**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of Stage 3 of the Queenstown Lakes Proposed District Plan

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**LEGAL SUBMISSIONS FOR CARDRONA CATTLE COMPANY LIMITED (SUBMITTER 3349) FOR STREAM 17: GENERAL INDUSTRIAL ZONE**

**Dated 7 August 2020**

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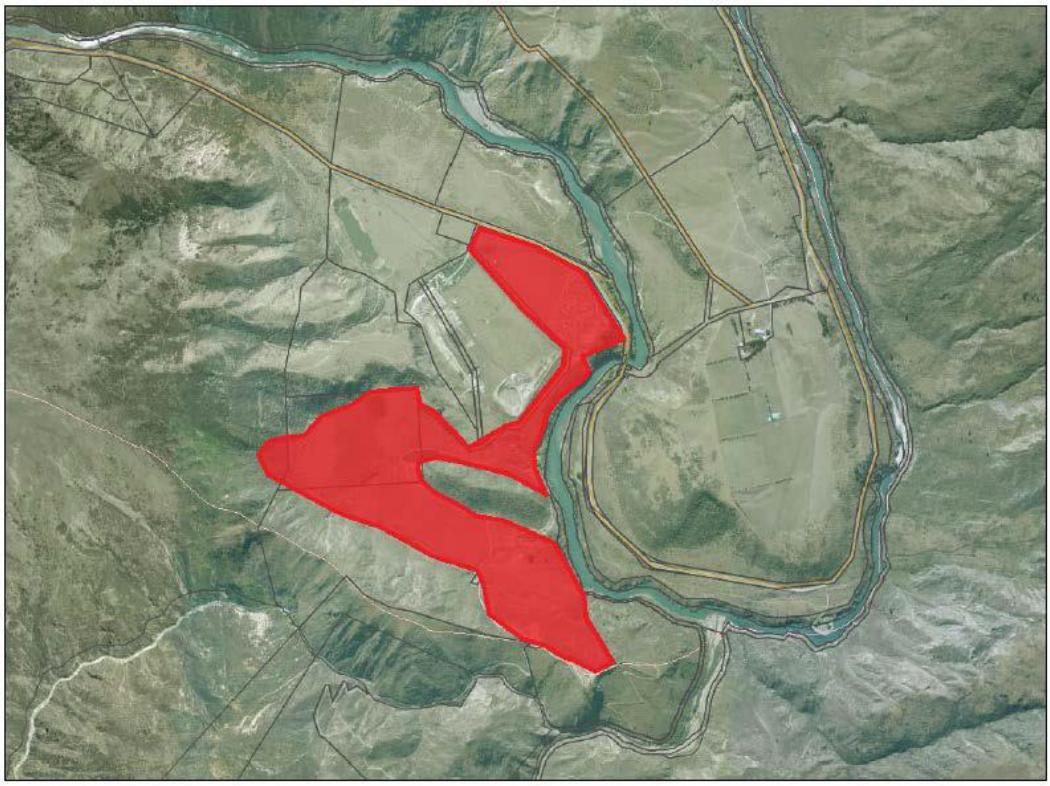
**MAY IT PLEASE THE PANEL**:

1. These submissions are made on behalf of Cardrona Cattle Company Limited (**CCCL**) (Submitter #3349).

2. CCCL has sought to rezone an area of land at Victoria Flats in Gibbston from Rural (**RZ**) and Gibbston Character Zone (**GCZ**) to a General Industrial Zone (**GIZ**). The land comprises 91.4 hectares in area depicted in red below, legally described as Lot 2 DP 420346 and Lot 8 DP 402448 as held in CFR 477524, Section 32 Blk II Kawarau SD as held in CFR OT14B/1179, and Pt Lot 3 DP 303681 as held in CFR 410584 (**the Site**).



3. Part of the land is affected by Designation #76 pertaining to the Victoria Flats landfill buffer area, and has the underlying RZ. The balance of the site is within the GCZ.

**Changes sought to PDP**

4. Amendments sought to the plan include those expressly sought in the original submission together with amendments proposed by Mr Place (in his s42A Report) to the GIZ provisions as amended in the evidence of Mr Giddens (at paras 45- 56).

5. In response to the evidence of Scope Resources Limited (**Scope**), the rebuttal evidence of Mr Giddens identifies further amendments to the GIZ rules in respect of the land within the designation buffer land prohibiting activities ( currently not prohibited) involving:

(a) Residential buildings and activities;

(b) Visitor accommodation activities;

(c) Commercial recreation and recreation activities (given non-complying activity status);

(d) Community activities.

6. In addition to that, at the hearing CCCL will propose:

6.1 An easement over the designation buffer land in relation to air contaminants including odour, for the benefit of the landfill site (on appropriate terms). This is a mechanism used in the context of a waste management facility at Whitford in the Manukau City Council district, and a copy of that easement is **attached**;

6.2 Restrictions on the use of the land within the designation buffer (to be applied through the Structure Plan) limiting activities to the heavy industrial activities with no managerial or caretaker accommodation allowed;

6.3 Development thresholds triggering upgrades to intersection with SH6.

**Consequential amendments (cl 10(2))**

7. Consequential amendments are expressly sought in the original submission in the following prayer for relief:

> … including but not limited to the maps, issues, objectives, policies, rules, discretions, assessment criteria and explanations that will fully give effect to the matters raised.

8. This prayer for relief is relied upon for the changes to the rules to the GIZ referred to by Mr Giddens in his Evidence in Chief, inter alia, and in seeking a UGB to follow the GIZ boundary of the CCCL land in the event that a rezoning of the land is approved.

9. Questions have been raised as to whether there is scope to insert the UGB as a consequential amendment and this is addressed in some detail further on.

**Synopsis of case for rezoning the land**

10. The rezoning is sought on the basis that:

10.1 The zone change is consistent with the objectives and policies of the proposed GIZ;

10.2 The zone change is consistent with the PDP Strategic Directions chapters (Chapters 3-6);

10.3 The rezoning gives effect to the National Policy Statement for Urban Development Capacity (NPS – UDC); more particularly the recently announced NPS-UD 2020 and the Operative Regional Policy Statements;

10.4 The changes are consistent with PDP maps that indicate additional overlays or constraints;

10.5 The GIZ changes take into account the location and environmental features of the site, including infrastructure, hazards and roading, which will be dealt with through the provisions of the PDP;

10.6 There is adequate separation and/or management between land uses provided for under the GIZ, in particular the landfill.

10.7 The CCCL site is more suited to industrial use than for viticulture and farming activity (due to soil and climatic conditions and proximity to the existing landfill

**Evidence for CCCL**

11. Evidence supporting the rezoning request has been filed by:

11.1 Mr Brett Giddens, resource management consultant;

11.2 Mr Tony Milne, landscape architect;

11.3 Mr Geoff Angus, economic evidence;

11.4 Mr Ray Edwards, traffic engineer.

**UGB – Chapters 3 and 4**

12. In Opening Submissions for the Council, an issue was raised with the fact that the relief sought by CCCL does not expressly seek that the UGB be drawn around the GIZ in the location being pursued in its submission. It is suggested that any attempt on CCCL's part to rely on the consequential relief sought in its submission would be a 'bottom up' approach to the plan preparation, and would require a very liberal interpretation of consequential relief in a clause 10(2) Schedule 1 context.

13. This is raised specifically in the context of the application of Chapters 3 (Strategic) and 4 (Urban Development) of the PDP describing this as a "top down approach" to preparing the plan. Counsel for the Council notes that Chapter 4 is clear that the location of new

UGBs or movement of existing UGBs is to allow for expansion of the urban environment is driven by the objectives and policies (and criteria in 4.2.1.4) in Chapter 4.[1]

14. Counsel for the Council refers to the consideration given to these provisions by Mr Place and favours his approach to these provisions over that of Mr Giddens in his Evidence in Chief.[2]

15. If the UGB had expressly been sought in addition to, and consequential upon, a rezoning of the land to GIZ, quite clearly no such issue would arise. However, and whilst I agree that the Chapter 3 and Chapter 4 provisions take a "top down approach" in the sense that they inform other PDP chapters, I disagree that the question of where the UGB should be drawn in the vicinity of the CCCL site is a logically prior or 'higher order' question that has to be considered before considering whether the CCCL site is suited to a General Industrial Zone.

16. It is noteworthy in my submission that the UGBs are not contained in a 'higher order' planning instrument such as the RPS, which is the case in other districts throughout the country, and if that were the case, CCCL's request for an urban zone would be problematic if the land lay outside of an urban limit set in an RPS. However, that situation does not arise.

17. In the context of this PDP, both the zoning is a method or a "district plan use rule" to achieve objectives and policies, on the authority of *Gock*.[3] The HC there held that in "plain english" the rural urban boundary (RUB)[4] is simply "a line on a map".[5]

18. The logical first question is whether, given the site characteristics, its location (and other questions of that kind) the land is suited to an industrial use. This has to come before considering whether a UGB should be drawn around the boundary of the site sought to be rezoned. It is nonsensical to consider, as a first question, whether a UGB should be drawn in the location of the outer boundary of the proposed GIZ boundary without first considering whether and what type of urban zone is appropriate for the CCCL site.

19. If the Panel considers that the GIZ is an appropriate zone for the land, it logically follows that the UGB ought to be drawn around the new GIZ boundary as a consequence of rezoning the land.

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[1] At para 7.21 Opening Legal Submissions for QLDC 20 June 2020
[2] Paras 124 – 142
[3] *Gock v Auckland Council* [2019] NZHC 276 at para [8]
[4] As it was described in that plan
[5] With reference to the explanation by the Environment Court in *Self Family Trust v Auckland Council* [2018] NZEnvC 49, [2018] NZRMA 323 at [17]

20. Accordingly, I reject the Council's contention that CCCL is taking a "bottom up" approach to the plan and nor do I accept that CCCL is taking a very liberal interpretation of what is consequential relief.

21. In simple terms, CCCL has sought to amend one of the methods (or rules) (zoning) to achieve relevant objectives as express relief in its submission and relies upon cl 10(2) jurisdiction of the Council to request a further method or rule as a consequential amendment to its primary relief.

22. It is noted that the evidence of Mr Place accepts that the request for rezoning the Site is "on the plan change" and having acknowledged this much, the wider implications of an UGB would necessarily follow from that relief.

**Jurisdiction under cl 10(2) Schedule 1**

23. Even where consequential relief is not sought in an original submission, a Council has jurisdiction to amend a plan in response to submissions. This jurisdiction is referred to by the EC in its reference to the *Lindis*[6] summary of the limits of the Court's powers to amend a plan in the context of a reference under cl 14, Schedule 1. For convenience, subpara (d) of the *Lindis* summary refers to:

> (d) "matter(s) ... relating to any consequential alterations necessary to the proposed ... plan arising from the submissions"; or

24. Subpara (d) of that summary is a reference to cl 10(2)(b)(i) of Schedule 1, which assumes some importance in this case. Whether a consequential amendment is a permissible alteration to a plan in terms of cl 10(2)(b)(i), is a judgement to be made having considered the internal hierarchy of provisions in the relevant plan.[7]

25. Depending on the outcome of that consideration, a Council may consider that changes not sought in a submission should be made to an equal or lower order provisions consequential to a change expressly sought as relief.

26. An example of a permissible consequential change of this order was considered in *Federated Farmers of New Zealand Inc (Mackenzie Branch) v Mackenzie District Council*,[8] where the HC observed that if an amendment is made to an objective under s290(2) of the RMA, consequential amendments to policies and methods not sought by a submission but related to it, may be warranted as consequential amendments.

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[6] *Lindis Catchment Group Inc v Otago Regional Council* [2019] NZEnvC 166
[7] Particularly in relation to the s32 obligations in finalising plan content.
[8] [2014] NZHC 2616

27. The cl 10(2) jurisdiction thus extends the range of permissible amendments under the "fair and reasonable" principle established in the *Countdown Properties* case. It is always a question of fact and degree as to how far a local authority can make amendments not specifically sought in submissions. The test is not whether relief had been expressly sought in the original submission, but whether the relief would go beyond what was reasonably and fairly raised in submissions.

28. In making an assessment as to whether recommendations made by the Independent Hearings Panel (**IHP**) on the Proposed Auckland Unitary Plan (**AUP**) were within scope of the submissions, the IHP applied a test of described by the HC in the context of an appeal, as the "reasonably foreseen logical consequence test", and this was considered to conform to the "orthodoxy" of RMA case law.[9]

29. Taking that approach, an UGB around the GIZ boundary consequential to the rezoning to GIZ is an amendment that is reasonably foreseen and is a logical consequence to the rezoning of the CCCL land.

**Traffic**

30. Mr Edwards was commissioned to consider the transportation issues associated with the rezoning proposal. As he notes in his evidence, a key transportation issue associated with the rezoning proposal is safely catering for site generated traffic turning into and out of Victoria Flats Road, an issue that had also been canvassed at the hearing of the storage facility resource consent application.

31. His preliminary assessment is that the current Victoria Flats Road intersection design is inadequate to safely cater for predicted future traffic flows and that at some point an upgraded intersection with a right turn bay for Victoria Flats Road traffic would cater for a certain level of development of the CCCL site with full development of the CCCL site requiring a more comprehensive intersection upgrade with the logical intersection design being (in his opinion) a roundabout.

32. Whereas he acknowledges that there are several areas where more work is required (in relation to the areas identified in paragraph 18 of his Evidence in Chief) and that it would be desirable to have answer to those questions now, it is his opinion that it is not critical to the current district plan review process as it is the NZTA that is the road controlling authority in relation to the most affected section of the road (SH6 and SH6A).

33. Mr Edwards had initially promoted a deferred zoning pending the outcome of the further analysis currently being undertaken, although it is anticipated that the Council is not in

[9] See [1]–[4], [92], [96]–[98], [101]–[103], [115]–[118] and [135], *Albany North Landowners v Auckland Council* [2017] NZHC 138

favour of deferred zonings. Accordingly, as an alternative measure, at the hearing, Mr Edwards will propose that traffic generation thresholds should be included within the rules to trigger intersection upgrades from having a right turn bay to the roundabout control which would be a trigger for full site development.

**Landscape**

34. Mr Milne has given very careful consideration to the landscape sensitivity of the CCCL site informed by the analysis of the site's character and values. He is not supportive of the ONL classification over the RZ land.

35. Mr Milne's evidence considers the unique landscape character of the GCZ generally and in particular that part of the Victoria Flats site within the GCZ that is proposed to be rezoned, whilst noting the physical separation of the Victoria Flats from Gibbston Valley and the evolving patterns of land use which have occurred across Victoria Flats since implementation of the QLDC landfill in particular in terms of its landscape characteristics.

36. Mr Milne's evidence provides specific response to the landscape evidence for the Council (from Mr Jones) and considers that the proposed structure plan provides a "bespoke response" to the site that enables a new typology of general industrial development to be well integrated into the site and the surrounding setting.

37. In Mr Milne's opinion, the considered approach of the structure plan will ensure that the landscape character and values of the surrounding context will not be affected to an unacceptable extent and on the basis of this assessment, it cannot be regarded as inappropriate development in an ONL in terms of the s6(b) directive.

**Opposing Submission from Scope Resources Limited (Scope)**

38. Scope has lodged a submission in opposition to the rezoning proposal, as operator of the landfill owned by the Council.[10] As to that, it is unclear whether Scope's further submission is limited to opposing the rezoning of land within the designation buffer land or whether its opposition extends to the whole of the CCCL site, including the GCZ land.

39. The Panel will be aware that CCCL had lodged an application to strike out the Scope further submission on the grounds related to its trade competitor status and the failure to identify direct effects.

40. By Minute 10 dated 27 March 2020, the Panel declined to strike out the Scope application, primarily on the ground that a trade competitor is not limited (or appears not to be) as a further submitter in terms of cl 8. CCCL reserves its position on that.

[10] For the term of its existing licence, which expires in 2034

41. The Panel will also be aware that CCCL has made an application for a resource consent for a storage unit facility on land within the designation buffer, and Scope was a submitter in opposition to that. The application was heard on 5 August, although closing submissions are yet to be filed (addressing specific matters addressed at the hearing in relation to Scope).

42. The issues raised by Scope in the context of the rezoning proposal were also raised as grounds for opposing the grant of that consent (reverse sensitivity effects on Scope and traffic). In the context of that hearing, CCCL had raised the specific question as to who is directly affected by reverse sensitivity effects – the Council as Requiring Authority under the designation, or (separately) on Scope as operator of the landfill (until 2034)? This issue was also alluded to in the decision of the Panel declining to strike out the Scope application.

**Relevance of cl 28**

43. Counsel is in receipt of a Memorandum of Counsel for QLDC clarifying the Council position on a matter relating to the CCCL GIZ submission, specifically in relation to the legal effect of clause 28 of a sale and purchase agreement. This had been submitted as Annexure E to Mr Giddens' rebuttal evidence. The question has been raised as to whether the clause acts to prevent Scope from submitting on applications for resource consents made by CCL and/or whether it is deemed to amount to a written approval from Scope to any such planning proposal.

44. The question assumes some significance in the context of CCCL's resource consent application due to the application of clause 28 (the precise issue being whether the Council is deemed to have provided an affected party approval to that application as CCCL contends it has). However, the meaning and application of the clause in that sale and purchase agreement has no relevance here. Accordingly, these legal submissions do not refer to the legal effect of clause 28 in advancing CCCL's case for a rezoning of its land.

**CCCL's case vis-à-vis Scope**

45. The case for CCCL in relation to Scope's submission is simply put; the rezoning proposal will provide for activities with a very low sensitivity to the (lawful) adverse effects generated by the landfill on the adjoining site. Development of the CCCL site for industrial activities will **not** lead to additional restrictions or constraints on the landfill operations beyond those that currently apply to and nor will it lead to any groundswell of pressure for relocation of the landfill to another site, rather, the rezoning will add stringent controls over and above the current RZ and designation controls (of which there are none)..

46. Contrary contentions are fearmongering and are made without an evidential basis. Reverse sensitivity effects are not considered to militate against the rezoning sought by CCCL.

**Preliminary issues raised by Scope**

47. Before considering the reverse sensitivity effects in further detail, there are 'preliminary' issues to be addressed in the context of the submission of Scope. The first has to do with the significance of the title for designation 'buffer' land.

*Significance of designation buffer*

48. Much is made by the witnesses for Scope of the fact that part of the land sought to be rezoned is within the buffer adjoining the landfill by virtue of Designation #76. However, this 'buffer' description is somewhat hollow as the plan contains no statement as to the purpose of this buffer, in terms of what it is intended to achieve.

49. Various purposes are attributed to this buffer land in the evidence for Scope, based upon statements made in the original NOR for the designation, although these statements are of no legal effect, on the authority of *Rogers v Christchurch City Council.*[11] The Court in the *Rogers* decision has held that zone descriptions not part of the plan cannot be relied upon by witnesses or the Court to interpret the plan.[12] Although the Court's comments applied to a zone and not a designation, the principle is of equal application here.

*No rules prohibiting any activities on the designation buffer land*

50. Contrary to the assertions of Mr Geddes (Scope's planner), the PDP contains no rules prohibiting activities on the designation buffer land by virtue of the designation, and nor are these restrictions imposed through rules of the underlying RZ.

51. Mr Geddes again relies on the content of the NOR application, where it states:

> Activities that will be prohibited within the landfill buffer area are:
>
> - All buildings and activities associated with residential and other accommodation purposes;
> - Buildings and activities associated with the public or private assembly of people;
> - Commercial activities such as the display, offering, provision, sale or hire of goods, equipment, takeaway food bars, professional, commercial and administrative offices, service stations, motor vehicle sales and the sale of liquor; and

[11] [2019] NZEnvC 119
[12] See para [47] in particular where a similar issue had arisen in the context of the Christchurch District Plan

- Recreational activities, including land and/or buildings for the primary purpose of recreation and/or entertainment.[13]

52. Putting aside the fact that the GIZ zoning sought by CCCL does not provide for any of these activities the designation conditions then proposed were not included in either the ODP or PDP. A prohibition in the s87A(6) sense will only apply if an activity is described as a prohibited activity by a rule in the plan.

53. At this point, it is instructive to refer to a private plan change request (by Memorial Avenue Investments Limited – **MAIL**) for a Business park zone over land on Memorial Avenue in Christchurch, in circumstances where a corner portion of the site to be rezoned was affected by a REPA designation (to protect operations of the adjoining Christchurch Airport). Unlike the situation here, the specific REPA designation includes restrictions over land within the REPA for the purpose of achieving safe landing and take-off of aircraft.

54. In the context of the rezoning request, an issue arose as to whether the designation was sufficient or whether similar restrictions should be included in the underlying zone provisions as well. The IHP determined that the restrictions specified in the Airport Designation had to be understood in the context of the RMA regime pertaining to the s176 approval required from a requiring authority by a proponent for an activity on designated land.

55. The IHP concluded that the restrictions specified in the designation simply make explicit what land use activities would "prevent or hinder" the designated works, and would require prior written consent in terms of s176. However, on account of the fact that the Requiring Authority's decision is open to an Environment Court appeal, the IHP concluded that similar controls ought to be included in the underlying zone.

56. In this specific context, it is reasonable to assume that the activities initially proposed to be prohibited within the landfill buffer (in the NOR application) describe the range of activities considered by QLDC as Requiring Authority to prevent or hinder operation of the landfill. However, quite aside from the fact that these activities are not restricted by the designation buffer, they are not provided for under the GIZ sought by CCCL.

57. Another interesting aspect of the MAIL private plan change request related to the fact that the structure plan for development of the entire Business Zone land dedicated the REPA land for car parking to reduce the number of persons who would be congregating on that part of the site at any one time. Accordingly, the REPA land had a significant role to play in contributing to the development of the entire MAIL site whilst accommodating the rationale for the REPA designation itself.

[13] Although some have already been consented, no more would be allowed.

58. In this instance, and as earlier noted, CCCL is willing to set aside the designation buffer land for the heavier industrial activities, with a further restriction on managerial or caretaker accommodation on that part of the land. This would be reflected in the Structure Plan, and this leads into my consideration of the 'place' of reverse sensitivity arguments under the RMA.

**Reverse sensitivity under the RMA**

59. It is useful to refer to passages supporting this 'balancing interests' approach (referred to in the context of the MAIL rezoning of REPA land), which appear in a decision of the IHP on the Christchurch District Plan replacement process. This was chaired by Judge Hassan, and is deserving of some weight here. The observations made by the IHP related to the potential for reverse sensitivity effects to arise if land adjacent to an existing poultry farm were to be rezoned for residential use. The rezoning was opposed by Tegel as operator of the farm.

60. The decision of the IHP notes[14] that the RMA does *not* use the term 'reverse sensitivity' and does not express any explicit principle or duty to account for this category of effect. The decision states:

> We are mindful of the danger of tacking 'principles' or 'duties' onto the RMA, given its clear purpose and principles and subordinate framework of policy statements and plans for the purpose of decision-making.

61. The decision endorses in broad terms the definition of 'reverse sensitivity' provided by Counsel in that case:

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

62. However, the IHP made the following pertinent points that: (my emphasis)

> … where this type of effect arises, it is as a result of the operation of the RMA. For instance, the concept of being "required to restrict … operations or mitigate … effects" could arise through RMA abatement notices or enforcement action in relation to the duties in ss 16 and/or 17 of the RMA. Alternatively, it could arise through the imposition of more stringent conditions at re-consenting or through plan review. **Given that, we consider it important that we are careful not to make any unjustified assumptions that intervention to manage reverse sensitivity effects is appropriate.** This is particularly because such intervention inevitably involves a choice between competing rights and interests. In terms of that balance, the RMA gives some limited recognition to incumbency, particularly in the fact that it specifies existing use rights. However, it does not go so far as to express any principle that, in plan review processes, new activities must be curtailed or restricted so as to protect incumbent or established uses. We would expect such a principle, if intended, to be

[14] At para [66].

> clearly expressed given the constraints it would impose on the capacity for plans to instigate and assist land use change for greater community wellbeing.

63. The decision reflects the need to give some recognition to the need to protect an incumbent or established use whilst recognising the rights of an adjoining landowner.

**Are reverse sensitivity effects likely to arise?**

64. In order to assess the likelihood to constraints being imposed on the landfill operations, an appreciation of the adverse effects able to be lawfully generated from the landfill activity is a necessary first step; all relevant RMA permissions pertaining to the landfill operation must be met at all times.

65. This was an issue traversed at the resource consent hearing for the storage unit facility, and a criticism was levelled at the evidence given for Scope that the level of permissible odour emissions in particular had been exaggerated by the witnesses called for Scope in light of its current operating conditions, as it appears to be here.

66. Relevant conditions currently in force include:

66.1 Conditions of Designation 76, which in the PDP include:

(a) Condition 4 (g)(iv) which requires "that an operations manual be prepared and approved by the District Planner for all aspects of the operation and maintenance of the activity and the manual is to include any on-going conditions that are required to be complied with", where aspects to be included in the manual include::

> … the effects of odour, dust, vermin and litter will be mitigated to ensure that any adverse effects associated with the site **are minor**. (my emphasis)

(b) Condition 11(c) in relation to the management plan for development of the landfill to ensure that (relevantly):

> Appropriate management techniques, such as buffer zones, employee education and fencing where appropriate, are put in place to avoid adverse effects on the sites that adjoin, but are not immediately affected by, the landfill operation.

66.2 The current discharge permit condition prevents the discharge of odour that is offensive or objectionable beyond the boundary of the site. This is to be determined by an officer of the ORC;

66.3 Pursuant to a recent review of that permit by the ORC, a landfill gas capture and destruction system is also to be installed and commissioned by 1 December 2020 (in compliance with the National Environmental Standards for Air Quality).

67. It is notable that while the landfill gas capture and destruction system is being installed, the odour levels are expected to increase, although once it is in place, gas emissions (in odour) **will** reduce. I come back to the significance of this further on.

68. In considering whether restrictions on reverse sensitivity grounds are justified, it is not enough that the landfill operations may result in complaints being made; there is no authority for the proposition that under the RMA an incumbent is entitled to be relieved from the burden of receiving and/or responding to complaints, particularly if the complaint is founded on reasonable grounds.

69. Similarly, restrictions justified on reverse sensitivity grounds are not intended to provide an incumbent with protection from detection in relation to any non-compliance with operating constraints. Although complaints may be a first sign of a groundswell of opposition that could lead to restrictions being placed on an incumbent,[15] the prospect of this happening must be objectively assessed.

70. As to this, in a very real sense, the assertions contained in the evidence for Scope[16] (that restrictions are inevitable if CCCL's proposal is consented) are somewhat exaggerated, as if the operating conditions of the landfill are complied with on an ongoing basis, the potential for reverse sensitivity effects to arise goes away.

71. Witnesses for Scope (Ms Van Uden and Mr Rissman in particular) each describe a history of complaints in relation to landfill activities, although, no evidence has been provided as to what the complaints were about or whether the complaints arose due to non-compliance with conditions of the discharge consent or designation. This absence is surprising as Scope is obliged to keep evidence of that kind.

**Odour effects said to be 'no more than minor' to ORC**

72. The AEE prepared for the Council[17] for discharges associated with the establishment of the gas capture and destruction system assumes some significance here. As it is a public record, a copy is **attached** to these submissions. Tonkin + Taylor had assessed the effects associated with discharges of odour in the context of the receiving environment which took into account:

[15] *News Auckland Limited v Manakau City Council* A103/2003.
[16] And to a lesser extent, in the s42A report of Ms Devlin
[17] January 2020

- Users of State Highway 6
- Users of the Wakatipu Gun Club
- Users of newly consented commercial activity
- Residences within the wider Gibbston Valley community

– and whilst noting that the identified receivers had a varying degree of sensitivity, the AEE concluded that the adverse effects of odour emissions would be **no more than minor on the environment at the source**, and a **less than minor effect on any nearby sensitive receiver**. It was on that basis that the ORC agreed to process the application on a non-notified basis.

73. The Gun Club and newly consented commercial activity were identified as receivers with a low sensitivity to the impact of odour, whilst noting that each of these activities was subject to caveats on their operations acknowledging that odour may be present and preventing them from lodging odour complaints with ORC (CCCL proposes a similar instrument here).

74. Relevantly, the AEE acknowledges that during the installation of this gas capture and destruction system, conditions of the pre-existing discharge consent will not be able to be met. Accordingly, any odour presently detected on the site amounts to an increase in the odour able to be lawfully generated from the landfill operations once the system has been installed. On this issue, the AEE states:

> While the landfill gas collection and destruction system is expected to result in a long-term decrease in landfill-gas related discharges (following installation) the Applicant acknowledges that the installation of this system is likely to cause a temporary increase in odour. This increase in odour is not covered by the existing discharge permit and forms the subject of this consent application.

75. The gas collection and destruction system is expected to be in place by December 2020, beyond which time, odour emissions are expected to **decrease** beyond those currently experienced on site. Even so, during the gas collection and destruction system installation works, the conclusions reached in the AEE were that the proposed works are expected to have **no more than minor effects** on the environment.

76. Scope can hardly advance its case in opposition to the CCCL rezoning proposal on the basis that odour emissions will have a significant effect on persons engaged in the industrial activities provided for under the GIZ – without seriously calling into question the integrity of the AEE submitted to the ORC.

**Relevance of NPS-UD 2020**

77. In response to directions from the Panel, the Council has filed a Memorandum containing an executive summary of its position on the new National Policy Statement on Urban Development 2020 (**NPS-UD**). Further detail of the Council position and supporting evidence will form part of its written reply.

78. The Council's Memorandum states that the NPS-UD contains the same underlying approach as the NPS-UDC whereby the Council must provide at least sufficient development capacity to meet expected demand for housing and business land over the short-medium and long terms, with similar requirements as to whether capacity is plan-enabled, infrastructure-ready (per Policy 2).

79. The NPS-UD will come into force on 20 October 2020, and in terms of s75(3) of the RMA, the Panel will have to consider whether provisions of the PDP give effect to relevant provisions of the NPS-UD in making its decisions on this and other Stage 3 submissions for the PDP.

80. CCCL considers that the NPS-UD introduces relevant changes, the significance of which are not addressed in the Council's Memorandum. These include clause 3.11(2) which requires that the further evaluation reports required under s32AA of the Act, and which will apply to the Panel's consideration of these stage 3 submissions must (relevantly):

> (a) Clearly identify the resource management issues being managed;
>
> (b) Use evidence, particularly any relevant HBAs, about land and development markets, and the results of the monitoring required by the NPS-UD, to assess the impact of different regulatory and non-regulatory options for urban development and their contribution to:
>
> (i) Achieving well-functioning urban environments; and
>
> (ii) Meeting the requirements to provide at least sufficient development capacity.

81. A well-functioning urban environment is defined in Policy 1 as:

> **Policy 1**: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:
>
> (a) have or enable a variety of homes that:
>
> (i) meet the needs, in terms of type, price, and location, of different households; and
>
> (ii) enable Māori to express their cultural traditions and norms; and
>
> (b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and

(c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and

(d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and

(e) support reductions in greenhouse gas emissions; and

(f) are resilient to the likely current and future effects of climate change.

82. A further very relevant amendment introduced by the NPS-UD was the inclusion of a requirement for "responsive planning" and this lends support to the rezoning sought by CCCL. This is provided for through new Policy 8 of the NPS-UD which states:

> Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:
>
> (a) unanticipated by RMA planning documents; or
>
> (b) out-of-sequence with planned land release.

83. In discussing the reasons for the inclusion of this new provision, the Recommendations and Decision Report on the NPS-UD records that urban areas are "dynamic and complex and continually changing in response to wider economic and social change". This is an observation that is particularly relevant in this COVID-19 afflicted context which is discussed in the economic evidence of Mr Angus for CCCL.

84. The NPS-UD does not use the term "urban growth boundary" and looks at "urban environments" in a much wider sense "irrespective of local authority of statistical boundaries, in relation to which it clearly exhibits an increased emphasis on:

- The importance of ensuring competitiveness in the provision of land for residential and business land development including for industrial activities; and
- As a **minimum** directs that there is to be a variety of sites that are suitable for different business sectors in terms of location and site size;
- That there be good accessibility for all people between housing, jobs, all of which supports the rezoning proposal advanced by CCCL, particularly in light of the shortage of land within Wakatipu Ward, the increased cost of industrial zoned land within Cromwell and Wanaka[18] and the comparative lack of accessibility for Queenstown residents to the available land in Cromwell.[19]

[18] See evidence of Mr Angus paras 33-38 EIC

[19] Which necessitates road travel through the Kawarau Gorge which during the winter months can be restricted by weather conditions

**Concluding comments**

85. The evidence for the Council opposes the rezoning of the land on a number of grounds although in terms of the assessment by Mr Place, and Ms Hampson, the argument is raised that in terms of the NPS-UDC, there is sufficient capacity to provide for industrial development over the short and medium term, thus meeting the expectation of the NPS-UDC.[20]

86. That argument loses some force in the context of the NPS-UD 2020. As with the NPS-UDC, the NPS-UD establishes **minimum**, not maximum margins for feasible business land (relevantly) to exceed projected demand, although there is an increased emphasis on land capacity to exceed forecast demand by a competitive margin and this is emphasised in Section 3.23[21] and new Policies 8 and 10.

87. As Mr Giddens observes, rezoning of the CCCL land to provide for industrial growth in Wakatipu is the only option currently available to the Council now.[22] Much of the growth of industrial activity is being met within the Central Otago District in Cromwell, "offering little to no benefits to the Queenstown Lakes District economy".[23]

88. Subpart 2 cl 38 of the NPS-UD demands that the Council be responsive to the CCCL initiative despite that it is out of sequence with the Council's planned release of industrial land.

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7 August 2020

[20] Page 7 Summary of Evidence of Mr Luke Place
[21] Reiterating the relevance of affordability and competitiveness
[22] EIC, para 113
[23] EIC para 114