape perspective, Ms Mellsop's evidence is that there is no need to include the whole of the Alpha Fan in one or other landscape classification. But, because of the moderate to high level of naturalness of the upper fan, its legibility and its importance to the visual integrity of the Mount Alpha face as a whole mean, it is appropriately included in the ONL of Roys Peak/Mount Alpha.[25]

11.13 In relation to the issue of naturalness, Hawthenden provided the First (Interim) Decision on Plan Change 13 to the Mackenzie District Council District Plan as Exhibit 17, it is understood because of Ms Ayres' reference to it in her EIC. At paragraphs [93] – [103] of that decision, the alternative of using a scale of naturalness is supported as a suggestion, and not as a 2-step process. The Environment Court suggests that a landscape with a moderate to high level of naturalness could be natural enough to be an ONL, and that is the

25 Rebuttal Evidence of Helen Mellsop on behalf of Queenstown Lakes District Council dated 5 May 2017, at paragraph 3.38.

level of naturalness that Ms Mellsop assessed the upper fan as having in her evidence in chief. In addition, it is submitted that the Christchurch City Landscape study that Ms Ayres refers to does not support her approach. That study evaluated each landscape character area holistically, with naturalness being one of the values considered in the evaluation of whether the landscape was outstanding (ie not a 2-step process that discounts areas because they are not natural enough mainly on the basis of vegetation character).

11.14 The Council continues to support its methodology and further it is noted that Council's position is not advanced simply by adopting the Environment Court's position on the appropriate location for the line, but also through Ms Mellsop's expert opinion. It is also noted that Ms Ayres for Hawthenden acknowledged in questions from the Panel that, if they were to prefer Ms Mellsop's methodology, she accepted that the Council's location was largely correct (except for a small portion).

11.15 It is also noted that Ms Ayres supported the Rural Lifestyle zone, but without any assurance that it would ensure that the environmental outcome sought could be achieved.

11.16 Finally in terms of a query regarding scope, it is acknowledged that Ms Mellsop's recommended ONL in some instances goes further down the Alpha Fan, and there is no scope within submissions for this part of her recommendation.

Relevance of intensive farming, or potential for intensive farming, including pivot irrigators

11.17 Hawthenden's case is premised on Ms Ayres' evidence that the level of naturalness of the Upper Fan is not high enough to amount to outstanding. Ms Ayres contradicted this position in questions from the Panel where she gave evidence (largely outside her expertise and of a planning nature) that the ONL rules make the land harder to farm. Counsel refers to the *Man o' War Station* authority, which is

that the identification of the ONL must come first, and be made in the absence of consideration of the planning rules.

11.18 Ms Mellsop was asked by the Panel about pivot irrigators, and legal counsel was asked to confirm in its Reply, the status of these in the recent Environment Court decision on Plan Change 13. It is understood that the question is of relevance to a few submissions, in particular Hawthenden, Solobio, James Cooper and Lake McKay Station.

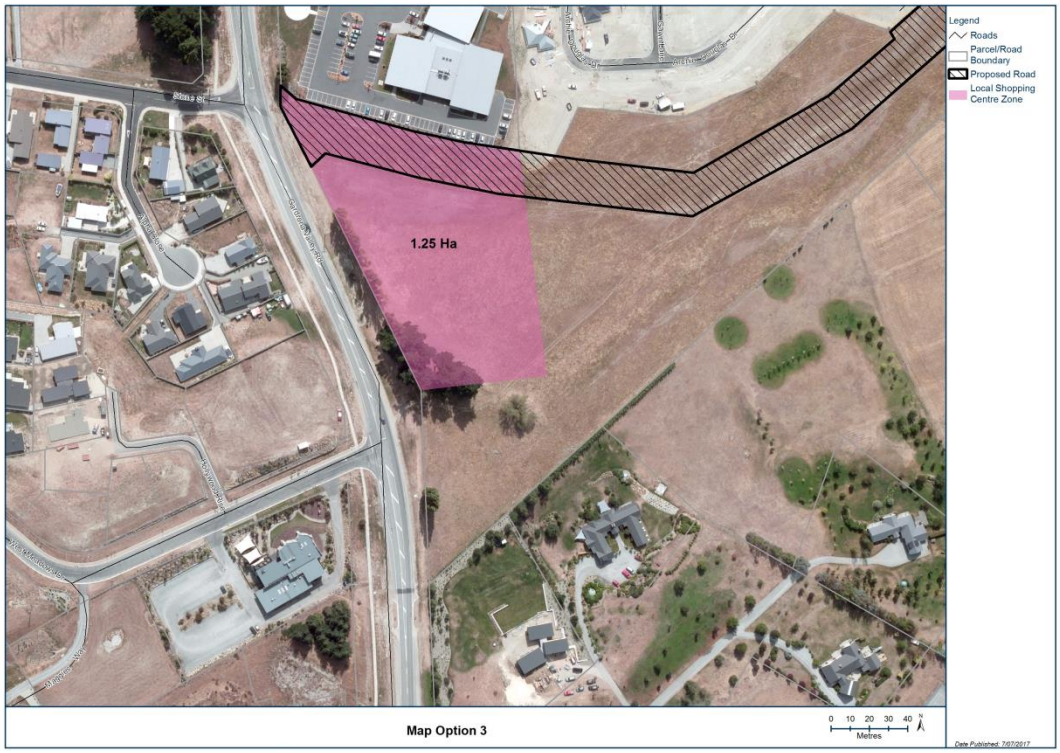
11.19 In *Federated Farmers of New Zealand (Inc) v Mackenzie District Council* [2017] NZEnvC 53 the Environment Court confirmed a discretionary activity status for Pivot irrigators generally (this includes a 250m minimum setback from specified roads),[26] and a non-complying activity status in particular sensitive areas (ie, Scenic Viewing Areas, Scenic Grasslands, Sites of Natural Significance, and Lakeside Protection Areas).[27]

11.20 The Court accepted Rule 15.1.1.a, which states that there shall be no irrigators within Scenic Viewing Areas, Scenic Grasslands, Sites of Natural Significance, or Lakeside Protection Areas. This does not appear to align well with the non-complying status referred to above.

12. CARDRONA VALLEY ROAD - LOCAL SHOPPING CENTRE ZONE

12.1 In summary, Ms Jones' Reply Evidence recommendations are to reduce the LSCZ to the shape and size set out below, which is 1.25 ha in area, and includes the 0.30 ha area that will be consumed by the Road approved by RM170094, if it is constructed. If the road is not developed in that area, development will be somewhat constrained by the sewer main easement that exists within that corridor. The LSCZ does not go quite as far south as West Meadows Road.

26 Under Rule 15.2.1, provided they meet the standards for Permitted Other Activities.
27 Under Rule 15.3.1



TRUSTEES OF THE GORDON FAMILY TRUST (395/FS1193)

12.2 The Gordon Family Trust is opposing the Council's recommendations to reduce the notified extent of the LSCZ located at Cardrona Valley Road.

12.3 Included within the Council's right of reply is a response from Mr Heath to the evidence that Mr Polkinghorne gave orally at the hearing, including Mr Hardie and Mr Polkinghorne's comments that Mr Heath had "discounted tourists". Council's Reply Evidence (Mr Heath and Ms Jones) confirms that there is a need to factor in tourist traffic, which has occurred.

12.4 In response to the Panel's specific question on this matter:

> *Please advise the Council's view as to whether that position is consistent with the role of the LSCZ at Frankton Corner*

12.5 Given Council's Reply Evidence (Mr Heath and Ms Jones) is that there is a need to factor in tourist traffic, Council's view is consistent with the role of the LSCZ at Frankton corner.

Limit floor area

12.6 Mr Hardie on behalf of the Gordon Family Trust challenged the scope to include rules that limit floor area, and also the reduction in overall size of the LCSZ.

12.7 The rules limiting the gross floor area (**GFA**) of retail and office activities to 300m^2 and 200m^2 respectively, were proposed through Hearing Stream 8 and as a result of Willowridge Development Ltd's submission (249). The issue of scope was addressed in the Council's Reply Submissions for Hearing Stream 8 dated 13 December 2016 at paragraphs 6.4 to 6.7. The Council continues to rely on these submissions, and sets them out below again for convenience:

> *Limit to office size*
>
> *6.4 The Council respectfully submits that there is scope within Willowridge's submission to limit the size of offices to no more than 200m^2 GFA.*
>
> *6.5 Willowridge's submission considers that the rules in the LSCZ are too permissive of commercial and retail activities, which has the potential to undermine the town centres and other commercial centres. The specific part of the submission and relief is as follows:*

Provision	*Support/ Oppose*	*Submission*	*Relief Sought*
…			
Local Shopping Centre Zone			
15.4	*Oppose*	*The rules in the Local Shopping Centre Zone are permissive of commercial and retail activities and seem to provide for a range of activities from small scale shopping to supermarkets. This has the potential to undermine the town centres and other commercial centres, particularly where the land zoned neighbourhood shopping centre of a significant size, such as the neighbourhood shopping centre on Cardrona Valley Road.*	*Include rules in 15.4 to restrict retail activities to those providing a local service (dairies, off-license, bakery) with a gross floor area of no more than 400m^2, or rules to like effect.*

6.6 When read as a whole, it is submitted that Willowridge's submission raises issues with the scale of both commercial activities and retail activities. The definition of "Commercial Activity", as defined in notified Chapter 2 of the PDP, includes commercial and administrative offices, and therefore office activities fall within the scope of this submission. While the specific relief sought does not refer to commercial activities, the Council submits

that when the submission is read as a whole it is clear that commercial activities are also sought to have a GFA limit.

Limit retail activities to 300m^2 GFA

6.7 *The Council respectfully submits that there is scope to apply the 300m^2 GFA limit to retail activities, which was included in redraft Rule 15.5.9. As the extract from Willowridge's submission above shows, it sought to restrict retail activities to "no more than" 400m^2 GFA. It is therefore respectfully submitted that these words provide scope to apply a GFA limit of any size less than 400m^2 GFA.*

Reduction in size of LSCZ

12.8 The scope to reduce the size of the LSCZ at Cardrona Valley road was addressed in Ms Bowbyes' section 42A Report dated 17 March 2017 (which was subsequently adopted by Ms Vicki Jones) at paragraphs 4.18 to 4.7. For clarity, the Council respectfully submits that JA Ledgerwood's submission (507) provides scope to reduce the LSCZ at this location as it sought that the zone be reduced in size because they felt that "*for a Neighbourhood Shopping Centre, substantially less land is required*".

12.9 In addition, Willowridge Development Ltd's submission (249) also sought that the LSCZ at this location be reduced in size as per Attachment 2 to its submission, specifically to the black hatched area in the extract below:

12.10 Otherwise, the Council's position and recommendations on the Cardrona Valley Road LSCZ, are covered in Ms Jones' Reply Evidence.

WANAKA LAKES HEALTH CENTRE (253)

12.11 The Panel queried whether, if it did not support the Centre's rezoning request from Large Lot Residential (**LLR**) to Local Shopping Centre zone (**LSCZ**), there would be scope to retain the LLR zone but add a restricted discretionary activity for additions/alterations to community activities.

12.12 The Health Centre's submission sought the following relief:

> *That the zoning of the Wanaka Lakes Health Centre be amended from Large Lot Residential as shown on Proposed District Plan Map 23 to Local Shopping Centre.*

12.13 The submission also sets out that the LSCZ is the most appropriate zone for the *current and future health care uses of the site* and that it *most appropriately provides for the future expansion of these facilities, should this ever be required.*

12.14 For the reasons set out in its evidence, Council's position is that it does not support the rezoning to LSCZ.

12.15 In response to the Panel's question, notified Rule 11.4.9 provides that community activities in the LLR zone are a discretionary activity. The question ultimately is whether the submission provides scope to relax this activity status.

12.16 There is no specific provision for community activities in the LSCZ, however the default activity status for activities not listed and that comply with all the standards is permitted under Rule 15.4.1. Therefore it is considered that there would be scope to retain the LLR zone over the subject sites and to add site specific rules that are more enabling of alterations and additions to existing community activities. The Council notes that it considers there is no scope to apply the rule zone-wide.

12.17 Ms Jones otherwise addresses the merits of this approach (which she does not support) in her Reply Evidence.

13. CARDRONA VALLEY ROAD BLOCK

Structure Plan

13.1 Through his reply evidence Mr Barr has recommended a structure plan be included in the PDP over the Orchard Road Holdings Ltd (91) only. This submitter sought that its land be rezoned from Rural to LDRZ and included in the Urban Growth Boundary.

13.2 The Council has also considered whether there would be scope to include a Structure Plan over all of the Gordon Family Trust land (not just those discrete parts subject to rezoning submissions) through either the Gordon Family Trust (395) or Willowridge (295) submissions.

13.3 Although the Gordon Family Trust submission attached a draft structure plan extending over quite a large area of land owned by the Trust, the rezoning submission itself was only in respect of a specific site which the Trust sought to be rezoned from LDR to MDR. That submission therefore does not give scope to include a structure plan extending over a broader area of land.

13.4 For completeness, it is also submitted that the Willowridge submission does not provide scope for a broader structure plan over the area to the east of Cardrona Valley Road, as that submission only seeks the reduction of the LSCZ.

13.5 The Council's position on this group of submissions is otherwise addressed in Mr Barr's Reply Evidence, at Section 11.

14. VARINA PROPRIETY LIMITED (591)

14.1 The Panel has queried, through its Reply Minute, whether there is scope for the Panel to recommend that a rear lane be required in the block bordered by Brownston, Helwick, Union and Dungarvon Streets, should the Panel find merit in the rezoning proposal of Varina Propriety Ltd. The Council notes that it assumes the Panel is referring to 'Upton' not 'Union' Street.

14.2 Varina sought that the Wanaka Town Centre Transition Overlay Zone (**TCTO**) be deleted and replaced with the Wanaka Town Centre Zone (**WTC**).[28] It also sought that if some or all of the TCTO zone were approved that the objectives, policies and rules of the MDRZ be modified to allow non-residential built form within the TCTO to have more enabling building form bulk and location controls.[29] In addition, Varina sought further or consequential or alternative amendments necessary to give effect to this submission.[30]

14.3 The legal principles regarding scope are set out in Appendix 2 to the Council's opening legal submissions for this hearing and have been well traversed. The paramount test is whether or not amendments are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the PDP.[31] Is the amendment a foreseeable consequence of the relief sought?[32]

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28 Submission 591 Varina Propriety Limited, at paragraph 5.2.
29 Submission 591 Varina Propriety Limited, at paragraph 5.3.
30 Submission 591 Varina Propriety Limited, at paragraph 5.10.
31 *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 166.
32 *Westfield (NZ) Limited v Hamilton City Council* [2004] NZRMA 556, and 574-575.

14.4 The scope of a submission is not limited to the words of the submission, so the question to be answered in this instance is whether the requirement for a rear lane in the block bordered by Brownston, Helwick, Upton and Dungarvon Streets, is a "foreseeable consequence" of the relief sought through both the rezoning request and the changes sought to the zone objectives, policies and rules of the MDRZ to allow non-residential built form within the TCTO to be more enabling.

14.5 The Council considers that there is no scope within Varina's submission to require a rear lane in that block. Such a requirement would be more restrictive than what the submitter is seeking (which is to allow *non-residential built form*). A rear lane is not built form, and would also impact on the extent of built form allowed. It is submitted that requiring a rear lane in the block is not a foreseeable consequence of the original relief sought.

15. JACKIE REDAI AND OTHERS (152)

15.1 At the hearing the Panel queried whether there is scope to rezone the subject land to Large Lot Residential (**LLR**) A Zone and relocate the Urban Growth Boundary (**UGB**) to follow part of the submission site. The submission originally sought rezoning to Rural Residential (**RR**) Zone from Rural.

15.2 Mr Barr recommends that the Redai rezoning submission is rejected, so this question is answered on the basis that the Panel might reject Mr Barr's primary evidence but accept Mr Barr's secondary evidence that a LLR A Zone would be more appropriate than the RR Zone.

15.3 The first issue here is whether the amended relief, to seek LLR A Zone, is within scope of the original submission that sought RR Zone. That is, to be in scope and available to the Panel, the LLR A Zone planning framework and the activities it provides for, must sit somewhere between the notified Rural Zone, and the RR Zone.

15.4 The notified minimum lot area for the LLR Zone is 4000m^2 (Rule 27.5.1, except for between Studholme Road and Meadowstone Drive

where the notified minimum lot area is 2000m^2). Similarly the RR Zone provides only one residential unit per 4000m^2 (notified Rule 22.5.11). An overview of the permitted, controlled, discretionary and non-complying activities for the LLR and RR zones, at notification, are set out below:

NOTIFIED LARGE LOT RESIDENTIAL ZONE	**NOTIFIED RURAL RESIDENTIAL ZONE**
Permitted Activities	
Dwelling (with more relaxed building colour standards)	Construction and exterior alteration of buildings
Residential Unit, Residential Flat	Residential Activity, Residential Flat
	Farming Activity
	Home Occupation
	Informal airports for emergency landings etc
Recreational Activity	
Controlled Activities	
	Home Occupation involving retail sales
	Visitor accommodation within subzone
Discretionary Activities	
Community activity	Community activity
	Informal airports
Commercial recreation	
Non-complying Activities	
Any other activity not listed	Any other activity not listed
Any building within a Building Restriction Area that is identified on the planning maps	Any building within a Building Restriction Area that is identified on the planning maps

	Visitor accommodation outside subzone
	Any other commercial or industrial activity
Licensed Premises	
Informal airports	

15.1 As can be clearly seen from the table above, the notified RR zone caters for a wider array of activities than the notified LLR zone. Consequently, the Council respectfully submits that there is scope to rezone the subject land to LLR A Zone.

15.2 In regards to the relocation of the UGB, there is nothing in the submission that indicates the submitters seek to move the UG, however it is acknowledged by the Council that the LLRZ is intended to be within the UGB, and a relocation of the UGB is a consequential change in the event that the LLRZ is accepted. What comes with that consequential change, is the expectation that the Council can and will service the land, which in this location, is possible.

16. ALLENBY FARMS LTD (502)

16.1 Due to the extensive number of submissions being responded to in this reply and the overlap with the Queenstown rebuttal evidence filed on Friday, legal counsel has not been in the position to complete this extract of the Council's Legal Reply. It will be filed tomorrow, 11 July 2017.

17. LAKE MCKAY STATION LIMITED (439/481/482/483/484)

17.1 Mr Colin Harvey, owner of Lake McKay Station gave unsubstantiated statements critiquing the Council's dwelling capacity evidence. It is counsel's understanding that Mr Harvey has no expertise in these matters, and therefore it is submitted that those statements should be given very little weight, if any.

17.2 Lake McKay Station is opposing the SNAs located over the station. Their argument is essentially that several important farm roads, which contain major irrigation supply pipelines, go through the SNAs.

17.3 Counsel was asked about a recent High Court judgment, *Royal Forest and Bird Protection Society of New Zealand Inc v Christchurch City Council* [2017] NZHC 669.

17.4 This High Court judgment supports the Council's position in that the assessment of significance of potential sites of ecological significance and the determination of the boundary of those sites are to be assessed on an ecological basis only. An analogy can also be drawn between the reasoning in *Man o' War Station* relating to section 6(b) landscapes, and section 6(c) matters.

17.5 Counsel however urges some caution in placing conclusive weight on the *Forest and Bird* case, as it is confirmation of a consent order rather than a judgment on the merits. However, the High Court does set out reasons for supporting the position agreed between the parties. The relevant discussion includes that the Independent Hearings Panel (the decision maker in that case) misapplied section 6(c) of the RMA when it concluded that farm practices played a part in the determination of the boundaries of sites of ecological significance. The parties agreed to an amendment to the policy framework, to that effect.

17.6 Together, the higher order authority supports the Council's approach in that the landscape lines and SNAs pursued by the Council over Lake McKay Station are the most appropriate method to meet the purpose of the Act, in particular section 6(b) associated with the protection of ONLs from inappropriate use and development, and section 6(c) with regard to the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

17.7 It is submitted to be appropriate to first consider whether land is an ONL/ONF reflects a proper 'top down' approach, in accordance with the statutory hierarchy, rather than a 'bottom up' approach, which the submitter appears to be advancing.

18. SEVEN ALBERT TOWN PROPERTY OWNERS (1038)

18.1 Seven Albert Town Property Owners (**SATPO**) opposes the submission of Mr Cutler (110) to extend the ONF classification on the true right side of the Clutha River upstream of the Albert Town Bridge to include Wicklow Terrace.

18.2 Through Rebuttal Evidence the Council recommended that the location of the ONF boundary be modified to follow the crest of the terrace, which results in it running through Wicklow Terrace. Wicklow Terrace is an unformed road and identified as Road on the PDP planning maps.

18.3 Ms Mellsop has acknowledged that the bank in front of the Seven Albert Town Property Owners has been at least partially modified,[33] but it does not have any buildings or significant man-made structures. It also forms only a very small part of the Clutha River ONF. It is submitted that the submitter is incorrect in thinking that an ONF or ONL must be uniform in the level of natural character, and that any areas with a higher level of human modification should be excluded. There are many ONF and ONL within the District that have modified areas within them – this does not mean that their overall level of natural character is low. It is a matter of wider context and scale. The Environment Court's comment in paragraph 105 of *WESI* supports that approach.

18.4 In addition, SATPO through its legal submissions suggest there is a discrepancy in the reasoning between Mr Barr's EIC, relating to 'landscape boundaries and classifications on land other than rural' (where essentially he makes recommendations to rezone some land that is an ONL to Rural, as the notified zone types do not include the necessary protection) and his Rebuttal Evidence, which considers that roads without zoning may be categorised within an ONL.

18.5 The SATPO legal submissions complicate matters by suggesting that roads within notified zones are not part of Stage 1, and that (we

33 Evidence of Helen Mellsop on behalf of Queenstown Lakes District Council dated 17 March 2017, at paragraph 8.119.

understand) because the land is not zoned Rural with its equivalent level of protection (or for example, another zone that also includes such protection), cannot be an ONL.

18.6 First, Council refers to the *Man o' War Station* case, which is clear authority for the 'two-step' process in that one must first identify whether land is an ONL, and must do that irrespective of the plan rules/ framework. This is an evidential question.

18.7 Roads were not zoned in the ODP but the consequence of that was not that roads were 'excluded from the ODP'. It is a consequence of the staged approach taken to the review, that the Council has not yet considered the rules that will apply to formed and unformed legal road, that exist within those parts of the District that have been notified in Stage 1.

18.8 Council does not accept that the Panel does not have jurisdiction over such roads, within the parts of the District that are in Stage 1 of the review. Most, if not all, ONLs/ONFs notified in Stage 1 include formed and/ or unformed roads within their boundaries, and as a consequence, dissect roads. If this were not the case the ONL/ONF lines would have to follow along every formed or unformed road, which would result in a cumbersome and unintelligible plan.

18.9 Such an approach (towards staging) would segregate the notified Stage 1 land into incomprehensible areas of land, and is submitted would result in an entirely nonsensical and impractical outcome. The practical outcome of SATCO's submissions is that the Council would need to draw each and every ONL around every road in the District. This is simply not accepted, and as far as counsel understands, is not used in any district plan that maps ONLs or ONFs in the country.

18.10 It is not certain that the Council will notify a Transport Zone in Stages 2-4. What the Council has resolved to review is a Transport chapter for the PDP. Whether that will include the likes of a deeming rule, that allocates the adjacent zone type to that land, is yet to be seen. For the record, Council has acknowledged that the rule in the Designations chapter that attempts to state that any stopped road,

takes on the adjacent zone type, is *ultra vires*. A designation cannot include such a rule, and one would need to be notified in Stages 2-4.

18.11 Consequently, it is submitted that the reasoning in SATPO's legal submissions is flawed and roads are able to, and should, be included within an ONL or ONF, consistent with Court of Appeal authority.

19. RN MACASSEY, M G VALENTINE, LD MILLS & RIPPON VINEYARD AND WINERY LAND CO LIMITED (692)

19.1 At the hearing the Panel queried whether the submission does seek a residential zoning, and if so, the scope of the type of urban zoning available. This question was in reference to Ms Mellsop's evidence in chief where she stated:[34]

> *Rippon Vineyard, belonging to Submitter #692, is within this area and while this submitter has sought relocation of the Urban Growth Boundary, they have not suggested appropriate zoning for the included urban land. <u>It is assumed that some form of urban zoning – Large Lot Residential or Low Density Residential – is sought by this submitter</u>. (*emphasis added)

19.2 However, in reviewing the original submission again, it is clear that the submission simply sought for the submitters' land to be included in the Wanaka UGB by amending the UGB to coincide with the ONL line.[35] The submitter did not seek a residential zoning and in fact make the following comments in their submission:

(a) *There is no resource management reason why the existing urban edge should be an Urban Growth Boundary for Wanaka*; and

(b) *It is more rational for the Urban Growth Boundary of Wanaka to reflect the ONL line depicted on Maps 18 and 22, which would bring the submitters' land together with Barn Pinch Farm and the Rural Residential zone above Mt*

34 Evidence of Ms Mellsop, at paragraph 7.70.
35 For completeness, it is also noted that the submission sought for the ONL line to allign with Waterfall Creek as per the plan attached to the submission.

Aspiring Road logically within Wanaka's Urban Growth Boundary.

19.3 When the submission is read as a whole, it is apparent that the submitters simply seek that the UGB line be aligned with the ONL and that their land remain zoned Rural as notified. Both Mr Barr and Ms Mellsop's evidence filed throughout this hearing, only discuss whether the UGB line should be moved and the recommendation, as set out in the s42A report, is to decline the relief sought.[36]

20. RANCH ROYALE ESTATES LIMITED (412)

20.1 In the Council's opening legal submissions the issue of scope was addressed for the amended relief now sought by Ranch Royale. The issue is whether the submitter's amended relief, to now seek ODP Three Parks Special Zone Low Density Residential sub-zone (**TP LDR**), is within scope of the original submission that sought ODP Three Parks Special Zone and within a Tourism and Community Facilities subzone (**TP Tourism**). The Panel queried which activities were covered by each zone.

20.2 These submissions are provided to assist the Panel, noting that Council's position and the submitter's is that a rezoning to LLR B Zone, is more appropriate. The activities each zone covers are listed in the table below (there are other activities also provided for in the zone that are not listed):

TP LDR ZONE	**TP TOURISM ZONE**
Permitted activities	
Home occupations	Home occupations
Residential units and residential flats	
Buildings approved by a Comprehensive Development Plan	Buildings approved by a Comprehensive Development Plan

36 Evidence of Ms Mellsop, at paragraphs 7.70 to 7.73. Section 42A Report / Evidence of Craig Barr Group 2 Wanaka Urban Fringe dated 17 March 2017, at section 8.

Controlled activities	
Retirement villages located on approved ODP or CDP	Visitor accommodation activities
Restricted discretionary activities	
Buildings for non-residential activities including visitor accommodation, and retirement villages, except those already approved by CDP	
Non-complying activities	
Visitor accommodation	Residential units, except for multi-unit developments that meet density of at least 25 residential units per hectare, inclusive of land required for roading and reserves
All non-residential activities except those specifically listed that have not been approved under an ODP or CPD	

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

20.1 On a minor point, counsel for Ranch Royale, Mr Todd was asked what the statutory effect of purpose statements were. His response was that they are only advice notes, and provide colour and context. Council agrees – they have no statutory effect (in the same way as advice notes).

21. GLENDHU BAY TRUSTEES LIMITED (583) AND JOHN MAY (FS1094)

21.1 Due to the extensive number of submissions being responded to in this reply and the overlap with the Queenstown rebuttal evidence filed

on Friday, legal counsel has not been in the position to complete this extract of the Council's Legal Reply. It will be filed tomorrow, 11 July 2017.

22. BERESFORD (149)

Case law on Crown obligations and Councils

22.1 In opening submissions for the Council, *Hanton v Auckland City Council* [1994] NZRMA 289 was cited for the proposition that while s 8 requires local authorities to take Treaty principles into account, it does not impose on them the obligations of the Crown under the Treaty. During the hearing the Panel asked if there was more recent case law on this point.

22.2 In 2013 the Environment Court in *Te Puna Matauranga o Whanganui v Wanganui District Council*[37] stated the same principle; namely, that the partnership embedded in the Treaty is between Maori and the Crown, and that the Council is not the Crown and is not subject to the Crown's obligations. It is therefore submitted that the principle stated in *Hanton* represents the current position.

22.3 In legal submissions for Mr Beresford, counsel stated that *Ngati Maru ki Hauraki Inc v Kruithof* is authority for the proposition that "*the Council is responsible for delivering on the Treaty's Article 2 promise, which Parliament had, in the RMA, "delegated to the Council"*."

22.4 The Council submits that that decision is not binding in the present instance. Ngati Maru had applied for a declaration that certain earthworks (approved by the Council) on Mr Kruithof's property were unlawful, and for enforcement orders. The Environment Court found in favour of Mr Kruithof. Ngati Maru then applied to the High Court for leave to appeal out of time. The error of law alleged by Ngati Maru was that the Environment Court failed to give proper reasons for rejecting the application for enforcement orders.

37 *Te Puna Matauranga o Whanganui v Wanganui District Council* [2013] NZEnvC 110 at [114].

22.5 The decision cited by counsel for Mr Beresford is the interim judgment on the application for leave to appeal (the decision was deferred in order to allow the parties time to negotiate). The consideration of Treaty principles was in the context of the principles applying to the Court's discretion to allow leave to appeal out of time. As noted above, the alleged error of law did not directly involve a breach of Treaty principles.

22.6 The decision on the leave application is *Ngati Maru Ki Hauraki Inc v Kruithof & Anor* [2005] NZRMA 1, where Baragwanath J dismissed the application (the parties having failed to reach agreement). The High Court held at paragraphs [80] - [82] that Ngati Maru did not have an arguable case, as it was "simply inconceivable" that the Environment Court could be persuaded to order Mr Kruithof to pull down the three units at the front of his property, for which the earthworks were being undertaken.

22.7 Baragwanath J went on to state at paragraph [83]:

> *While I attempted in the interim judgment to articulate Ngati Maru's grounds of concern, it is to be borne in mind that, despite their importance, the ss8 and 6(e) provisions, among others in the RMA which provide for recognition of Maori values, do not give them the status of trumps. They are to be evaluated by the decision maker, whether counsel or Environment Court. While this Court on appeal will correct error, like any judicial tribunal, it will strive to maintain a sense of proportion…*

22.8 The Council submits that the *Kruithof* decisions do not assist the submitter. The context was very different from a full district plan review and/or the rezoning of land. The issues were essentially around process (whether leave to appeal out of time should be granted, and whether reasons should be given in a situation where there was no arguable case), and Ngati Maru's arguments did not succeed.

Section 8 and *King Salmon*

22.9 The Panel also questioned whether, in light of *King Salmon,* counsel's opening submissions were correct[38] in stating that the s 8 duty is to weigh the principles of the Treaty with all other matters being considered, and in coming to a decision, effect a balance.

22.10 The Council submits that there is an important distinction between the 'overall judgement' approach widely used before *King Salmon,* and the duty imposed by s 8.

22.11 Under the 'overall judgement' approach, a decision-maker could conclude that an activity did not give effect to a relevant provision in a higher order planning document, and yet still approve a plan change because the activity was considered to give effect to the document overall. That approach is no longer possible because *King Salmon* held that directive language in a higher order document means what it says; "avoid" means "not allow" or "prevent", and is a stronger direction than "take account of".[39] However, policies expressed in less specific and directive terms (such as "take into account") leave councils with more flexibility.[40]

22.12 It follows that if a higher order document directs that an activity or effect is to be "avoided" and a decision-maker considers this requirement cannot be met, then the relevant proposed plan or change would not give effect to the higher order document.

22.13 The nature of the duty imposed by s 8 is a different question. Section 8 is not a provision in a higher order planning document and it does not direct decision-makers to avoid a particular effect or activity. Rather, s 8 sits within Part 2 and imposes a statutory obligation to "take into account" the principles of the Treaty.

22.14 As discussed in Section 3 of these submissions, the Council's position is that recourse can be had to Part 2 (including s 8) on a full district plan review where the objectives and policies of the plan are

38 At paragraph 5.13 of the Council's opening legal submissions dated 12 May 2017.
39 At [93] and [126]-[129].
40 At [127].

not established and where the provisions of higher order documents (such as both the ORPS and PRPS) do not "cover the field".

22.15 Further, *King Salmon* held that the s 8 obligation may be relevant to procedural matters. The Supreme Court observed that by comparison with ss 6-7, s 8 is "a different type of provision again", in that the Treaty principles may have additional relevance to decision-makers in matters of process.[41] Once the PDP is operative, although it will be presumed in light of *King Salmon* to give effect to s 8, decision-makers will still need to consider whether s 8 is relevant to procedural matters.

22.16 The Council therefore submits that the weighing exercise outlined at paragraph 5.13 of counsel's opening submissions is the correct way to meet the "take into account" obligation in s 8, and is not affected by *King Salmon.*

Reply Minute queries

Ngāi Tahu Claims Settlement Act 1998 (NTCSA)

22.17 The Panel has queried through the Reply Minute:

> *In relation to Mr Barr's rebuttal evidence at paragraph 11.26, what relevant obligations does the Ngāi Tahu Claims Settlement Act impose in relation to the block known as Sticky Forest?*

22.18 Mr Barr's paragraph 11.26 noted that Policy 2.1.2 of the PRPS, which ensures that district and regional plans '*give effect to the Ngāi Tahu Claims Settlement Act*', is more favourable to Mr Beresford's submission than the ORPS (which contains no equivalent or similar provision, and does not refer to the NTCSA).

22.19 The Council notes, as did Mr Barr in paragraph 11.25, that the PRPS is subject to appeals. However, if Policy 2.1.2 comes into force in its current form, the following paragraphs describe what obligations would be imposed.

41 At [26]-[27] and [88].

22.20 The Council's position is summarised as follows:

(a) councils can only act in accordance with their functions, duties and powers under the RMA, and these cannot be enlarged or amended by Policy 2.1.2 (being delegated legislation) when a council is deciding on the most appropriate zone for a particular site;

(b) consent authorities and local authorities must comply with ss 208 and 220 of the NTCSA, but those provisions have no implications for determining the most appropriate RMA zone for a particular site;

(c) there are no provisions of the NTCSA that can be given direct effect to by a zoning decision;

(d) under section 8 of the RMA (in particular with regard to the Treaty principle of good faith), the overarching nature of the NTCSA in providing redress means that councils should have regard to that element when making decisions about the zoning of settlement land in regional and district plans; but this should not be seen as a trump or veto in determining the most appropriate zone.

22.21 The starting point is that Council can only act in accordance with its functions, duties and powers under the RMA. Policy 2.1.2 is delegated legislation and cannot widen the scope of the RMA. It follows that Policy 2.1.2 must be read as meaning that the PDP is to give effect to the NTCSA, insofar as Council is able to do so using its RMA functions, duties and powers.

22.22 Council must therefore apply the statutory tests under the RMA to determine what zoning is most appropriate for this particular site. In doing so, Council is also required by Policy 2.1.2 to give effect to the NTCSA, where it can do so without stepping outside the four corners of the RMA.

22.23 The next step is to identify which, if any, provisions of the NTCSA can be given effect to in the PDP.

22.24 The NTCSA gives legislative effect to the Ngāi Tahu Deed of Settlement. Local authorities cannot affect or alter the transfer and vesting of land and assets under the NTCSA from the Crown to Ngāi Tahu. Local authorities also do not fall within the NTCSA definition of "Crown" in s 8 as "Her Majesty the Queen in right of New Zealand" (noting that the definition of "Crown" for the purposes of Part 9 (Right of first refusal) is not relevant to the Sticky Forest block). Put shortly, the transfer and vesting aspects of the NTCSA cannot be given effect to through RMA planning documents.

22.25 The NTCSA has two key provisions impacting directly on consent authorities and local authorities in RMA planning matters. Under s 208, consent authorities must have regard to statutory acknowledgements when forming an opinion as to whether Te Rūnanga o Ngāi Tahu is an affected person. Under s 220(1), local authorities must attach to all regional policy statements, district plans and regional plans (including proposed plans and statements) information recording all statutory acknowledgments affecting statutory areas covered wholly or partly by such policy statements and plans.

22.26 It is submitted that the obligations in ss 208 and 220 are clearly within the ambit of Policy 2.1.2 in the PRPS, and it may be that Policy 2.1.2 was directed at highlighting the existence of those statutory obligations to councils.

22.27 Taking a step back, the overarching effect of the NTCSA is to settle the claim of Ngāi Tahu and provide redress. Decisions under the RMA are to take Treaty principles into account under s 8. The Council acknowledges that when decisions are being made about settlement land, Treaty principles are particularly relevant. However, the Council does not accept that benefits arising from taking account of Treaty principles must necessarily override other Part 2 RMA values. In short, the weighing exercise outlined at paragraph 5.13 of counsel's opening submissions is submitted to be the correct way to meet the "take into account" obligation in s 8, including in the context of decisions about zoning of settlement land.

22.28 The above submissions are not to be taken as casting any doubt on Policy 2.1.2 or as amending Council's position in relation to the PRPS, which is under appeal.

Reasonable use of Sticky Forest

22.29 The Panel has queried through the Reply Minute:

> *What reasonable use can be made of the Sticky Forest Block the subject of Mr Beresford's submission under the PDP provisions the Council supports?*

22.30 In general, it is not for the Council to identify a suitable or reasonable use *per se*, but rather to consider the most appropriate provisions in terms of the relief sought against the notified provisions (in the absence of other submissions and relief which are relevant to that land). It appears that the Panel's question is directed at whether a s85 application might be possible, noting this has been raised in legal submissions for Mr Beresford at paragraph 47.

22.31 Section 85(3B) requires not only that the provision or proposed provision makes any land incapable of reasonable use, but also, that it places an unfair and unreasonable burden on any person who has an interest in the land. These submissions address the first of those grounds only, as directed by the Panel, but the Council notes that both grounds in s 85(3B) would have to be met.

22.32 Mr Barr in his rebuttal evidence at paragraph 11.79 has recommended that the submission be rejected, except for the ONL boundary which is recommended to be amended. The amended ONL boundary has been agreed between the landscape experts for the submitter and the Council (respectively, Mr Field and Ms Mellsop). Legal submissions for Mr Beresford state at paragraph 7 that the submitter is not contesting the ONL, though this is offered as a *quid pro quo* for obtaining residential development opportunities for 20 hectares of the 50 hectare block.

22.33 In considering what "reasonable use" can be made of the Sticky Forest block, the ONL annotation should therefore be put to one side, and the focus is on what reasonable use can be made under Mr Barr's recommended Rural zoning for the whole block.

22.34 In *Hastings v Auckland City Council* the Court held:[42]

> *…the test to be inferred from section 85 is not whether the proposed zoning is unreasonable to the owner (a question of the owner's private rights), but whether it serves the statutory purpose of promoting sustainable management of natural and physical resources (a question of public interest)…the focus is on the public interest, not the private property rights.*

22.35 The "reasonable use" ground in s85 does not require the Council to put forward a list of options for use of the land and gain the submitter's approval of one or more options. Nor is that the proper process for Council to follow when determining the most appropriate zoning for any particular site. The Council is required to apply the statutory tests in determining the appropriate zone; and if an application is made under s85, the question is whether the proposed zoning meets the statutory purpose. The Council's evidence, in particular that of Mr Barr, shows that it does.

23. GARDINER (260)

23.1 The Panel in its Reply Minute at 5(i) asked:

> *What is the Council's position on the scope to shift the ONL line at Bremner Bay as recommended by Ms Mellsop (refer her Evidence in Chief at 6.19).*

23.2 The question is whether there is scope to put the ONL classification over the three parcels of land that adjoin Bremner Bay Reserve to the north.

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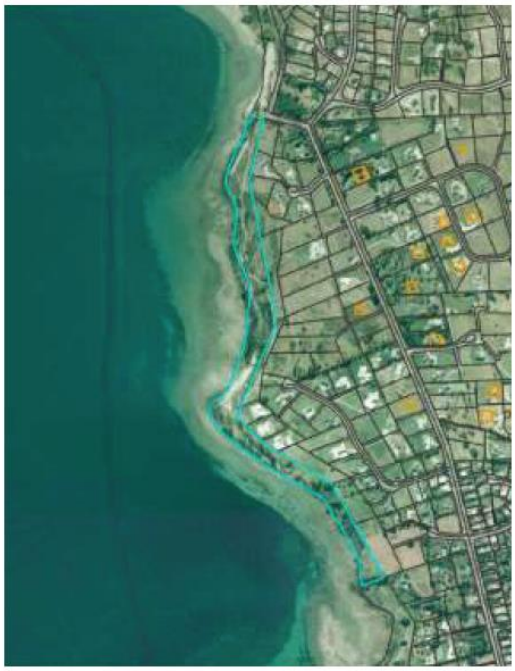
42 *Hastings v Auckland City Council* EnvC Auckland A068/01, 6 August 2001 at [98], cited in *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZEnvC 14 at [863]. See also *Newbury Holdings Limited v Auckland Council* [2013] NZHC 1172 at [39].

23.3 Through its submission Gardiner seeks that the Wanaka Lakefront Reserve be identified as an ONL (no map is included in the submission). The question is then, whether the three parcels of land are part of the "Wanaka Lakefront Reserve". If it is, then applying the ONL classification over those three parcels would be within scope of the Gardiner submission. What is reserve land or otherwise, is not shown on the PDP maps. It is however defined in the Wanaka Lakefront Reserves Management Plan **[SG78]** and more particularly in 3.11 and Appendix 6 of that Plan.[43] The relevant extracts are shown below:



3.11 // BREMNER BAY RESERVE

3.11.1 // History

The bay is named after the Bremner family, who in Pembroke's early days either resided on Eely Point Road or Lakeside Road.[20] The reserve was initially proposed in 1948 because "this area fronts the lake where the water is shallow and warmer, and is becoming a popular spot for picnics, bathing and small boats".[21]

By 1991 the reserve had become one of the most popular spots in Wanaka for swimming and picnicking.[22]

3.11.2 // General description

Bremner Bay is situated on the eastern lakefront between Eely Point Reserve and Beacon Point Reserve. The area from the Eely Point Reserve entrance road along to the northern side of 202 Beacon Point Road is not a reserve, but is an unformed legal road. It is part of a larger reserve consisting of 12 hectares, giving it a much larger appearance. The general principles and policies in this plan will also apply to the unformed legal road section.

Since 2005, Council has undertaken significant clearance of unwanted vegetation, leaving in the main a mix of native and non-invasive exotic plants. Large areas of grass have been created in some areas. The Te Kakano Aotearoa Trust has been active in planting natives in this area, where practical.

The reserve is home to a track, which was upgraded in 2006, and is very popular with both cyclists and walkers alike.

As Bremner Bay is easy to access from Lakeside Road, it remains a popular spot for swimming, picnicking, kayaking and other passive recreational pursuits.

Bremner Bay Reserve

RESERVE NAME/ REFERRED TO AS	LEGAL DESCRIPTION	CLASSIFICATION (UNDER RESERVES ACT 1977)	AREA (HA)	DISTRICT PLAN ZONE	DISTRICT PLAN DESIGNATION NUMBER
Bremner Bay Reserve	Section 71 Blk XIV Lower Wanaka SD	Recreation Reserve	6.5	Rural General	120

23.4 The three relevant parcels of land are PT Lots 1-2 DP17422 and Lot 10 DP 23717. Figure 1 of Ms Mellsop's evidence in chief is shown below for ease of reference:

43 http://www.qldc.govt.nz/assets/Uploads/Council-Documents/Reserve-Management-Plans/Wanaka-Lakefront-Reserves-Management-Plan.pdf

Figure 1: Notified PDP and recommended ONL boundaries at Bremner Bay.

23.5 As can be seen when you compare the two maps, the three parcels of land Ms Mellsop seeks to include in the ONL are not part of the Wanaka Lakefront Reserve and therefore it is submitted that the Gardiner submission does not provide scope to include the three land parcels within the ONL.

24. JAMES COOPER (400/1162)

Scope query

24.1 The Panel has queried, through its Reply Minute at 5(ii):

> *What is the Council's position on the scope to change the notation on the Cooper land from ONF to ONL as Ms Mellsop recommends?*

24.2 In order for there to be scope, it is submitted that the effect of an ONL and ONF notation would need to have been the same at notification (ie. the PDP provisions as notified would treat them alike).

24.3 As notified, Chapter 6 provided policy direction that subdivision and development proposals within ONLs and ONFs were to be assessed against the Rural Chapter assessment matters, as subdivision and development is inappropriate in almost all locations (notified Policy 6.3.1.3). In addition, ONLs and ONFs were to be avoided when locating urban growth boundaries or extending urban settlements through plan changes (notified Policy 6.3.1.7).

24.4 While both ONFs and ONLs have a specific objective to protect, maintain or enhance (notified Objectives 6.3.3 and 6.3.4 respectively), the policies sitting underneath each are different. A table comparing these policies is set out below:

Outstanding Natural Features	**Outstanding Natural Landscapes**
6.3.3.1 Avoid subdivision and development on Outstanding Natural Features that does not protect, maintain or enhance Outstanding Natural Features.	6.3.4.1 Avoid subdivision and development that would degrade the important qualities of the landscape character and amenity, particularly where there is no or little capacity to absorb change.
6.3.3.2 Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Landscapes adjacent to Outstanding Natural Features	6.3.4.2 Recognise that large parts of the District's Outstanding Natural Landscapes include working farms and accept that viable farming involves activities which

Outstanding Natural Features	Outstanding Natural Landscapes
would not degrade the landscape quality, character and visual amenity of Outstanding Natural Features.	may modify the landscape, providing the quality and character of the Outstanding Natural Landscape is not adversely affected.
	6.3.4.3 Have regard to adverse effects on landscape character, and visual amenity values as viewed from public places, with emphasis on views from formed roads.
	6.3.4.4 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 windfarm or hydro energy generation are not likely to be compatible with the Outstanding Natural Landscapes of the District.

24.1 While the policy direction is not identical, the default status across both is that subdivision and development is avoided where that would degrade, or not protect, the outstanding landscape or feature.

24.2 The subtle differences in the subsequent policies are submitted to be due to the practicalities of a Feature versus a Landscape. A Landscape is usually a larger area that can include a farming operation, while a Feature is often a unique landform that is located amidst either an ONL or RLC landscape, which tend to be smaller and not likely to be farmed intensively (eg. a rouche moutonee such as Roys Peninsula, Mt Barker or Mt Iron, or the islands within Lake Wanaka). It is however submitted to be of relevance that, despite these practical differences, land in either an ONF or ONL is subject to the same Assessment matters in the Rural Chapter (Rule 21.7.1).

24.3 One difference is the standards for farm buildings, in that any Farm Building within an ONF requires resource consent as a restricted

discretionary activity. Farm Buildings within the ONL are permitted, subject to a range of standards including that they must be less than 4m in height and the ground floor area is not greater than 1,00m^2.

24.4 Overall, as the regulatory effect of an ONL or ONF classification is the same in terms of the applicable PDP rules, it is submitted that there is scope to change the notation on the Cooper land from ONF to ONL.

25. SUNNY HEIGHTS LIMITED (531)

25.1 The legal submissions for Sunny Heights largely critique the detail of Ms Mellsop's evidence compared to that of Mr Espie's, drawing a conclusion that Mr Espie's should be preferred.

25.1 Ms Hill's criticisms of the depth and comprehensiveness of Ms Mellsop's analysis of the river confluence landscape in comparison to Mr Espie's are probably fair. They essentially reflect the level of detail feasible within the large scope of evidence that the Council was required to prepare for the Upper Clutha mapping submissions, compared to those experts representing submitters who are focusing on either one, or what is comparatively a very small number, of sites.

25.2 In response to Ms Hill's critique (referring to Ms Hill's paragraphs):

(a) [25] – [26], Ms Mellsop's discussion of the Hāwea River and which part of it she considers to be an ONF is in paragraph 8.49 of her evidence in chief. Mr Espie appears to agree with Ms Mellsop's opinion in this respect, although he considers the Hāwea ONF does not extend as far up the river as Ms Mellsop does. Mr Espie calls his extension of the ONF/ONL up the Hāwea River a 'protrusion of the Clutha River ONF', which is submitted to not make sense in landscape terms as it is the Hāwea River, not the Clutha River ONF;

(b) [27], it is accepted that the Clutha River/Hāwea confluence landscape is narrower than 1.5km at some points, and that is why Ms Mellsop has pointed out in paragraph 4.18 of her Rebuttal that while *WESI* provided guidance on how large

an area of land must be before it can be considered a landscape rather than a unit of a wider landscape, this guidance was couched in tentative terms;[44]

(c) [28], Ms Mellsop's evidence has addressed this difference in her evidence;[45] and

(d) [30], Ms Mellsop has explained in her evidence that she considers the Clutha River[46] and the lower part of the Hāwea River to be ONFs.[47] Where she has defined the ONL of the Clutha river corridor and the Clutha/ Hawea confluence, Ms Mellsop considers the rivers are ONFs within a wider ONL.[48]

26. JEREMY BELL INVESTMENTS LIMITED (782)

Airport Mixed Use Zone

26.1 The Council has not received formal withdrawal of Queenstown Airport Corporation's (**QAC**) further submission in opposition to Jeremy Bell Investments Ltd's (**JBIL**) submission seeking the Wanaka Airport Mixed Use Zone, now the Airport Mixed Use Zone (**AMUZ**).

26.2 JBIL submit that the Outer Control Boundary (**OCB**) provides support to the airport and the visual amenity enjoyed by JBIL is substantially influenced by the airport. They contend that use of JBIL's land in association with the airport offers a "*degree of reciprocity*" and "w*hy should JBIL be obliged to accept all of the effects of the airport yet be entitled to none of the benefits?*" [49]

26.3 It is submitted that the existence of the OCB is not a good reason to extend the AMUZ. In addition, 'reciprocity' is not an RMA principle and is submitted to be irrelevant in the Panel's determination of the most appropriate zone for the land itself. JBIL has not run an

44 At paragraph 20.
45 Rebuttal Evidence of Helen Mellsop dated 5 May 2017, at paragraphs 4.19 to 4.22.
46 Evidence of Ms Mellsop, at paragraph 8.56.
47 Evidence of Ms Mellsop, at paragraph 8.49.
48 Evidence of Ms Mellsop, at paragraph 8.105 to 8.109.
49 Submissions of Counsel on behalf of Jeremy Bell Investments Limited dated 13 June 2017, at paragraph 12(b).

'unreasonable use' argument (or relevantly, made identified in its original submission) against the location of the OCB.

26.4 The JBIL Legal Submissions also appear to accept that there may be outstanding issues and that is a matter of refinement and drafting. Solutions to these issues have not however been offered up by the submitter and the onus is not on the Council to provide those solutions. If the submitter considers that another zone is more appropriate than the notified zone, it is up to them to provide solutions and the necessary evidence to satisfy the statutory tests.

Rural Lifestyle Zone

26.1 In JBIL's memorandum of counsel relating to its submission to rezone land to Rural Lifestyle, at paragraph 3 it sets out its view as to how to ascertain the most appropriate zoning of the land with reference to *Guthrie v Dunedin City Council.*[50] The Council considers that this is a simplistic approach to this matter. Earlier in these legal submissions a more detailed analysis of the Panel's duties is set out. The Council relies on that approach, including earlier legal submissions on the matter. What is the "most appropriate" is submitted to be dependent upon the specific context and facts for each piece of land, and how the zoning fits in with the Strategic Directions of the PDP. Also, counsel for JBIL confirms that *Guthrie* is a case where the core objectives and policies were settled, which is not the case here.

27. UPPER CLUTHA ENVIRONMENTAL SOCIETY (UCES) (145)

27.1 The Panel has queried, through its Reply Minute, whether there is scope for UCES to argue for modifications to ONL lines at the specific locations identified in Ms Lucas' evidence.

27.2 UCES's submission seeks that a new ONL category apply district-wide.[51] Most of the submission is focussed on what rules should apply to the ONLs (ie. seeking non-complying activity status for residential subdivision and development in the ONLs and ONFs[52]).

50 *Guthrie v Dunedin City Council* EnvC Christchurch C174/2001, 5 October 2001.
51 UCES submission, at page 29, paragraph B.
52 UCES submission, at page 2.

UCES also seeks that the notified Landscape Lines be excluded from the Plan or alternatively that they are only shown on the maps as guidelines until determined by the Environment Court.

27.3 Nothing in the submission suggests that there should be modifications to the notified ONLs. Modifications to the ONLs in certain locations is not accepted as being a foreseeable consequence of the relief sought by UCES (ie. remove the lines, or make the notified version 'guidance' only), and therefore the Council respectfully considers that there is no scope to move the ONL lines at the locations identified in Ms Lucas' evidence (Waterfall Creek and Dublin Bay). To do so would make the lines more restrictive (ie. would include more land within the ONL). The UCES submission does not suggest or foreshadow that it wishes to make more of the District part of the ONL, and that is the exact outcome of what Ms Lucas' evidence is pursuing. Further, it is submitted that such changes to the ONLs, based only on the UCES submission, raise questions of procedural fairness, which would be highly relevant in this instance.

DATED this 10th day of July 2017

S J Scott / C J McCallum
Counsel for Queenstown Lakes District Council

APPENDIX 1

CONFIRMATION OF WHERE PANEL MINUTE QUERIES ADDRESSED IN COUNCIL'S REPLY

Minute paragraph	Matter	Witness to reply / legal subs
4 (i)	Is the Council still of the view (as expressed in opening submissions) that where a submitter seeks to apply an 'operative' zone to land within the PDP, the Hearing Panel should recommend to Council that the land in question be notified as part of Stage 2, but that the status quo zoning should be retained in the interim, given the lack of certainty that it provides to submitters? Is it relevant that some sites the subject of submissions (e.g. at Hawea) have both an operative zone and a PDP zone over them?	Legal Reply
4 (ii)	In relation to the geographical areas withdrawn from the PDP by virtue of Council's 16 March 2017 resolution, how is it that the PDP maps might continue to show notations such as ONL and ONF lines over that land (as suggested in opening submissions for Council)? In particular, is the maintenance of ONL (or ONF) lines on that land consistent with the terms of the Council's resolution and the legal effect of withdrawal of the land from the PDP? If the Council believes that there is sound reason to maintain the ONL/ONF lines, is there a risk that in the specific instance of Peninsula Bay Joint Venture, that submitter might have been misled by the terms of the Council's resolution (and/or the terms in which that resolution was communicated to the submitter) when it failed to lodge the expert evidence previously foreshadowed in communications with the Hearing Administration staff, and that it ought now to be given the opportunity to call evidence in support of its submission that the location of the ONL line across its land should be altered? Further, failing reconvening of the hearing for this purpose, on what basis should the Hearing Panel determine a position on the Peninsula Bay Joint Venture submission given that the Council's section 42A Report and accompanying evidence did not appear to address that submission?	Legal Reply
4 (iii)	Please clarify the Council's view as to the ambit of the "*urban environment(s)"* in the Upper Clutha area for the purposes of the NPSUDC 2016. In particular, does the NPS definition of urban environment, with its reference to "*land containing, or intended to contain, a concentrated settlement of 10000 people or more"* mean that Hawea and/or Luggate area within the Wanaka urban environment? If so, does that mean that the land between Hawea and Wanaka (for instance) is likewise part of the Wanaka Urban Environment? Put another way, how "*concentrated"* does the settlement of people need to be to qualify? – Are the rural lifestyle zoned areas on Riverbank Road, for instance, part of the Wanaka Urban Environment, and if they are, does that mean that the rural zoned land between those rural lifestyle areas and the UGB are likewise part of the Wanaka Urban Environment? If rural lifestyle areas are insufficiently "*concentrated"* for this purpose, would rural residential areas qualify? Likewise, taking the proposed Lake Mackay Station Rural Residential Zone on the margins of Luggate, if	Craig Barr Reply Evidence

Minute paragraph	Matter	Witness to reply / legal subs
	recommended, would it extend any "*concentrated settlement*" of which Luggate forms part? Alternatively, if the more correct focus is from the recognisably urban parts of Wanaka outwards, how far does one go in each direction before the land ceases to contain or be intended to contain a concentrated settlement of the required size?- to the UGB, or beyond it, and if beyond it, how far beyond it?	
4 (iv)	Projecting forward to Stage 2 of the PDP process, how does Council see submissions seeking rezoning of current ODP Zones, where the relief sought is a Stage 1 PDP Zone e.g. land currently zoned Township where a submitter seeks a a Low Density Residential Zone. Will that be possible, or is it the Council's view that such a submission would be out of scope? Would it make a difference if the future rezoning application seeks some local variation to the zone provisions the outcome of the PDP Stage 1 process (e.g. with additional standards)?	Legal Reply
4 (v)	Please clarify the interrelationship between infrastructure provision and rezoning. Specifically, where an Urban Zone is sought but no/insufficient capacity currently exists in the infrastructure network and no LTP provision is made for the relevant infrastructure upgrade, is that a fatal flaw for the submitter such that the submission cannot be granted (in the Council's view) or is the absence of infrastructure provision relevant but not determinative?	Legal Reply and Craig Barr Reply Evidence
4 (vi)	If the Council's view is that the NPSUDC requires provision to be made for 'affordable' housing (please advise), is the Council satisfied that the PDP as currently framed meets any such obligation, and if not, advise the process and timescale within which it will be addressed?	Legal Reply
4 (vii)	Please provide clarification on the application of the Section 32 tests to zoning requests. In particular, is zoning a method to achieve the broader objectives and policies of the Plan, or is it a method to achieve the zone/sub-zone (as applicable) objectives and policies (which presumably should reflect those broader objectives and policies). In other words, what is the correct reference point for the section 32 analysis?	Legal Reply
4 (viii)	Please advise any more recent authority than *Hanton* v *Auckland CC* [1994] NZRMA 289 for the proposition in the Council's opening submissions that the Council (and hence the Hearing Panel) does not stand in the Crown's shoes for the purposes of its Treaty of Waitangi obligations; noting that counsel for M Beresford cited *Ngati Maru ki Hauraki Inc v Kruithof* CIV-2004-484-330 (Baragwanath J) as authority for the opposite conclusion.	Legal Reply

Minute paragraph	Matter	Witness to reply / legal subs
4 (ix)	During the course of the hearing, Ms Banks agreed to provide us with a table for situations where traffic related upgrades she had recommended were in her view critical to a positive zoning recommendation. We request that be included in the Council's Reply. In relation to any situations in this category, please advise the mechanism by which the Hearing Panel could be satisfied the relevant upgrades will be undertaken.	Craig Barr and Wendy Banks' Reply Evidence
4 (x)	Mr Barr considered that there were no submissions other than that of M Beresford which required a wider Part 2 consideration but indicated he would need to review the submissions gained with that question in mind. Please confirm, or otherwise, Mr Barr's initial advice.	Craig Barr Reply Evidence
4 (xi)	Is it the Council's view that ONLs and ONFs should be determined on landscape advice irrespective of zoning or current use? If not, please provide authority supporting the Council's position.	Legal Reply
4 (xii)	Please confirm the effect of the NZTA Rules (with appropriate cross references) governing the use of existing accesses to limited access roads if the nature and extent of the land use changes?	Craig Barr Reply Evidence
4 (xiii)	Does Mr Espie's evidence that he personally has authored approximately 15 landscape reports on rural lifestyle subdivision applications cause Mr Barr to reconsider his evidence that such applications are not normally accompanied by landscape analysis?	Craig Barr Reply Evidence
4 (xiv)	Do any adverse effects arise from the potential for 2 household units (through operation of the residential flat provisions in the PDP) to be established on any site, that have not previously been considered in the evidence given by Council experts? If not, what difference does that consideration make to their recommendations, if any?	Craig Barr Reply Evidence
4 (xv)	Please identify the Plan provisions related to roads, in particular where the PDP states that roads are not zoned.	Craig Barr Reply Evidence
5 (i)	What is the Council's position on the scope for Upper Clutha Environmental Society to argue for varied ONL lines at the locations identified in Ms Lucas's evidence?	Legal Reply
5 (ii)	What is the Council's position on the scope to change the notation on the Cooper land from ONF to ONL as Ms Mellsop recommends?	Legal Reply

Minute paragraph	Matter	Witness to reply / legal subs
5 (iii)	What is the Council's position on the scope to shift the ONL line at Bremner Bay as recommended by Ms Mellsop (refer her Evidence in Chief at 6.19).	Legal Reply
5 (iv)	We asked Ms Banks to revert with her view on the difference reducing the size of the Cardrona Valley Road LSCZ as recommended by Ms Jones would make to her West Meadows Road related recommendations. Specifically, what capacity is there to increase traffic demand on West Meadows Road?	Wendy Banks Reply Evidence
5 (v)	Can Mr Davis please provide a response to Dr Lloyd's view that rabbit control on Mount Iron should only be directed at revegetation areas because, across the ONF more broadly, rabbits are useful as a mechanism to keep down exotic species.	Glenn Davis Reply Evidence
5 (vi)	Can Council please provide with its reply its analysis of alternative options for the shape of the Cardrona Valley Road LSCZ if its size is reduced as recommended. Please provide those in the form of an overlay on an aerial photo, with the proposed road currently the subject of a resource consent application also shown.	Vicki Jones and Tim Heath Reply Evidence
5 (vii)	What is the Council's view on the scope the Hearing Panel may have to recommend that a rear lane be required in the block bordered by Brownston, Helwick, Union and Dungarvon Streets should the Hearing Panel find merit in the rezoning proposal of Varina Proprietary Ltd.	Legal Reply
5 (viii)	Given the agreement between Ms Mellsop and Mr Field regarding the location of the ONL line on the Sticky Forest Block, what implications does that have for the ONL line on the adjacent Peninsula Bay property (assuming Council's view remains that it should be shown on the face of the PDP maps)?	The Peninsula Bay property is not Stage 1 land, and Council is accepting the Panel's view expressed that it has no jurisdiction over the ONL over that land
5 (ix)	In relation to traffic demand on West Meadows Drive, if Ms Banks' view is that there is some capacity on that road, whether linked to the reduction in size of the Cardrona Valley Road LSCZ or to the modification to the roading network the subject of Ms Nic Blennerhassett's representation, but not enough for all of the rezoning requests (as advised), what is the Council's	Craig Barr Reply Evidence (addressed

Minute paragraph	Matter	Witness to reply / legal subs
	proposal as to how that capacity might be allocated?	instead through recommended West Meadows Drive Structure Plan)
5 (x)	On the Scurr Heights Block, is the walking track above the zoned development area the same moraine that is protected by a building restriction area above Kirimoko, and if so, would that indicate that a building restriction area should likewise be placed on the Scurr Heights Block? If the answer to the last point is in the affirmative, where exactly should the building restriction area be placed?	Helen Mellsop Reply Evidence
5 (xi)	What is the Council's view on the incremental recreational value of the additional tracks on Mount Iron and Little Mount Iron being proffered by Allenby Farms Limited as part of its proposal, over and above the existing legal easements?	Craig Barr Reply Evidence
5 (xii)	Please provide clarification of the reference in Mr Barr's report 2 at 12.33 to the modified McLean scale – what is it, what degree of protection on it is appropriate for Mt Iron and why?	Craig Barr Reply Evidence
5 (xiii)	What is the Council's view on references in the PDP and/or the Operative or Proposed Regional Policy Statement to Ngai Tahu/Kai Tahu? Specifically, should such provisions be read as referring to any member or members of the iwi or to Ngai Tahu/Kai Tahu collectively as represented by Te Runanga o Ngai Tahu under the Te Runanga o Ngai Tahu Act 1996.	Craig Barr Reply Evidence
5 (xiv)	In relation to Mr Barr's rebuttal evidence at paragraph 11.26, what relevant obligations does the Ngai Tahu Claims Settlement Act impose in relation to the block known as Sticky Forest?	Legal Reply
5 (xv)	In relation to the properties currently zoned Rural Lifestyle immediately west of Riverbank Road, are there grounds to differentiate those properties from the Rural Lifestyle properties to the east of Riverbank Road, as regards the most appropriate zoning?	Craig Barr Reply Evidence
5 (xvi)	As previously requested, can Mr Barr please advise what practical difference it would make to currently Rural Lifestyle Zoned properties at Makarora which have already been subdivided and either have an approved building platform or a constructed house thereon if they were downzoned to a Rural Zoning.	Craig Barr Reply Evidence

Minute paragraph	Matter	Witness to reply / legal subs
5 (xvii)	What comment does Mr Barr have on Ms Pennycook's information regarding the current path of (and hazard risk created by) the Makarora River in relation to the areas he has recommended be retained under a Rural Lifestyle Zoning.	Craig Barr Reply Evidence
5 (xviii)	What is the Council's view on the proposal discussed with Mr Dippie of Willowridge Limited and with the representatives of the Redai et al group that future development of the currently Rural Zoned land west of Riverbank Road might appropriately be the subject of a structure plan process to guide the nature and timing of its future development? Would it be appropriate to consider a deferred zoning approach in conjunction with that option?	Craig Barr Reply Evidence
5 (xix)	What is Council's response to Mr Dippie's evidence that rezoning the lower terrace land being developped by Willowridge Ltd at Luggate would be consistent with the suggestions the Council has made to him regarding the desirability of affordable home options being provided at that location.	Craig Barr Reply Evidence
5 (xx)	What is the Council's view regarding the implications of a major Three Parks entrance off the State Highway on the maintenance of the building restriction area currently in place on Allenby Farms land adjacent to the State Highway? Please identify on an appropriate plan where that intersection will be located.	Craig Barr Reply Evidence
5 (xxi)	What is the Council's response to the evidence and submissions for Gordon Trust that the purpose of the LSCZ is to cater, among other things, for tourist traffic? What are the implications for Mr Heath's evidence on the desired size of the Cardrona Valley Road LSCZ if that purpose were taken into account. If the Council's view is that no need to factor in tourist traffic, please advise the Council's view as to whether that position is consistent with the role of the LSCZ at Frankton Corner.	Vicki Jones Reply Evidence
5 (xxii)	The suggestion was made during the course of the presentation for Mr Cooper that SNA E 18B no longer exists. Does the Council have any information that would assist the Panel on this point?	Craig Barr Reply Evidence
5 (xxiii)	What is Ms Mellsop's response to Mr Espie's analysis that the river terraces on the Cooper land are not distinctive, given that there are other examples (such as near Red Bridge on the Luggate side of the river and above the Shotover River, next to Domain Road) where similarly legible river terraces have not lead to an ONL classification.	Helen Mellsop Reply Evidence
5 (xxiv)	What is the Council's response to the joint Burden/Glen Dene proposal?	Craig Barr Reply Evidence

Minute paragraph	Matter	Witness to reply / legal subs
5 (xxv)	What is Ms Mellsop's response to Mr Espie's analysis suggesting that the terraces identified as marking the ONL line on the Sunnyheights (ex Crosshill) side of the Hawea River confluence are not distinctive, in particular that there are a number of equally legible river terraces above the ONL line.	Helen Mellsop Reply Evidence
5 (xxvi)	Mr Espie gave evidence for Jeremy Bell Investments Limited regarding the visibility of the upper terrace on the submitter's land proposed for rural lifestyle rezoning, distinguishing that land from the rural lifestyle land to the southwest of Mount Barker, because in his view the terrace was not sloping and open to the north. The Hearing Panel members' own observation was that this did not appear to be correct and that at least part of the Upper Terrace both slopes towards and is open to the north when viewed from Smiths Road. Please advise the Council's view on that factual issue, with appropriate supporting material.	Helen Mellsop Reply Evidence
5 (xxvii)	What is the Council's view on the appropriate activity status for clearing of the trees currently on Sticky Forest, assuming Mr Beresford's submission provides scope for a revised rule.	Craig Barr Reply Evidence
5 (xxviii)	What reasonable use can be made of the Sticky Forest Block the subject of Mr Beresford's submission under the PDP provisions the Council supports?	Craig Barr Reply Evidence

APPENDIX 2

COUNCIL MEMORANDUM OF COUNSEL REGARDING ANNOTATIONS ON PLAN MAPS

BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of all Stage 1 hearings on the Proposed District Plan

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MEMORANDUM OF COUNSEL ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL REGARDING PANEL'S MINUTE CONCERNING ANNOTATIONS ON MAPS

RELEVANT TO HEARING STREAMS 1 - 14

30 June 2017

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MAY IT PLEASE THE PANEL:

1. This memorandum is filed on behalf of the Queenstown Lakes District Council (**Council**) in response to a minute issued by the Panel on 12 June 2017, titled 'Minute concerning annotations on maps' (**Minute**).

2. The purpose of the memorandum is to set out how the Council will approach the remainder of the Stage 1 hearings in light of the Panel's views set out in the Minute.

3. This memorandum also touches on:

3.1 the consequences for hearing streams already completed; and

3.2 some consequential implications that arise from the Panel's view that planning map annotations over **"Stages 2-4"** land (i.e. land that is still to be notified as part of a later stage of the plan review)[1] need to be re-notified.

4. In summary and relevant to Hearing Streams 1 – 14, the Minute sets out the Panel's interpretation of the various components of the PDP, as notified, as being:

4.1 Chapters 1 - 6 inclusive, 26 - 28 inclusive, 30, 32 - 37 inclusive apply across all parts of the District covered by the PDP zones notified to date (Panel's emphasis); and

4.2 where the PDP Plan Maps show ODP zone notations, they should be treated as outside Stage 1 of the PDP. Therefore when the Council notifies a PDP zone for such land in Stages 2-4, it should notify all the applicable notations and/or controls for that land (i.e. ONL, ONF, UGB, ANB, OCB) at the same time, as applicable.

Hearing Streams 1 - 14

5. The Council has reservations as to the basis for a number of assertions made in the Panel's minute (including its focus or otherwise on certain parts of the

1 The latest programme from Council indicates the remainder of the plan review will be progressed through three subsequent stages of notification): http://www.qldc.govt.nz/assets/Uploads/Council-Documents/Committees/Planning-and-Strategy-Committee/21-April-2017/Item-1.-Proposed-District-Plan-Review-Stage-2/1.-Proposed-District-Plan-Review-Stage-2.pdf

public notice, the notified PDP text and planning maps including that the legend specifies "District Wide Matters", and a lack of attention to the distinction between zone and district wide chapters). Nevertheless, in the interests of progressing the remainder of the review as efficiently as possible, the Council will proceed based on the position outlined in paragraphs 4.1 and 4.2 above, as it relates to Stage 1, and Stages 2-4 land.

6. The Council does not intend to seek a declaration from the Environment Court on the question of the applicability of the notified Strategic[2] and District Wide[3] chapters of the PDP, nor annotations that were notified on the PDP planning maps across Stage 1 land, Stages 2-4 land, or 'Volume B land'.[4]

7. Council therefore accepts that the Panel will not hear submissions or evidence from the Council or submitters in relation to notations on the maps applied to Stages 2-4 land, and Volume B land as part of Hearing Streams 13 and 14.

8. For the purposes of Hearing Stream 13, Queenstown, this (by way of example only) will mean that:

8.1 Council's evidence relating to the Outstanding Natural Landscape lines notified on the PDP Stage 1 planning maps over part of the Remarkables Park Zone and the Quail Rise Zone will not be pursued; and

8.2 Council's evidence relating to Queenstown Airport Corporation's submission point asking for the ANB and OCB lines to be shown on the PDP planning maps, consistent with Plan Change 35 to the ODP, will not be pursued as far as it relates to land not currently notified in Stage 1 (for example, the ANB line as it goes over the Remarkables Park Zone, and the OCB line as it goes over the Industrial A Zone and Frankton Flats Zone).

9. The evidence that falls within this category will not be pursued on the basis that the Panel does not accept any evidence on those same matters, filed on behalf of submitters.

2 PDP Chapters 1, 3-6.
3 PDP Chapters 26 - 28 inclusive, 30, 32 - 37 inclusive.
4 Volume B land, being Frankton Flats B, Northlake Special Zone, Remarkables Park Zone, Ballantyne Road extension, Queenstown Town Centre extension, Peninsula Bay North, and Mount Cardrona Special Zone.

10. Evidence already filed and heard in Hearing Streams 1-13 (including the Upper Clutha rezoning hearing stream) that falls into the same category will also need to be treated in the same manner.

Other consequences for the Panel – earlier Hearing Streams

11. There are other consequences of the Panel's Minute that the Council considers the Panel will need to consider and address, which relate to:

11.1 **Category A:** Provisions within notified and reply versions of Stage 1 PDP chapters, that are site specific and apply only to Stages 2-4 land, or Volume B land;

11.2 **Category B:** Submissions, evidence and any legal submissions filed on those site specific provisions referred to in paragraph 11.1; and

11.3 **Category C:** Submissions, evidence and any legal submissions filed specifically on Plan Map annotations over Stages 2-4 land, or Volume B land.

12. Examples[5] of the matters listed in paragraph 11 are, the submission points by:

Categories A and B:

12.1 238, and 807, seeking (respectively) that the Frankton 'town centre' and the Remarkables Park Zone be recognised in the Strategic Directions objectives (i.e. Reply Objective 3.2.1.2 and policies);

12.2 249, seeking that Three Parks Special Zone be recognised in the Strategic Directions objective (i.e. Reply Objective 3.2.1.3 and Policy);

12.3 580, seeking that Rule 30.4.4 or restricted discretionary status should not apply to the Hydro Generation Zone;

12.4 621, seeking that a new rule be inserted into Chapter 35 (Temporary Activities) to permit Temporary Activities in the Walter Peak Rural Visitor Zone;

12.5 621, seeking that noise rules be amended to exclude noise from activities in the Walter Peak Rural Visitor Zone;

5 This is just five examples, not a complete list.

Category C:

12.6 31, 63, 822 seeking that the Kingston Flyer be listed as a protected heritage item (within the Township Zone);

12.7 426, relating to the protected heritage listing for Kinloch Jetty and Wharf Building (within the Township Zone);

12.8 383, relating to notified Protected Tree 12 (located in Quail Rise Special Zone); and

12.9 383, relating to notified Protected Tree 191 (located in Walter Peak Rural Visitor Zone).

13. Council would appreciate confirmation as to how the Panel intends to deal with the evidence it has already heard from Council and submitters that falls into these discrete categories.

14. For the record, Council expects that the Panel will hear and make recommendations on any submissions made by submitters that are of a general nature (for example on the planning framework within a particular chapter, including on any of the general objectives, policies and rules), notwithstanding that the submitter may own or have some interest in Stage 2-4 or Volume B land. Such submitters have every right to submit on the PDP, and in the Council's position that was the correct approach to do so. An example of such a submitter is Transpower NZ Limited and the National Grid, and the objective/policy framework sitting behind protection of that infrastructure. Such submissions and evidence must be distinguished from that listed in paragraph 11.

"Stage 2-4"

15. As a consequence of the Panel's Minute, at the same time as notifying the zone chapters for Stage 2-4 land, the Council will need to re-notify any planning map annotations that relate to a Strategic or District Wide chapter (noting that any final decision as to notification is one to be made by full Council).[6] / [7]

6 Other annotations may include the UGB, ONL, ONFs, QAANB and QAOCB, a SNA, the National Grid, and Historic Heritage and Protected Tree annotations.

7 Subject to any recommended changes made through Council's s42A and right of replies in Hearing Streams 1-12.

16. A full analysis has not been undertaken at this time but, by way of example only, for Planning Map 31, this would mean the Council will need to consider re-notifying the following:

16.1 the ONL, UGB, Protected Tree 12 and Historic Heritage Feature 50, which are all planning map annotations that were notified over the Quail Rise Special Zone in Stage 1;

16.2 Historic Heritage Feature 248, Transmission Line, OCB, and ONL, which are all planning map annotations that were notified over the Shotover Country Special Zone in Stage 1; and

16.3 the Transmission Corridor as notified over the Industrial A Zone in Stage 1.

17. As mentioned above, submissions received in Stage 1 have also sought specific planning map annotations over Stages 2-4 land and the Council through the hearings, have recommended their inclusion in the PDP. This work will need to be considered in Stages 2-4. For example, the Council will look to notify the OCB over the ODP Industrial A Zone and Frankton Flats Zone.

DATED this 30th day of June 2017

J G A Winchester / S J Scott
Counsel for the Queenstown Lakes
District Council