

**Before the Panel of Hearing Commissioners
For the Queenstown Lakes Proposed District Plan**

In the Matter of

of the Resource Management
Act 1991

And

In the Matter of

of the Queenstown Lakes
Proposed District Plan – Stage 2

And

In the Matter of

of Hearing Stream 14 – Wakatipu
Basin

Legal Submissions on behalf of
Boxer Hills Trust (Submitter 2385 and
2386) and **Trojan Helmet Limited**
(Submitter 2387 and Further Submitter
1157)

Dated: 15 July 2018

Introduction

1. These legal submissions are presented on behalf of Trojan Helmet Limited (**THL**, Submitter 2387) and Boxer Hill Trust (**BHT**, Submitter 2385 and 2386) (together the **Submitters**) in respect of submissions on Chapters 3, 6, 24, 27, 45 and others of the Queenstown Lakes Proposed District Plan (**Proposed Plan**).
2. THL and BHT together own approximately 190ha of land located directly southwest of Arrowtown, which extends between Arrowtown-Lake Hayes Road in the west to McDonnell Road in the east, and Hogans Gully Road in the south.
3. The land includes:
 - (a) approximately 162ha of golf course which is owned by THL and known as “The Hills” golf course (addressed by Submission 2387);
 - (b) an approximately 8.4ha block which fronts McDonnell Road and currently contains a driving range associated with the golf course which is owned by BHT (addressed by Submission 2386); and
 - (c) an approximately 19.7ha block adjacent to the intersection of Hogans Gully and the Arrowtown Lakes Hayes Roads, which is currently grazed and also owned by BHT (addressed by Submission 2385).

Overview of THL’s and BHT’s Submissions

The Hills Resort Zone (Submission 2387)

4. THL has made a submission on the Proposed Plan seeking its land be zoned “The Hills Resort Zone” (**HRZ**) which is a bespoke zone that would provide for ongoing operation and maintenance of the golf course(s), the clubhouse and related ancillary activities, and provide for new residential and visitor accommodation facilities in some areas, up to a maximum of 150 units (including the three existing dwellings on the site). The land is included in the Wakatipu Basin Rural Amenity Zone (**WBRAZ**) in the notified Proposed Plan.

5. Within THL's proposed HRZ the following would be enabled:
- (a) Golf, farming and sculpture activities. For the vast majority of Zone (over 96%) only these activities would be permitted, ensuring a predominance of open space is maintained.
 - (b) Up to 150 residential units catering for a mix of residential, visitor, and staff accommodation, provided such activities are undertaken within identified development nodes (i.e. 'Activity Areas' of which there are nine, and 'Homesites' of which there are six) . Activities of this nature outside of the identified Activity Areas and Homesites would be would be non-complying.
 - (c) A limited range of commercial activities in and around the existing clubhouse (proposed Activity Area C) which are related and ancillary to the operation of the resort.
 - (d) A limited number of temporary events, such as golf tournaments, subject to controls on frequency, duration, noise, traffic management, operations management and so forth.
 - (e) A limited number of helicopter movements (around 6 landings and 6 takeoffs per week), provided the take off and landings are near the clubhouse (i.e. within Activity Area C) and specified noise limits are met.
 - (f) A public walk/cycleway through the Zone (in a location that will not conflict with use of the golf courses) which would be established upon or prior to the construction of 40 residential units, and which would provide connection between the developing McDonnell Road and the Lake Hayes areas, and may ultimately connect to the public trail network.
 - (g) Extensive areas of landscaping, which must be established prior to development occurring; otherwise the development would be non-complying.
6. All development within the HRZ would be required to comply with the HRZ Structure Plan, which has been formulated following a landscape led

design process that is described in detail in THL's evidence and is addressed later in these submissions.

7. All development would also be required to comply with various HRZ standards relating to building materials and colours, building heights, density, glare and so forth. For development that would potentially be visible from beyond the HRZ, additional standards would apply, and extensive areas of landscaping (**LAMA**) would need to be established before any development could occur.
8. Additionally, a comprehensive suite of objectives, policies and rules would be included in the District Plan to govern land use within the Zone and ensure resource consents are required where necessary, and any adverse effects of land use and development are avoided.
9. In the event that the HRZ is rejected, THL has sought alternative relief that would see amendment to the Chapter 24 provisions so as to better recognise and provide for the use and development of the rural land resource of the Wakatipu Basin. The alternative relief is not addressed in these legal submissions, nor in the evidence for THL, as the HRZ is the primary relief sought and is considered far superior.
10. The HRZ is not opposed by any submitter but is supported by a number of submitters, including neighbours.
11. THL has pre-lodged evidence of the following witnesses in support of the HRZ:
 - (a) Jeffrey Brown, Planner;
 - (b) Richard Tyler, Master Planner and Landscape Architect;
 - (c) Yvonne Pflüger, Landscape Architect;
 - (d) Anna Marie Chin, Architect;
 - (e) Fraser Colgrave, Economist;
 - (f) Tony Penny, Traffic Engineer;
 - (g) Stephen Peakall, Acoustic Engineer;

- (h) James Hadley, Civil and Structural Engineer;
 - (i) Brendan Allen, General Manager of The Hills Golf Club;
 - (j) Emma Hill, Chair of Michael Hill International, Director of The Hills Golf Club and THL¹, and Hill family representative.
12. In addition, the following expert reports were lodged in conjunction with THL's Stage 2 submission:
- (a) A section 32 evaluation of the HRZ, prepared by Mr Brown's planning consultancy, Brown and Co;
 - (b) A master planning report, prepared by Richard Tyler's company, Site Landscape Architects;
 - (c) An assessment of landscape and visual effects, prepared by Boffa Miskell (Yvonne Pflüger);
 - (d) A helicopter noise assessment, prepared by Marshall Day Acoustics (Stephen Peakall);
 - (e) A transportation assessment prepared by Traffic Design Group (Tony Penny);²
 - (f) An infrastructure feasibility assessment prepared by Mr Hadley's firm, Hadley Consultants;³
 - (g) An natural hazards assessment, also prepared by Mr Hadley's firm, Hadley Consultants;⁴
 - (h) A report on preliminary and detailed site investigations undertaken in respect of land contamination, prepared by Davis Consulting Limited (Glen Davis).⁵

¹ THL is a family owned company, owned by the Hill family.

² This report was originally prepared for and also lodged in conjunction with THL's Stage 1 submission. The report has been updated in Mr Penny's evidence dated 13 June 2018.

³ This report was originally prepared for and also lodged in conjunction with THL's Stage 1 submission. The report has been updated in Mr Hadley's evidence dated 13 June 2018.

⁴ This report was originally prepared for and also lodged in conjunction with THL's Stage 1 submission. The report has been updated in Mr Hadley's evidence dated 13 June 2018.

⁵ This report was originally prepared for and also lodged in conjunction with THL's Stage 1 submission. The report remains relevant to THL's Stage 2 submission.

13. The evidence and reports demonstrate, in summary, that there are no physical, technical, landscape or other reasons that count against the HRZ, and that the HRZ is significantly better than the notified WBRAZ.
14. The Council's position on the HRZ is not entirely clear, as some of its witnesses support (or do not oppose) the HRZ, while others do oppose the proposed Zone. This is address in detail later in these submissions.

Hogans Gully Road Landholding (Submission 2385)

15. BHT has made a submission in respect of its approximately 19.7ha block of land bounded by Hogans Gully and the Arrowtown Lake Hayes Roads that supports the notified Wakatipu Basin Lifestyle Precinct (**WBLP**) zoning of its land.
16. A WBLP zoning would enable the creation of up 19 lots, each with a dwelling, subject to the necessary resource consents being obtained.
17. BHT accepts the some of the controls on development proposed within the notified WBLP (e.g. the required 75m building setback from roads) but seeks changes to some of the other provisions, including some of the objectives and policies, which it considers will otherwise not encourage innovative and landscape led out outcomes, and/or are unnecessary and will give rise to inefficient consenting requirements. BHT also seeks amendment to some of the objectives and policies to better recognise the development potential within the WBLP.
18. BHT has pre-lodged evidence of the following expert witnesses in support of the WBLP zoning of its land:
 - (a) Jeffrey Brown – Planner;
 - (b) Tony Penny – Traffic;
 - (c) James Hadley – Infrastructure and Servicing.
19. BHT also made a submission on Stage 1 of the PDP (which it has not withdrawn),⁶ by which it sought a Rural Lifestyle zoning of its Hogans Gully land, which was supported by (amongst other reports) a landscape

⁶ Because it has not been withdrawn, BHT's Stage 1 submission is deemed to be a submission "on" Stage 2 of the Proposed Plan/the Variation.

assessment prepared by Yvonne Pflüger and a soil contamination assessment prepared by Mr Davis. Neither Ms Pflüger nor Mr Davis have undertaken an assessment or prepared any evidence in respect of the Stage 2 proposal for BHT's Hogans Gully land, however their Stage 1 reports remain of some relevance. Neither report raises any issues with the zoning of BHT's land for rural residential development.

20. The Council's evidence also supports the WBLP zoning. Notably, no submitter has filed any evidence in opposition to the WBLP zoning, so the zoning is uncontested evidentially.
21. The Council's evidence does not support all of the amendments to the WBLP zone provisions sought by BHT however. Mr Brown addresses these in his evidence.
22. Because THL supports the notified WBLP zoning of its Hogans Gully Road land (subject to amendment of some of its provisions, as detailed by Mr Brown), its submission will not be addressed any detail in these legal submissions. However, the general criticisms made in these submissions of the Council's approach to Stage 2 of the Proposed Plan remain relevant, and the legal principles discussed below apply to the Panel's assessment of and decision on the submission,

McDonnell Road Landholding (Submission 2386)

23. BHT has made a submission in respect of its approximately 8.4ha block of land which fronts McDonnell Road on its eastern boundary, is adjacent to The Hills Golf Club on its northern and western boundaries and the Arrowtown Lifestyle Retirement Village on its southern boundary. The land currently contains a driving range associated with The Hills Golf Club. BHT's submission seeks that the land be included in the WBLP, instead of the notified WBRAZ. A WBLP zoning of BHT's land would enable the creation of 8 residential lots, subject to the necessary resource consents being obtained.
24. BHT's submission is not opposed by any submitter but is supported by a number of submitters, including neighbours.
25. BHT has pre-lodged the following expert evidence in support of the submission:

- (a) Jeffrey Brown – Planner;
 - (b) Tony Penny – Traffic;
 - (c) James Hadley – Infrastructure and Servicing;
 - (d) Yvonne Pfluger - Landscape.
26. As with BHT's Hogan's Gully land, BHT also made a submission on Stage 1 of the PDP (which has not withdrawn) by which it sought a Rural Lifestyle zoning for its McDonnell Road land, which was supported by (amongst other reports) a soil contamination assessment prepared by Mr Davis. Mr Davis has not undertaken an assessment or prepared any evidence in respect of the Stage 2 proposal for BHT's McDonnell land, however his Stage 1 report remains relevant, and does not identify any contamination issues in respect of the land that would render it unsuitable for residential development.
27. The evidence and reports conclude that a WBLP zoning of BHT's land is better than the notified WBRAZ. Notably, the Council's landscape witness supports a WBLP zoning.
28. The Council's planner does not support the inclusion of BHT's land within the WBLP and recommends retention of the notified WBRAZ. This recommendation is flawed for a number of reasons, which are addressed later in these submissions.

The Law

29. Detailed legal submissions addressing the legal tests that apply when considering submissions on a Proposed District Plan were presented for THL during the Stage 1 hearings (Hearing Stream 1B). The keys points are summarised below, while a more detailed analysis of the legal principles that should inform the Panel's decisions on Stage 2 of the Proposed Plan is set out in **Appendix A**.

Case Law

30. The Environment Court gave a comprehensive summary of the mandatory requirements for the preparation of district plans in *Long Bay-Okura v North Shore City Council*⁷. Subsequent cases have updated the Long Bay summary following amendments to the RMA in 2005 and 2009, one of the more recent and comprehensive being the decision in *Colonial Vineyard Ltd v Marlborough District Council*⁸. However, since that decision section 32 has been materially amended again⁹.
31. The 2013 Amendment to section 32 changed the requirements for and implications of section 32 evaluations, but did not change the statutory relationship between the relevant higher order documents (discussed in Appendix A).
32. An updated version of the Long Bay/Colonial Vineyard test, incorporating the 2013 Amendments, is set out in **Appendix B**.
33. Further principles relevant to the implementation of section 32 as set out in the Act and derived from the case law include the following:
- (a) The Proposed Plan should achieve integrated management of the effects of the use, development and protection of land and associated natural and physical resources of the District.¹⁰
 - (b) The Panel should not start with any particular presumption as to the appropriate zone, rule, policy or objective.¹¹

⁷ A078/08.

⁸ [2014] NZEnvC 55.

⁹ By section 70 of the Resource Management Amendment Act 2013, which came into force in December 2013. Minor amendments were also made in 2017, which are of no consequence presently.

¹⁰ Section 31(1)(a).

- (c) No onus lies with a submitter to establish that the subject provisions should be deleted, nor is there a presumption that the provisions of a proposed plan are correct or appropriate. The proceedings are more in the nature of an inquiry into the merits in accordance with the statutory objectives and existing provisions of policy statements and plans.¹²
- (d) The Panel's task is to seek to obtain the optimum planning solution within the scope of the matters before it based on an evaluation of the totality of the evidence given at the hearing, without imposing a burden of proof on any party.¹³
- (e) Section 32 requires a value judgment as to what, on balance, is the "most appropriate" when measured against the relevant objectives. "Appropriate" means "suitable"; there is no need to place any gloss upon that word by incorporating that is to be superior.¹⁴
- (f) The words "most appropriate" in section 32 allow ample room for the Council (or its officers or witnesses) to report that it (they) considers one approach "appropriate" and for the Panel to take an entirely different view, on the basis of the evidence and other information it has received.¹⁵
- (g) Section 32 does not require an enquiry as to "need" in terms of whether the activity is present or if there is a sufficiency of that form of activity.¹⁶
- (h) Section 32 is there primarily to ensure that any restrictions on the complete freedom to develop are justified rather than the converse. To put it more succinctly, it is the "noes" in the Proposed Plan which

¹¹ *Eldamos Investments Limited v Gisborne District Council* W47/05, affirmed by the High Court in *Gisborne District Council v Eldamos Investments Ltd*, CIV-2005-548-1241, Harrison J, High Court, Gisborne, 26/10/2005. See also *Sloan and Ors v Christchurch City Council* C3/2008; *Briggs v Christchurch City Council* C45/08, and *Land Equity Group v Napier City Council* W25/08.

¹² *Hibbit v Auckland City Council* 39/96, [1996] NZRMA 529 at 533, cited with approval in *Kennedy v Auckland City Council*, A110/08, and *Pahia and District Citizens Association Inc v Far North District Council* A036/07.

¹³ *Eldamos* paragraph [129].

¹⁴ *Rational Transport Society Inc v NZTA* [2012] NZRMA 298 (HC) at [45].

¹⁵ See the Independent Hearings Panel's decision on the Strategic Directions Chapter of Proposed Christchurch Replacement Plan (dated 26 February 2015) at paragraph [67].

¹⁶ *Gus Properties Ltd v Marlborough District Council* W075/94 at 16.

must be justified, not the “ayes”.¹⁷ This accords with the Act’s enabling purpose.

- (i) Where the purpose of the Act and the objectives of the relevant plans can be met by a less restrictive regime, then that regime should be adopted. Such an approach reflects the requirement to examine the efficiency of the provision at issue. It also promotes the Act by enabling people to provide for their well-being while addressing the effects of their activities.¹⁸
- (j) An assessment against the objectives and policies of the relevant plans should be holistic and undertaken “in the round”, as opposed to a more focused vertical or “silo” approach. The “silo” approach risks undue focus being placed on particular provisions of the plans, where such emphasis is not required or even suggested by the plan(s) itself.¹⁹
- (k) Where, (such as here), the objectives and policies of a Plan (the Proposed Plan) are unsettled, the proposal will need to be judged against superior documents including any relevant regional plan, policy statements, and national standards or policy statements. Nevertheless the provisions in all plans do not always fit neatly together and regard should be had to the policies and objectives of a plan through the filter of Part 2 of the Act when necessary.²⁰
- (l) A variation should be tested by whether it achieves the purpose of the Act, rather than whether the variation is necessary to achieve the purpose of the Act as incorporated into objectives and policies of the remainder of the Proposed Plan. There is no presumption in favour of any particular zoning of a site. What is required is the

¹⁷ *Hodge v CCC* C1A/96, at page 22, where the Court cited with approval the planning witness’ evidence on this point.

¹⁸ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Whakatane District Council* [2017] NZEnvC 51 at [59], where the Court found that notwithstanding subsequent amendments, the approach applied in *Wakatipu Environment Society Inc v Queenstown Lakes District Council* C153/04 at [56] was still applicable.

¹⁹ *Art Deco Society (Auckland) Incorporated v Auckland Council* [2012] NZEnvC 125, see [1]–[3], [21]–[22], [27]–[28] and [134].

²⁰ *Briggs v Christchurch City Council* C045/08, see also *Eldamos*, at [30]. The principle is not inconsistent with *King Salmon*.

most appropriate zoning of land between the status quo and that proposed by the variation (or anything in between).²¹

34. More generally, the Supreme Court's decision in *King Salmon*²² (which is binding on the Panel) reinforces the following general principles in relation to the preparation and change of district plans:
- (a) The hierarchy of planning documents required under the RMA and the importance of the higher level documents in directing those that must follow them.
 - (b) That planning documents are intentional documents and mean what they say.
 - (c) That language is important, and wording (and differences in wording) does matter.
 - (d) The need to be precise and careful with words, to create certainty of meaning.
 - (e) That policies, even in higher level documents, can be strong and directive, and need to be implemented as such.
 - (f) That reconciling the potential for conflicts between different provisions of a planning document is important.
 - (g) Where there are clear directive higher level planning provisions these will be deemed to be in accordance with Part 2 of the Act and there may be no need for further resort to Part 2 provided the proposed lower level provisions "give effect to" the higher level provisions.²³
35. In respect of Part 2 of the Act, the *King Salmon* case has clarified:
- (a) While environmental protection is a core element of sustainable management, no one factor of the "use, development and protection" of natural and physical resources in section 5 creates a general veto.

²¹ *Infinity Group v Queenstown Lakes DC* C010/05.

²² *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38.

²³ *Ibid.*

- (b) While environmental bottom lines may be set to protect particular environments from adverse effects, that will depend on a case by case assessment as to what achieves the sustainable management purpose of the Act.
 - (c) Sections 6, 7 and 8 “supplement” section 5 by further elaborating on particular obligations on those administering the Act.
 - (d) “Inappropriateness” in sections 6(a) and (b) should be assessed by reference to what it is that is sought to be protected or preserved.
36. The more particular implications of the *King Salmon* case for district plan formulation include:
- (a) More directive objectives and polices carry greater weight than those expressed in less direct terms.
 - (b) Directive objectives and policies to avoid adverse effects should usually be accompanied by restrictive activity status, such as non-complying or prohibited, (although minor or transitory effects may be permissible).
 - (c) When considering higher order documents (such as an RPS) do not refer to Part 2 or undertake a “balancing” or “in the round” interpretation of its provisions unless the policy statement does not “cover the field” in relation to the issues being addressed, or its wording is uncertain or conflicting. Put another way, to the extent the policies of a higher order document (e.g. an RPS) are directive they must be given effect to by a district plan, unless there is a conflict in the higher order document, and only then can the decision maker refer to Part 2.

Particular Legal Issues Arising

Status of the PRPS

37. The PRPS has, since December 2016, been the subject of numerous appeals on a large number of its provisions which were mediated over the course of 2017 and early 2018. The majority of appeals have been resolved by agreement amongst the parties and consent orders lodged. Those orders are in the process of being issued by the Environment Court.

38. Once issued, the provisions to which they relate will have full legal weight and Operative Policy Statement will no longer be relevant. As it presently stands, the Operative Policy Statement should be given little weight given the changes made by, and the status of the PRPS.
39. Counsel understands that counsel for the Council has addressed the Panel on the matter of the PRPS, and expects she will provide a further update on the status of the various Chapters of the PRPS in her closing submissions.

Status of Stage 1 PDP Provisions

40. As the Panel will be aware, the Council issued its decision on Stage 1 of the Proposed Plan on 7 May 2018. Stage 1 of the Proposed Plan includes the higher order strategic chapters: Chapters 3 (Strategic Directions), 4 (Urban Development), 5 (Tangata Whenua) and 6 (Landscapes).
41. The appeal period in respect of the Stage 1 decision closed on 19 June 2018. 100 appeals have been lodged. This includes an appeal by THL which supports the definition of “resort” contained in the Stage 1 decision and seeks the inclusion in the higher order chapters of the Proposed Plan, or elsewhere, as may be appropriate, an objective and policy suite that recognises and provides for resort development in appropriate locations in the District.
42. The period in which to lodge section 274 party notices in respect of the appeals closed on 10 July. Over 500 section 274 party notices have been lodged. The Council and Court are presently determining how best to manage the very large proceedings.
43. Together the appeals challenge most aspects of the Stage 1 decision. Chapter 6 is challenged in its entirety. Accordingly, the Stage 1 provisions, including the higher order strategic provisions, are in a state of flux and are likely to change, possibly significantly. They should therefore be given little or no weight by the Panel when making decisions on Stage 2 of the Proposed Plan.
44. Given the unsettled nature of the Proposed Plan, and noting again that there is no presumption in favour of the Council’s notified proposal, when evaluating submissions on Stage 2 of the Proposed Plan, the Panel must

have recourse to the relevant objectives and policies of the PRPS (to the extent they are settled), the Operative Policy Statement (subject to a careful consideration of weighting), the provisions of any other relevant higher order documents, and most importantly, to Part 2 of the Act.

45. In any case, because they were drafted and submissions heard prior to the notification of Stage 2 of the Proposed Plan, most of the landscape related provisions of the Stage 1 decision on the Proposed Plan do not address and are of little or no relevance to land within the Wakatipu Basin that is not within an ONL or ONF, or located within a Rural Character Landscape (which neither the WBRAZ nor the WBLP are).

Proposed New Chapter 6 Objectives and Policies

46. The Council's planning witness, Mr Barr, in his rebuttal evidence²⁴, recommends a suite of policies for inclusion in Chapter 6 which seek to manage activities within the WBRAZ. He does so purportedly in response to submissions 2307, 2314 and 2577. However these submissions do not seek the changes to Chapter 6 that Mr Barr recommends. It is submitted that even if they did, they would not be "on" the Stage 2 of the Proposed Plan/the Variation, because Stage 2/the Variation, as notified, did not propose to alter Chapter 6, other than two fairly minor amendments, specifically, to delete one paragraph from Part 6.2 Values, and to amend Part 6.4 Rules. It is submitted that there is therefore no scope for the Panel to make a decision on the new Chapter 6 policies that Mr Barr recommends.
47. Counsel for the Council (Ms Scott) addresses this issue in her opening legal submissions²⁵ in particular at paragraph 2.4 where she states:
- "(d) importantly, it is agreed that jurisdiction (and scope) exists to insert new provisions into Chapters 3 and 6 to the extent that such amendments do not impact the application of Stage 1 provisions, and apply to the area of land covered by the Zone."*
48. It is unclear from her submissions with whom there is "agreement" that new provisions can be inserted in Chapters 3 and 6. THL does not agree there is scope to do so.

²⁴ Dated 27 June 2018, Appendix A.

²⁵ Dated 5 July 2018.

49. Had new Chapter 3 and/or 6 provisions been notified as part of Stage 2 of the Proposed Plan, THL, and inevitably a vast number of other persons, would have submitted on them.
50. In fact it was obvious to THL that there was no clear connection between Stage 2 of the Proposed Plan, in particular Chapter 24, and the higher order strategic chapters, but given the higher order chapters were not addressed by Stage 2, THL considered, in accordance with established legal principles, that there was no jurisdiction to make a submission on these chapters.
51. It is submitted it will cause significant prejudice to submitters, including THL, if the Proposed Plan is amended in the “side wind” manner now recommended by Mr Barr and endorsed by legal counsel for the Council.
52. It is submitted that if the Council considers it necessary to amend the higher order strategic chapters in order to ensure a nexus between those chapters and proposed Chapter 24, the only way in which it can fairly and lawfully do so is by way of a further variation.

Adequacy Council's Section 32 Evaluation

53. The Council's section 32 evaluation of proposed Chapter 24 acknowledges that the primary purpose of the Chapter is to “*protect the Wakatipu Basin's landscape resource.*”²⁶
54. It is submitted that the focus on “protection” of the landscape is at odds with the legal principle established by *King Salmon* that that while environmental protection is a core element of sustainable management, no one factor of the “*use, development and protection*” of natural and physical resources in section 5 creates a general veto.²⁷
55. It is also problematic in that the land addressed by Chapter 24 and proposed to be zoned either WBRAZ or WBLP is not located within an ONL nor does it contain any ONFs, both of which would require “*protection*” under the Act (albeit only from “inappropriate” subdivision, use and development).

²⁶ Page 6.

²⁷ Refer paragraph 36, above.

56. The landscapes addressed by Chapter 24 are instead section 7 landscapes, for which the Act does not mandate *protection*; rather it requires that “*particular regard*” be had to (inter alia):
- (a) The ethic of stewardship;²⁸
 - (b) The efficient use and development of natural and physical resources;²⁹
 - (c) The maintenance and enhancement of amenity values;³⁰
 - (d) The maintenance and enhancement of the quality of the environment;³¹
 - (e) Any finite characteristics of natural and physical resources.³²
57. It is submitted that *particular regard* must be had to such matters while ensuring that overall, sustainable management is achieved. Sustainable management means more than protecting the landscape. It means enabling people and communities to provide for their social, economic and cultural while managing effects on the environment.
58. When considering how best to achieve sustainable management, section 32 requires, among other things, the identification and assessment of the benefits and costs of the environmental, economic, social and cultural effects of the provisions proposed, including the identification and assessment of the opportunities for economic growth and employment anticipated to be provided or reduced by the implementation of the provisions.³³
59. It is submitted that the Council’s section 32 evaluation is scant, at best, and contains no meaningful assessment of the above matters, nor any of the other matters section 32 requires.
60. Its assessment of the benefits and costs of the proposed rules and standards that will govern (and limit) land use within the WBRAZ and

²⁸ Section 7(aa).

²⁹ Section 7(b)

³⁰ Section 7(c)

³¹ Section (f)

³² Section 7(g)

³³ Section 32(2)

WBLP totals no more than a few lines. It contains no individual assessment of any of the proposed rules or standards, and, it appears, no assessment at all of proposed subdivision rules (Chapter 27) including WBRAZ rule which significantly alters the status quo and proposes to restrict subdivision to 80ha.

61. These are significant omissions from the Council's section 32 report and indicate that the disabling effects, or costs of notified Chapter 24 have not been taken into account.
62. It submitted that the only conclusion that can be drawn is that Council's section 32 evaluation, which is its entire justification for Chapter 24, is unbalanced and inadequate.
63. This inadequacy is not rectified by the Council's evidence, which is addressed later in these submissions.

THL and The Hills

64. The Hills Golf Club was established after Sir Michael and Lady Christine Hill purchased a run down deer and sheep farm in the early 1990s.
65. A handful of golf holes were development for personal use, evolving over time into a championship 18 hole marquee golf course.
66. The development of the property has been organic but considered, and driven by a desire to create a sanctuary and sense of connection for everyone that visits. Any changes made to the property are in harmony with the land, enhancing its health and natural and scenic values.³⁴
67. Three generations of the Hill family live on the property. They are not developers, but consider themselves “*fortunate custodians of an incredibly special piece of land*” who “*feel an obligation to ensure it is cared for and maintained for future generations.*”³⁵
68. The Hill family are committed to sustainable land use management and practices. Extensive planting and waterway restoration and improvements measures have been implemented, at significant cost, over time throughout the property.
69. The property, including the golf course, is maintained to the highest standard. For many golf courses, in order to attain such a standard an assortment of synthetic fertilizers, herbicides, insecticides, fungicides, and other chemicals are relied on to keep the turf on greens and fairways thick and weed free. However, at the Hills Golf Club the overarching ideals of health and wellbeing are paramount, and both the Hill family and the Golf Club Manager, Mr Allen, are very conscious of the impacts on the land and environment that golf course development can have.
70. They take their custodianship of the land very seriously and are committed to adopting land use management and maintenance practices that require the lowest input levels, so as to protect and improve the soil and ensure the healthiest possible waterbodies, regardless of labour intensity and

³⁴ Evidence of Emma Hill dated 13 June 2018, paragraph 9.

³⁵ *Ibid*, paragraph 8.

cost.³⁶ The health of the property has been substantially improved under their watch.

71. The Hill family's care for the land and the landscape is also evident in the buildings they have established on the property. There are presently three family dwellings on the property, housing three generations of the family. The dwellings are designed by renowned architects, are sensitively sited, and are constructed to the highest standards.
72. In addition to the family's dwellings is the highly acclaimed golf course clubhouse, which is hunkered into the earth, with the majority of the building underground. The clubhouse building has won multiple international architectural awards.
73. The property has resource consent for 16 additional dwellings, the decision in respect of which determined that that proposal '*involve[d] a particularly efficient use and development of the natural and physical resources of the property, and show[ed] high regard for the ethic of stewardship of th[e] land for future generations,*'³⁷ and that it would have "*significant positive effects*".³⁸ This further highlights the family's commitment to high quality, sensitive design and landscape driven development outcomes.³⁹
74. The Hills golf course is unique for the sculpture which makes much of the course into an open air gallery. A number of the sculptures are works of Sir Michael and Lady Christine's son, Mark Hill, who also resides on the property with his family. A number of the sculptures are in locations chosen by their artist to enhance both the sculpture and the landscape. The sculptures are presently authorised by a resource consent, but would be permitted under the proposed HRZ.
75. As well as being committed to the land and the landscape, and to achieving enduring, sustainable outcomes, the Hill family is committed to the community. The family run annual charity events at the Hills Golf Club, donating the proceeds to various local charities, including the Queenstown Hospice, the Wakatipu Junior Golf Club, the James Patterson Trust and

³⁶ See for example, the evidence of Brendan Allen dated 13 June 2018, paragraph 24.

³⁷ RM081223 and RM081224 Decision, dated 4 June 2009, page 27.

³⁸ Ibid, page 18.

³⁹ The consent will not be implemented if the HRZ is approved.

Curekids.⁴⁰ Additionally, the Hill family has personally underwritten 8 major national golf events at significant personal cost, including over \$2.3M to bring the NZ Open to Queenstown, providing a significant boost to golf and related tourism in the Region.

⁴⁰ Evidence of Emma Hill, paragraph 13.

Submission 2387: The Hills Resort Zone

76. The HRZ is a logical progression of The Hills.
77. The existing golf course(s) and the hummocky land form of the property readily lend themselves to further development, as the golf course is laid out spaciouly and the landform means that most development can be concealed when viewed externally from the property.
78. The activities sought to be enabled by the HRZ will complement and enhance the existing facility. There are numerous examples of similar facilities both in New Zealand and internationally, which demonstrate that golf resort developments such as proposed by the HRZ, can be operated successfully.⁴¹ In contrast, high end golf courses like The Hills, which are not supported by complementary land uses, are seldomly financially viable in their own right without surpluses from other activities.⁴²
79. The bespoke HRZ has been carefully and comprehensively considered and planned, with input from a full range of expert advisors sought at the Zone's inception, and their advice implemented throughout its formulation.
80. The process has been landscape led. The primary influencing factors when formulating the HRZ have been to ensure that future development enabled by the Zone will integrate with the golf course and will not give rise to adverse landscape character and amenity effects for neighbours and the wider community, and that the special landscape and amenity values of the property and the wider area are maintained.
81. Detailed analysis of potential development outcomes has been undertaken, including visibility mapping and photo montages, to identify the parts of the property that can absorb development without giving rise to adverse visual, amenity and landscape effects. This has been complemented by a rigorous landscape assessment which has taken into account the landscape characteristics identified in Schedule 24.8 of the Proposed Plan for the landscape character unit (LCU 22) within which the property is located, including the landscape and development constraints on and opportunities for development.

⁴¹ See evidence of Brendan Allen, paragraph 28.

⁴² Evidence of Fraser Cosgrave, dated 13 June 2018, paragraphs 27 – 30.

82. Specifically, under the HRZ, all development will be located so that it is visually discreet, integrated with the landform and plantings, and kept off ridges. The vast majority of property will be retained as open space meaning that the attractive, golf course/parkland landscape and greenbelt buffer the property provides for Arrowtown will be maintained. A walk/cycle way will be integrated into the Zone, providing a meaningful link between South Arrowtown and the Lake Hayes area for its users.⁴³
83. Only the parts of the property where built form can be readily absorbed without giving rise to adverse visual or landscape character effects have been identified as suitable and enabled for development.
84. An upper limit on the total number of residential and visitor accommodation units that can be established within the HRZ is proposed, as well as an upper limit on the number of units within each identified Activity Area. The Zone limit provides flexibility for a range of development and management models and ensures adequate provision is made for any staff accommodation component, while the individual Activity Area limits ensure that development will be appropriately dispersed across the property. For each of the individual Homesites, one dwelling will be enabled within the identified 1000m² building footprint.
85. A limited range of commercial activities will be enabled, but only within the Clubhouse Activity Area and of a nature required to support The Hills Resort.
86. Staff accommodation is provided for in one identified Activity Area (S), to accommodate resort staff and their families, so as to ensure that the establishment of the HRZ will not place further pressure on the District's housing supply.
87. Extensive landscaping (including earth contouring and vegetation planting) (**LAMA**) will be required around most of the Activity Areas and some Homesites to ensure the visibility of these areas from outside the property is minimised. The HRZ rule framework requires that the LAMA are established prior to any development commencing in the adjacent Activity Area, so as to ensure the LAMA performs the anticipated mitigation

⁴³ Refer Schedule 24.8 of the Proposed Plan, and the description contained therein for LCU22:The Hills.

function. The Council will retain control over the form and function of the LAMA, via the controlled activity consent process.

88. The potentially more visible activity areas (A4, A5 and A8) will be subject to limits on maximum site coverage and roof pitch requirements (A4 and A5), and maximum densities (A8, in which only 2 dwellings are permitted), to reduce the bulk and scale of built form when viewed from outside the property and to ensure that a sense of open space prevails.
89. All buildings will require a controlled activity consent, with the Council's control limited to infrastructure provision and traffic, and building design and appearance⁴⁴. This will ensure that the design of any onsite infrastructure and any necessary upgrading of intersections can be addressed to the Council's satisfaction prior to any development occurring, and that the Council is assured of internal amenity outcomes.
90. All buildings will be required to comply with prescribed standards in respect of exterior colours, surfaces, materials and light reflectivity, (as well as the additional standards that will apply to Activity Areas A4, A5 and A8, discussed above) to ensure that built form is recessive and in harmony with the landscape. Building design guidelines will also apply, however these will evolve over time and will therefore sit outside the Proposed Plan.
91. Specified height limits and maximum masl levels will apply to all buildings to ensure minimal visibility from viewpoints external to the property and so that built form does not dominate the landscape.
92. Golf events (including events such as the NZ Open) will be enabled subject to compliance with standards in respect of duration, hours of operation, noise limits, frequency, traffic management, operations management, sanitation and waste minimisation. Presently these events are authorised by resource consents which must be renewed every few years, which is inefficient.
93. A limited number of helicopter movements (around 6 landings and 6 takeoffs per week) will be permitted, provided specified noise limits are met. A greater number is provided for on tournament days, provided

⁴⁴ The latter matter of control responds to the Council's evidence and will be addressed at the hearing.

compliance with the proposed rule which prescribes an average 24 hour noise limit is achieved.

94. A public walkway/cycle trail will be established through the HRZ and will provide a meaningful and scenic connection between the developing McDonnell Road and the Lake Hayes areas, and may ultimately connect to the public trail network. The proposed trigger for the trail is the establishment of 40 residential/visitor accommodation units, the rationale being that development beyond this number of units will inevitably take the resort development model to one that is of a more public nature (as compared with a lower yield, more private model) with a greater range of facilities (e.g. restaurants, cafes etc) likely on offer. The route has been carefully selected to ensure it will not conflict with the use of the golf course(s) and that the gradient of the trail is achievable for most users (1 in 4 at its steepest). It is anticipated that THL will form, landscape and maintain the trail, at its cost.
95. Development that does not accord with the proposed HRZ Structure Plan will be a non-complying activity. The Structure Plan ensures that over 96% of the HRZ will be retained as open space. The average density of the Zone will be around 1 dwelling per hectare (10,000m²), which is a significantly lower overall density (almost half) than is provided for within the Millbrook Resort Zone, where the average density is one dwelling per 6000m²⁴⁵.
96. Together, the HRZ provisions and the Structure Plan will ensure that the property maintains its “greenbelt buffer” function which it is suggested contributes to its sense of place,⁴⁶ although it should be noted that this characteristic of the property is a direct result of the significant investment in and care for the land by the Hill family over the period of their ownership.
97. The proposed HRZ, including the Structure Plan and each of the proposed controls on development and activities within the Zone, has been subjected to rigorous and robust scrutiny by the numerous independent experts engaged by THL to provide advice in respect of the proposal.

⁴⁵ Evidence of John Edmonds on behalf of Millbrook Country Club Limited, dated 13 June 2018, paragraph 49.

⁴⁶ Proposed Chapter 24, Schedule 24.8, LCU 22 - The Hills, “Sense of Place” description (page 24-74).

98. The HRZ's formulation has been an iterative and involved process, culminating in a zone crafted to fit comfortably within, respond to and enhance the unique characteristics and qualities of the property and the wider landscape within which is situated.
99. The HRZ is a result of and will continue to promote THL's commitment to and investment in landscape and development outcomes of the highest standard that enhance and improve amenity values and the quality of the environment.

The Evidence in Respect of the HRZ

THL's Evidence

100. THL has pre-lodged extensive expert and non-expert evidence in respect of its submission for the HRZ. This evidence complements and builds on the over 350 page submission lodged by THL in February.
101. THL's evidence is surmised below.

Landscape and Related Matters (Yvonne Pfluger, Richard Tyler, Anna Marie Chin)

- (a) The HRZ is a comprehensive development proposal that has been developed and refined over a three year period through a collaborative process involving a range of experts. It is tailored specifically for The Hills property, building on its current recreational (golf) uses and exceptionally high quality design and maintenance standards.
- (b) The Structure Plan for the HRZ has been prepared based on a number of masterplanning principles, the foremost of which is to protect the landscape.
- (c) The proposed rules for the HRZ, together with the Structure Plan, will ensure that the significant majority of the property (over 96%) will be maintained as open space.
- (d) Specified standards relating to building design, height and landscaping will ensure that development within the HRZ is in

character with the surrounding local and wider landscape, without being visually prominent or dominant.

- (e) The proposed building design guidelines will result an interesting interwoven fabric of design of building and land that enhances the sculptural character of the golf course, resulting in a place that is unique.
- (f) Adverse cumulative effects will not arise because development in the HRZ will not be “cumulatively visible” with other existing or proposed resort developments within the Basin.
- (g) The HRZ will not result in a significant alteration in identity and sense of place because in this part of the Basin, the sense of place, particularly with regard to the property, is a highly modified golf course, which will be retained under the HRZ.
- (h) In the broader land use context, the HRZ will provide a logical transition from Arrowtown village out to the wider landscape.

Economics (Fraser Colgrave)

- (i) The HRZ will give rise to significant one off and ongoing economic benefits.
- (j) The one off impacts, as a result of construction, will result in significant increases in the District’s GDP, employment and household incomes.⁴⁷
- (k) The ongoing impacts, as a result of the HRZ being operational, will be increased economic activity at The Hills and further afield, and addition employment and wages/household incomes.⁴⁸
- (l) In addition, the HRZ will attract and retain wealthy golf tourists who will purchase goods and services in the District and create enduring District benefits.⁴⁹
- (m) These benefits will not be realised by the WBRAZ.

⁴⁷ Evidence of Fraser Colgrave, dated 13 June 2018, paragraph 15.

⁴⁸ Ibid, paragraph 16 – 17.

⁴⁹ Ibid, paragraph 19.

Traffic and Transportation (Mr Penny)

- (n) The traffic likely to be generated from development enabled under the HRZ can be accommodated on the surrounding road network without adversely affecting the level of service and road safety at driveways and intersections, and without adversely affecting accessibility for adjacent properties.⁵⁰
- (o) If upgrades to accessways are required, these can be addressed at the time of subdivision or when resource consent is sought for buildings.⁵¹
- (p) Traffic generated by the HRZ will have little effect on peak hour volumes, including on the SH6 Shotover Bridge.⁵²

Infrastructure (Mr Hadley):

- (q) There are no natural hazard issues which would inhibit development under the HRZ.⁵³
- (r) Storm water disposal is entirely feasible via collecting and controlling stormwater runoff and disposing by draining to the local water course passing the property.⁵⁴
- (s) The HRZ can be supplied with potable water by either a connection to the Council's Arrowtown water supply scheme (for which pipes border or are adjacent to the property) or through a private scheme using existing or new bores on the property.⁵⁵
- (t) Wastewater can be addressed by either connecting to the Council's wastewater scheme which runs through and adjacent to the property or by development of a private communal on-site wastewater disposal scheme.⁵⁶

Helicopter Noise (Mr Peakall)

⁵⁰ Evidence of Tony Penny dated 13 June 2018, paragraph 15.

⁵¹ Ibid, paragraph 19.

⁵² Ibid, paragraph 74

⁵³ Evidence of James Hadley dated 13 June 2018, paragraph 20.

⁵⁴ Ibid, paragraph 21.

⁵⁵ Ibid, paragraph 13 – 14.

⁵⁶ Ibid, paragraph 17 – 19.

- (u) Noise from helicopter operations within the proposed Clubhouse Activity Area of the HRZ will be reasonable on neighbouring land and no further attenuation measures are required.

Planning (Jeff Brown)

- (v) Of the WBRAZ and the HRZ, the HRZ better achieves the higher order objectives and policies of the Proposed Plan because it enables significant socio-economic benefits while not causing adverse change to the landscape values of the property of the wider Basin.⁵⁷
 - (w) The HRZ, as compared with the WBRAZ, better achieves the provisions of the Operatives Regional Policy Statement overall.⁵⁸
 - (x) The economic benefits of the HRZ significantly outweigh the costs, and significantly outweigh the economic benefits of the WBRAZ.⁵⁹
 - (y) There are no overlays, environmental features or constraints for the property, or reverse sensitivity or infrastructure issues that count against the HRZ.⁶⁰
 - (z) The property can absorb the development that would be enabled by the HRZ.⁶¹
 - (aa) The HRZ is superior to the WBRAZ.
102. The evidence for THL demonstrates that there are no physical, technical, landscape or other reasons that count against the HRZ, and that the HRZ is superior to the notified WBRAZ.

Council Evidence

103. In contrast to the extensive and thorough evidence for THL in respect of the HRZ, the Council has lodged four brief statements of evidence in respect of THL's submission. These are discussed below.

⁵⁷ Evidence of Jeff Brown dated 19 June 2018, paragraph 4(a)(i).

⁵⁸ Noting no relevant consent orders resolving appeals on the PRPS had been issued at the time Mr Brown prepared his evidence.

⁵⁹ Evidence of Jeff Brown, paragraph 4(d).

⁶⁰ Ibid, paragraph 4(e), (f), (g), (h), (i).

⁶¹ Ibid, paragraph 4(l).

Infrastructure and Servicing – Ms Jarvis

104. The Council's evidence in respect of infrastructure matters is provided by Andrea Jarvis. Ms Jarvis has prepared primary⁶² and rebuttal evidence⁶³, although only her primary evidence addresses the HRZ.⁶⁴
105. In summary, Ms Jarvis accepts Mr Hadley's evidence and agrees that connection to and capacity within Council water and waste water networks for the HRZ development will likely be available (subject to the payment of any necessary development contributions) or that alternatively, on site systems can be designed which will not generate addition demand on the Council's network.
106. Because there are options which do not impact on the Council's networks, she does not oppose the HRZ from an infrastructure perspective.⁶⁵
107. Mr Hadley's evidence also address natural hazard risk and references the soil contamination assessment prepared by Davis Consulting. Ms Jarvis' evidence does not touch on either matter. No other submitter has lodged any evidence on these matters in respect of the HRZ. Accordingly, Mr Hadley's evidence on these matters is uncontested and should, it is submitted, be adopted by the Panel.

Traffic and Transportation– David Smith

108. The Council's evidence in respect of traffic related matters is provided by Mr Smith. Mr Smith has prepared primary⁶⁶ and rebuttal⁶⁷ evidence both of which address the HRZ.
109. The opinions expressed by Mr Smith's in respect of the HRZ are that:
- (a) He agrees with Mr Penny that for traffic generated by the HRZ there will be a significant amount of interaction with Arrowtown.⁶⁸ Mr Smith's rebuttal evidence supersedes his primary evidence (paragraphs 13.10 – 13.11) on this point, in which he made no

⁶² Dated 28 May 2018.

⁶³ Dated 27 June 2018.

⁶⁴ In her rebuttal evidence she states, at paragraph 2.2, that she has read Mr Hadley's evidence in respect of the HRZ, but considers that no response is needed.

⁶⁵ Jarvis Evidence, 28 May 2018, paragraphs 75.1 – 75.7.

⁶⁶ Dated 28 May 2018.

⁶⁷ Dated 27 June 2018.

⁶⁸ Smith Evidence, 27 June 2018, paragraph 8.7.

allowance for trips to or from the HRZ to Arrowtown, Wanaka or Central Otago, and overstated the potential trip generation from the HRZ by a factor of four or more.

- (b) He agrees with Mr Penny's calculations in respect of peak traffic generation by the HRZ.⁶⁹
 - (c) He considers that in isolation the HRZ *will not* have a significant impact on the efficiency of the Shotover Bridge.⁷⁰ In reaching this conclusion he has resiled his initial and erroneous view expressed in his primary evidence which was based on his miscalculation of the number of peak hour trips likely to be generated by the HRZ, (which he overstated by a factor of four or more).⁷¹
 - (d) Despite his view that the HRZ development in isolation will not impact the efficiency of the Shotover Bridge, Mr Smith considers that the HRZ will negatively impact on the performance of the network when considered in the context of cumulative effects in the Wakatipu Basin.⁷²
 - (e) Additionally, he considers that the increased volumes of traffic on McDonnell Road necessitate an assessment of the efficiency and safety of the intersection of the Arrowtown-Lake Hayes/McDonnell/Malaghans Road intersection.⁷³
110. It is submitted that due to the significant errors and miscalculations contained in Mr Smith's primary evidence, as summarised above and identified by My Penny, it should be given no weight in so far as it relates to the HRZ.
111. As per the summary above, the outstanding traffic and transportation related issues in respect of the HRZ, from a traffic and transportation perspective are:
- (a) The cumulative effects of the HRZ development in conjunction with the effects of the various other rezoning requests, if granted; and

⁶⁹ Ibid, paragraph 8.8.

⁷⁰ Ibid, paragraph 8.9.

⁷¹ Tony Penny's Evidence, dated 13 June 2018, paragraph 73.

⁷² Ibid, paragraph 8.10.

⁷³ Ibid, paragraph 8.4.

- (b) The safety and efficiency of the Arrowtown-Lake Hayes /McDonnell/ Malaghans Road intersection.

112. The issues are addressed below.

Cumulative Traffic Effects

113. The starting point/baseline for Mr Smith's assessment of traffic and transportation issues is the notified Stage 2 WBRAZ and WBLP, developed to maximum capacity. His assessment is that if the notified extent of these zoned areas is fully developed, the SH6 Shotover Bridge will reach capacity around 2035.⁷⁴
114. It is submitted that the starting point for Mr Smith's assessment is unhelpful for the Panel because, contrary to the approach he has taken, the Panel must commence its inquire with a clean slate, with no presumption in favour of the Council's notified proposal. It is submitted it would be wrong at law for the Panel to accept, as Mr Smith suggests, that the baseline for the assessment of traffic effects is the Council's notified proposal, and that there is an onus or burden of proof on submitters to establish that their proposals can be accommodated, in traffic terms, in addition to that. It is submitted that if the Panel were to adopt such an approach it would signal a presumption by the Panel that the Council's notified provisions (and zonings) are correct or appropriate, which case law has established should not be the case.⁷⁵
115. It is submitted that Mr Smith's assessment of cumulative effects with regards to the SH6 Shotover River Bridge is also unhelpful because it assumes that zoning requests that differ from the Council's notified proposal are either all accepted or all rejected. However, contrary to how Mr Smith has assessed these rezoning submissions, the Panel is not confined to a decision which either accepts all of them or rejects all of them. The Panel must instead assess each individual submission on its merits, having regard to the totality of the evidence presented in respect of it.⁷⁶ Importantly, in respect of the HRZ, Mr Smith's evidence is that development within the proposed Zone will not have a significant impact on the efficiency of the SH6 Shotover River Bridge on its own.

⁷⁴ evidence of David Smith, dated 28 May 2018, paragraph 7.11.

⁷⁵ Refer to the earlier section of these submissions entitled 'The Law'.

⁷⁶ Ibid.

116. It is submitted that, Mr Smith has, in any case, overstated the potential for adverse cumulative effects because when modelling future traffic levels he assumes no change to the mode share. It is submitted this is highly conservative and inconsistent with transportation planning investigations and strategies currently being pursued by the Council which seek to encourage alternative transportation methods; for example: the Council's review, removal and increase in the cost of parking in the CBD, so as to discourage people from bringing vehicles into the CBD; the recent and ongoing improvements to the public bus services; the masterplan which contemplates water transport and a gondola from Frankton to the CBD, park and ride facilities, and so forth.
117. Mr Smith takes no account of such measures, or of the development of future technologies which may impact upon reliance on private vehicles. It is submitted that the implementation of such measures, either individually or cumulatively, will inevitably have an impact on transportation matters, including capacity and congestion, within the Wakatipu Basin. Mr Penny will address this further in his evidence.

Safety and Efficiency of the Arrowtown-Lake Hayes/McDonnell/Malaghans Road Intersection.

118. Mr Smith states that given the increased traffic volumes on McDonnell Road, an assessment of the efficiency and safety of the intersection of Arrowtown-Lake Hayes Road/McDonnell Road/Malaghans Road should be undertaken.
119. Mr Penny has undertaken an assessment of the efficiency of the intersection with the HRZ traffic in his evidence⁷⁷ and concludes that the level of traffic is below the Austroads thresholds which specify when detailed intersection performance analysis is required, meaning that no adverse operational (i.e. efficiency) effects are anticipated.⁷⁸
120. Potential safety issues arising from increased traffic using the intersection are not expressly addressed by Mr Penny, (although it is submitted that given the low traffic levels, there are unlikely to be any), however to address Mr Smith's concern, THL proposes to include an additional matter

⁷⁷ Dated June 2018.

⁷⁸ Ibid, Paragraph 46.

of control in the HRZ provisions in respect of buildings (proposed rule 44.4.6) that would enable the Council to require an assessment of the nature referred to by Mr Smith prior to any residential or visitor accommodation development occurring, and to impose any necessary conditions on such development. This will be addressed further by Mr Penny and Mr Brown.

121. Overall, it is submitted that the matters raised by Mr Smith are not of a significance or nature that warrants rejection of the HRZ, noting that:
- (a) The HRZ development, on its own, will not have a significant impact on the efficiency of the Shotover Bridge, or the operation of any other parts of the transportation network.
 - (b) Any concerns regarding the safety of the Arrow-Lake Hayes/McDonnell/Malaghans Road intersection as a result of the HRZ traffic using the intersection can be addressed by the inclusion of an appropriate development standard in the HRZ.

Landscape – Bridget Gilbert

122. The Council's evidence in respect of landscape related matters is provided by Ms Gilbert. Ms Gilbert has prepared primary⁷⁹, supplementary⁸⁰ and rebuttal⁸¹ evidence which address the HRZ.
123. It is submitted that Ms Gilbert's primary evidence should be read with significant caution and given very limited, if any, weight because when she prepared it she had not read the landscape assessment prepared by Yvonne Pfluger in support of the HRZ which was lodged in conjunction with THL's Stage 2 submission.⁸²
124. It is submitted that Mr Gilbert's supplementary evidence should also be read with some caution as, surprisingly, she had not undertaken a site visit and was not familiar with THL's property at the time she prepared it.

⁷⁹ Dated 28 May 2018, refer paragraphs 55.1 – 55.28.

⁸⁰ Second Supplementary Statement dated 6 June 2018.

⁸¹ Dated 27 June 2018.

⁸² Through no fault of THL, Ms Gilbert was only provided with and responded to Ms Pfluger's graphic supplement lodged in support of THL's submission, which contains no written analysis of THL's proposal. Counsel brought this to the Council's attention as soon as it became apparent; following which Ms Gilbert prepared her supplementary statement dated 6 June 2018.

125. In respect of the HRZ, the opinions expressed in Ms Gilbert's evidence are that:
- (a) She considers that Mr Pfluger's and Mr Tyler's evidence provide a thorough description of the site and the local area, and that collectively the material provided by THL provides a clear understanding of the location, character and scale of development anticipated within the HRZ.⁸³
 - (b) She considers that the HRZ Structure Plan and provisions are the outcome of a location and landscape led design proposal.⁸⁴
 - (c) She considers that much of the proposal is to be applauded.⁸⁵
 - (d) She acknowledges that the HRZ has been developed with careful consideration given to the management of visual amenity values, and development is in the main confined to the visually discreet parts of the property with location specific development controls and a landscape framework proposed to manage adverse visual effects in relation to the surrounding areas.⁸⁶
 - (e) She acknowledges the open space, trail and sculpture park benefits of the proposal and the building design aspirations of the HRZ.⁸⁷
 - (f) She accepts that development within the HRZ will not be dominant in views from the surrounding area.⁸⁸
 - (g) She considers that from a landscape perspective the property is a reasonable candidate for a resort zone, given its highly modified golf course use, visual containment and variable land form patterning.⁸⁹
 - (h) She considers that if the land to the south of Arrowtown (i.e. LCU 24) were to be urbanised, the HRZ may form an appropriate

⁸³ Bridget Gilbert's Rebuttal Evidence, dated 27 June 2018, paragraph 16.2.

⁸⁴ Ibid, paragraph 16.4,

⁸⁵ Ibid.

⁸⁶ Supplementary evidence, dated 6 June 2018, paragraph 2.3

⁸⁷ Ibid, paragraph 16.24.

⁸⁸ Supplementary evidence, dated 6 June 2018, paragraph 2.10.

⁸⁹ Ibid, paragraph 16.27.

transition between the urban development and more rural/rural living and land uses.⁹⁰

126. It is submitted that Ms Gilbert's evidence in respect of the HRZ indicates that she is supportive of the HRZ proposal.
127. She does however take issue with three fairly minor aspects of the proposal, as follows:
- (a) She considers built development should be assessed as restricted discretionary activity, instead of a controlled activity as proposed by THL, so as to give the public confidence that regardless of the management structure associated with the HRZ, a quality built environment will be delivered.⁹¹ She acknowledges however that THL may wish to maintain some control of the design outcomes within the HRZ to ensure a cohesive and high quality development which she says is a laudable aspiration.⁹²
 - (b) She considers the walk/cycleway should be implemented at the outset of the HRZ development, rather than upon the establishment of 40 residential/visitor accommodation units.⁹³
 - (c) She considers House Sites 4 and 5 should be reconfigured so as to ensure they are not visible from Hogans Gully Road.
128. It is submitted that the above "issues" identified by Ms Gilbert are matters of design, and can be readily addressed by some minor changes to the HRZ provisions, to the extent that is necessary. (The necessity of the changes will be addressed by Ms Pfluger and Mr Brown, and touched on briefly later in these submissions). It is submitted that the issues raised by Ms Gilbert are not of a nature or significance that could reasonably lead to a conclusion that the HRZ proposal should be declined on landscape grounds.
129. Ms Gilbert also retains a concern that the scale or extent and character of the landscape change associated with the HRZ will result in a significant

⁹⁰ Ibid, paragraph 16.27.

⁹¹ Ibid, paragraph 16.7.

⁹² Rebuttal Evidence, dated 27 June 2018, paragraph 16.8.

⁹³ Ibid, paragraph 16.9.

alteration in the sense of place throughout the north eastern portion of the Basin.⁹⁴

130. It is difficult to conceive of how the HRZ will result in a change in the sense of place in this part of the Basin when, as Ms Gilbert acknowledges, development within the HRZ will be confined to the visually discreet parts of the property and will not be dominant in views from outside the property. That is, people will not know the property is a resort because they will not be able to readily see the resort development, so their sense of place will not be affected.
131. It is further difficult to conceive of any change in sense of place as a result of the HRZ when the property is presently highly private and is not accessible to or experienced by the general public. A resort zoning will likely mean that the general public will be able to visit the property (although that will depend on how the property is managed) however they will do so with the knowledge and expectation that the property is a resort and will be visiting it for that very purpose. It is submitted it is simply quite illogical to suggest that these persons, who chose to visit the resort because it is a resort, will experience adverse effects as a result.
132. It is unclear from Ms Gilbert's evidence whether her "concerns" about a change in sense of place give rise to an adverse effect. Ms Gilbert does not state that it does. Notably, no submissions have been lodged by any person raising the potential "effect", and the only submissions that have been lodged support the HRZ.
133. That there will be a change in sense of place as a result of the HRZ is disputed by Ms Pfluger. Ms Pfluger's evidence is that the sense of place in this part of the Basin, particularly with regard to The Hills, is presently a manicured highly modified golf course, which will be retained by the HRZ proposal.⁹⁵
134. Despite the concerns expressed by Ms Gilbert in respect of the change in identity and sense of place that will occur if the property is zoned HRZ (which it is submitted, are overstated), she goes on to conclude that from a

⁹⁴ Ibid, paragraph 16.23.

⁹⁵ Yvonne Pfluger's evidence dated 19 June 2018, paragraph 97.

landscape perspective, The Hills is a reasonable candidate for a resort zoning.

135. Accordingly, it is submitted there are no landscape grounds for rejecting the HRZ.

Planning – Marcus Langman

136. The planning evidence in respect of the HRZ is provided by Mr Langman.⁹⁶ Mr Langman has prepared primary⁹⁷, supplementary⁹⁸ and rebuttal⁹⁹ evidence.
137. As with Ms Gilbert's primary evidence, it is submitted that Mr Langman's primary evidence should be read with significant caution and given very limited if, any weight because it relies heavily on Ms Gilbert's primary evidence, which does not consider the detailed landscape assessment prepared by Ms Pfluger and lodged in conjunction with THL's submission.

Procedural Matter

138. Mr Langman's rebuttal statement is most relevant presently. In this statement he comments on (in his Appendix C) the HRZ provisions, for the first time. The impression gained from his other statements is that when preparing those he had not read the HRZ provisions (or for that matter, any of THL's expert reports), as he made no mention nor offered any assessment of them in his earlier statements. That is despite the fact that the HRZ provisions were, along with a full suite of expert reports, including a section 32 evaluation, submitted to the Council on 23 February 2018, as part of THL's submission on Stage 2 of the PDP.
139. As something of an aside, it is necessary to note that in his rebuttal evidence Mr Langman lists the submitter evidence that he has read for the purposes of forming his opinions and preparing his evidence.¹⁰⁰ He does not proffer a list of submitter evidence or reports read in any of his previous statements. In his rebuttal statement, he states he has read the evidence of Mr Brown, Mr Colgrave and Mr Peakall for THL, and also that of Mr

⁹⁶ Mr Barr also prepared evidence in respect of THL's alternative relief, which is not addressed in these legalese submissions for reasons stated earlier.

⁹⁷ Dated 30 May 2018.

⁹⁸ Second Supplementary Statement, dated 6 June 2018.

⁹⁹ Dated 27 June 2018.

¹⁰⁰ Ibid, at paragraph 2.1(v) and 2.2(p)

Allen, Mr Hadley, Ms Hill and Mr Penny, although the latter statements do not require a response, in his view. He does not claim to have read the evidence of Ms Pfluger, Mr Tyler or Ms Chin, which is surprising given he relies heavily on Ms Gilbert's opinion as to the landscape effects of the HRZ, and suggests that his assessment is not as balanced as it should be.

140. In Appendix C of his rebuttal evidence Mr Langman indicates where he considers changes to the HRZ provisions are required, although he does not proffer any specific wording in respect of the changes. Accordingly, the matters raised by Mr Langman will require a considered drafting response from Mr Brown, (in addition to Mr Brown considering the other matters Mr Langman raises).
141. The matters raised in Mr Langman's rebuttal evidence in respect of the HRZ provisions could, and it is submitted should, have been raised in his evidence in chief, noting again that the HRZ provisions were appended to THL's submission. If they were, THL's witnesses would have had time to consider and respond to them, including by making changes to the HRZ provisions as necessary, and explaining the rationale for those changes in written evidence.
142. It is submitted it is unfair to THL and inconsistent with the Panel's previous directions as to rebuttal evidence (which it has said should focus on matters that could not have reasonably been anticipated to be addressed in the evidence in chief),¹⁰¹ that Mr Langman has raised the matters in respect of the HRZ provisions only in his rebuttal evidence.
143. For this reason, Mr Brown's, and possibly THL's other witnesses' summary statements may necessarily be longer than the one A4 page the Panel has requested.

Noise and Economics

144. Although no noise or economic evidence has been lodged by or on behalf of the Council, Mr Langman has commented on that lodged by THL.
145. Mr Peakall and Mr Colgrave will respond to the noise and economic issues raised Mr Langman's rebuttal evidence (to the extent that is necessary)

¹⁰¹ Refer the Panel's 1 May 2018 Procedural Minute, and also its Stage 1 Procedural Minutes.

and it is submitted that their evidence should be given significant weight over the opinions expressed by Mr Langman, as both Mr Peakall and Mr Colgrave are qualified experts with significant experience in their respective fields, whereas Mr Langman has no qualifications or expertise in either.

146. As for the matters he raises:

(a) Noise:

(i) The manner in which helicopter noise is proposed to be managed in the HRZ (i.e. a noise limit) is entirely consistent with the relevant New Zealand noise standard (NZS 6807) and how noise is managed elsewhere in the Proposed Plan, including in Chapter 26.

(b) Economics:

(i) The “costs” of the HRZ identified by Mr Langman – increased demand on infrastructure and loss of landscape character or impacts on amenity - are not costs at all because:

(A) Ms Jarvis and Mr Hadley agree that onsite infrastructure can be provided which will place no additional demand on Council networks;

(B) The landscape related evidence for THL (which Mr Langman has not read) is that there will be no adverse landscape character or amenity effects as a result of the TRZ.

(ii) There are numerous domestic and international examples of viable golf resort developments and in any case, financial viability is not a relevant matter under the Act.¹⁰²

¹⁰² *NZ Rail Ltd v Marlborough District Council* [1994] NZRMA 70, at page 22, where the High Court said: “Financial viability in those terms is not a topic or a consideration which is expressly provided for anywhere in the Act...it is the broad aspects of economics rather than the narrower consideration of financial viability which involves the consideration of the profitability or otherwise of a venture and the means by which it is to be accomplished. Those are matters for the applicant developer and, as the Tribunal appropriately said, for the boardroom.”

147. It is submitted that the noise and economic related issues raised by Mr Langman are neither substantive nor of a nature that warrants rejection of the HRZ proposal.

Landscape

148. Mr Langman states, at paragraph 25.6 of his rebuttal evidence, that Mr Gilbert has concerns in respect of the scale or extent of the landscape change associated with the HRZ, and “*for this reason, she remains opposed to the proposal from a landscape perspective*”. It is submitted that Mr Langman’s interpretation of Ms Gilbert’s evidence – that she remains opposed to the HRZ - is at odds with what she in fact says in her evidence, (as summarised earlier) and can not be sustained. For the avoidance of doubt Ms Gilbert’s concluding comments on the HRZ are:

“..should the Panel be minded to consider it appropriate to enable additional resort land use in the Basin, from a landscape perspective....I consider that the Hills site is a reasonable candidate, given its existing highly modified golf course use, visual containment and variable land from patterning.”¹⁰³

Planning

149. Mr Langman’s response to Mr Brown’s evidence is set out in paragraphs 23.7 – 23.16 and 25.16 – 25.19 of his rebuttal evidence. His evidence can be summarised as follows:
- (a) He purports it would be more appropriate to seek to enable the HRZ development via a resource consent process, than a bespoke zone.¹⁰⁴
 - (b) He purports a clear benefit of the resource consent process would be the requirement for a detailed assessment against the landscape character and amenity value framework in Scheduled 24.8 of the Proposed Plan.¹⁰⁵
 - (c) He purports the objective and policies for the HRZ do not set a clear picture of the effects of development that are to be avoided or

¹⁰³ Gilbert Rebuttal evidence, paragraph 16.26.

¹⁰⁴ Langman Rebuttal Evidence, paragraph 23.7 – 23.9.

¹⁰⁵ Ibid, paragraph 23.9

mitigated. He purports that in contrast, the proposed objectives and policies for the WBAZ address a much wider range of issues and are far more likely to achieve and implement the strategic objectives of the Proposed Plan.¹⁰⁶

- (d) He purports the HRZ provisions are very permissive and do not take into account landscape matters.¹⁰⁷
- (e) He purports the WBRAZ is more appropriate than the HRZ but if the Panel is minded in favour of the HRZ, amendments to the Zone provisions are required, including in respect of the activity status for buildings, the inclusion of site coverage controls to retain internal amenity and the consideration of a requirement for open space covenants in respect of the golf course and open space areas at the time of subdivision¹⁰⁸.

150. It is submitted that Mr Langman's assessment is superficial and does not accord with or address the matters required under section 32. This, along with the particular issues he raises, is addressed in detail below.

Resource Consent vs Zone

151. Mr Langman's suggestion that THL should pursue its proposal via a resource consent process is without merit. The Council has embarked on a review of its District Plan which includes identifying zones and setting their boundaries. THL is entitled to request a different zone to that which the Council has notified for its land, and that is what it has done (via its submission). The Council (and the Panel) is seized of the opportunity to consider and make a decision on THL's submission now and it is submitted, must do so. Mr Langman's suggestion that a resource consent is a better method seems nothing more than an attempt to "kick the can down the road" so as to avoid having to make a decision on various and potentially competing proposals. It is submitted his approach is unhelpful for the Panel.

152. In any case, pursuit of a zone, as opposed to a resource consent for THL's proposal, is a far superior method because:

¹⁰⁶ Ibid, paragraph 23.13.

¹⁰⁷ Ibid, paragraph 25.17

¹⁰⁸ Ibid, paragraphs 25.18 – 25.19.

- (a) A resource consent is more appropriate for one off activities, meaning development of the nature proposed by THL will require multiple consents, which is inefficient, including with regard to the Council's staffing resource that will be required to process and determine them.
- (b) Resource consents will inevitably expire, and will therefore not provide sufficient flexibility for development of the nature and scale proposed by THL, which will likely be established over a period of years.
- (c) A zone enables an integrated approach to be adopted from the beginning to the end of development, and provides an overarching framework against which to measure and check the appropriateness of development outcomes throughout the process. In contrast, utilising a resource consent process to enable THL's development may result in ad hoc outcomes.
- (d) A zone provides certainty of outcome, for THL, the Council and the community.

Schedule 24.8

153. Mr Langman's comment in respect of Schedule 24.8 is made in response to Mr Brown's evidence for Submitter 2313 and it is submitted is of no application to THL's proposal for the HRZ. It is further submitted that his reference to his evidence in respect of Submission 2313 and his suggestion that it is of equal application to THL's submission¹⁰⁹, when Submission 2313 bears no relationship whatsoever with THL's submission and its bespoke HRZ proposal, provides a clear indication that Mr Langman's review and consideration of THL's proposal is inadequate.
154. In any case, as Ms Pfluger explains¹¹⁰, the HRZ, including the Structure Plan, has been formulated taking into account and specifically responds to the characteristics of LCU 22: The Hills, including the potential landscape issues and constraints, identified in Schedule 24.8. These characteristics and constraints have been summarised earlier in these submissions. It is therefore submitted there is no benefit to be gained, in terms of assessing

¹⁰⁹ Langman, Rebuttal Evidence, 25.15

¹¹⁰ Yvonne Pfluger Evidence dated 19 June 2018, paragraphs 60 - 63

the proposal against the Schedule, if a resource consent was to be pursued, instead of a zone.

155. In any case, Schedule 24.8 currently has no legal weight, and there is no presumption in favour of it, such that it is of no more relevance to the Panel's assessment than any of the landscape evidence, including that for THL.

HRZ Objectives and Policies

156. Again, Mr Langman's comment in respect of the bespoke objectives and policies is made in relation to Submission 2313, not THL's submission in respect of the bespoke HRZ, and it is unclear from Mr Langman's evidence whether he has reviewed and considered the HRZ objective and policies.
157. In any case, his criticisms of them are unfounded and lack any cogent reasoning. His analysis is very vague and it is not apparent from his evidence that he has undertaken a comparison of the WBRAZ and the HRZ against any of the section 32 criteria or the framework of the Act.
158. It is not apparent that he has taken into account any of the significant employment and economic benefits of the HRZ,¹¹¹ or the costs of retaining the WBRAZ, with its restrictive regime in respect of dwelling densities.
159. His focus, like the Council's section 32 evaluation of the Proposed Plan, appears to be primarily if not solely on preserving the landscape, with no regard to the various other matters that section 32 (e.g. economic and employment growth) and Part 2 (enabling people to provide for their social, economic and cultural wellbeing) require assessment of.
160. He purports that the WBRAZ, rather than the HRZ, is "*far more likely to achieve and implement the strategic objectives*" but he fails to identify what objectives specifically will be implemented. In contrast, Mr Brown has undertaken a very detailed comparative analysis of the WBRAZ and the HRZ against the relevant higher order provisions¹¹² and has concluded that the HRZ better achieves these and the purpose of the Act.¹¹³

¹¹¹ Refer Mr Colgrave's evidence dated 13 June 2018.

¹¹² Refer Mr Brown's evidence dated 19 June, Attachment D.

¹¹³ Ibid, paragraph 108.

161. It is submitted that Mr Langman's evidence is so vague and fails so significantly to assess the HRZ in accordance with the necessary statutory requirements that it should be given no weight.

The HRZ Provisions are Permissive and do not take into account Landscape Matters

162. It is submitted that Mr Langman's criticisms that the HRZ provisions do not take into account landscape matters and are overly permissive are utterly unfounded.
163. Ms Gilbert, the Council's landscape witness, acknowledges at the outset of her evidence that the HRZ and Structure Plan are the outcome of a "landscape led design process" and that "in this respect, much of the proposal is to be applauded".¹¹⁴
164. Ms Pfluger's evidence (which Mr Langman has not read) is that the HRZ will ensure that over 96% of the HRZ will remain as open space.
165. There are extensive landscaping requirements (via the LAMA) which must be met or otherwise development will be non-complying.
166. There are controls on building material, colours, heights, densities, roof pitch, site coverage and so forth, as well as design guidelines (which also address individual site landscaping) that will apply to all buildings.
167. The Activity Areas have been identified following rigorous visibility modelling and landscape analysis, and development is enabled in only those parts of the HRZ that have been identified as capable of absorbing it.
168. The HRZ rules are not overly permissive. They are generally permissive of resort development, but within clearly defined parameters (e.g. development is only provided for in the identified Activity Areas, and is subject to numerous development standards). All buildings and temporary activities will require at least a controlled activity consent. Activities that are not directly related to the resort are non-complying or prohibited.
169. Accordingly, it is submitted that Mr Langman's evince on this point is not credible and should be given no weight.

¹¹⁴ Bridget Gilbert Rebuttal evidence, paragraph 16.4

Amendments to the HRZ

170. Mr Brown and other witness will address in detail the amendments Mr Langman recommends to the HRZ should the Panel be minded to approve it, however three matters require brief comment in these submissions:
- (a) *Activity status for buildings*: it is not accepted that buildings should be restricted discretionary activities in the HRZ. The areas where buildings are enabled (i.e. the Activity Areas and Homesites) have been chosen due to their generally low visibility from external viewpoints. The HRZ contains standards in respect of all buildings (materials and colours, height, and so forth) which if breached, trigger (respectively) restricted discretionary and non-complying activity status. Given the extensive work that has been undertaken, including robust and rigorous analysis to identify the Activity Areas and to ensure that development within them is appropriate and of low or no visibility from external viewpoints, a restricted activity status for buildings would, it is submitted, impose an unnecessary level of regulation on the HRZ and would be inefficient. It would largely negate the purpose of the HRZ Structure Plan, which is to enable development within a carefully defined framework. It is also relevant to note that within Millbrook, where development is much more dense and highly visible, buildings are generally controlled activities. There is no justification for a more stringent requirement to apply in the HRZ.
 - (b) *Site coverage controls*: it is not accepted that site coverage controls to “retain internal amenity” are necessary. The Activity Areas are of are generally of a size and configuration that dwellings within them will not be “stacked” but will have an outlook over the adjacent golf course landscape, noting again that over 96% of the HRZ will be retained as golf course/open space. Internal amenity is therefore already adequately provided for and no additional site coverage controls are required.
 - (c) *Open space covenants*: it is not accepted that open space covenants are required in respect of the golf course and open space areas. Under the HRZ, development within these areas will be a non-complying activity. This will ensure adequate protection of

these areas from development. It is also noted, that Millbrook, with its much more numerous, denser and visible development areas has no such requirement.

- (d) Notwithstanding the comments above, Mr Brown has critically reviewed the HRZ provisions in light of Mr Langman's evidence, including the comments in his Appendix C, and will present an amended set of HRZ provisions at the hearing in response.

Summary of the Evidence in Respect of the HRZ

- 171. It is submitted that overall, the evidence for THL is substantively more compelling and should be preferred to that for the Council because:
 - (a) It is considered, detailed and addresses the full gamut of resource management issues in respect of the HRZ proposal;
 - (b) It assesses with HRZ proposal within the framework of the Act; and
 - (c) It is balanced.
- 172. Conversely, the evidence for the Council is, it is submitted, none of these things, and therefore should be given very little weight.
- 173. Even if it is given weight, the Council's evidence does not, it is submitted, proffer any cogent reasons for a decision that rejects the HRZ in its entirety. Any criticisms of the HRZ it makes do not substantively call into question the appropriateness of the HRZ, but rather relate to matters of detail, which it is submitted, can be addressed, to the extent that may be necessary, by fairly minor "tweaks" to the HRZ provisions.

Submission 2386 – BHT’s McDonnell Road Land

174. BHT has made a submission in respect of its approximately 8.4ha block of land located on McDonnell Road, seeking its inclusion in the WBLP. The land is zoned WBRAZ in the notified Proposed Plan.
175. BHT seeks some amendments to the WBLP provisions that would apply to the land, including site specific amendments that would enable the creation of 2500m² lots (while retaining the 1 ha average lot size), and building setbacks from roads of a distance comparable to the immediately adjacent Arrowtown Lifestyle Retirement Village, where buildings are set back by around 14 metres¹¹⁵. Mr Brown and Ms Pfluger’s evidence address the amendments to the WBLP provisions sought by BHT in more detail.

The Locality

176. The Arrowtown Lifestyle Retirement Village (**Retirement Village**) is immediately adjacent to BHT’s land and is currently under construction. When completed, it will comprise 120 two and three bedroom villas, 75 apartments and a 100 bed care centre offering rest home, hospital and specialist care.¹¹⁶ A plan of the retirement village shows its layout as dense and grid like, exhibiting a distinctly urban character.¹¹⁷
177. Across McDonnell Road, on its eastern side, is the Arrowsouth Special Zone. The zone enables residential development to urban and rural residential densities, depending its location in the zone.
178. Various other consents have been granted in the vicinity of BHT’s land enabling development of a rural residential nature. A summary of these is contained in Appendix 2 of THL’s submission for the HRZ.¹¹⁸
179. Overall, the land in the vicinity of and including BHT’s land comprises smaller, individual landholdings, the vast majority of which are not used for productive land uses, and all of which are significantly less than 80 ha in size.

¹¹⁵ Evidence of Yvonne Pfluger dated 15 June 2018, paragraph 43.

¹¹⁶ <https://arrowtownretirement.co.nz/about/>.

¹¹⁷ For a copy of the plan, see Appendix I (Folio of Figures) of the Wakatipu Basin Land Use Study, page 21.

¹¹⁸ Submission 2387, dated 23 February 2018, Appendix 2.

WBLUS

180. BHT's land is contained in LCU 24: Arrowtown South in Schedule 24.8 of the Proposed Plan. Schedule 24.8 is derived from the Wakatipu Basin Land Use Study (**WBLUS**) which informed and underpins Chapter 24 of the Proposed Plan.

181. The description of LCU 24 contained in the WBLUS includes the following statement:

“Generally the unit reads as part of the swathe of golf courses and rural residential development that frame the western and southern edges of Arrowtown and effectively function as a ‘greenbelt to the village.

However this ‘greenbelt’ effect, together with the legibility of the escarpment as a robust defensible edge to Arrowtown has been significantly compromised by the Arrowtown Lifestyle Retirement Village SHA which confers a distinctly urban character in a prominent and sizeable part of the unit.”¹¹⁹

182. The WBLUS gives LCU 24 a “high” development absorption capability rating¹²⁰ and recommends, as a planning response, that the land be addressed by a precinct overlay - the “Arrowtown Precinct” - “to give certainty as to [its] suitability for future urban development”,¹²¹ which provides for low or medium density residential development (i.e. 450m² or 250m² lots¹²²) of an “urban parklike character”¹²³, with a requirement for a structure plan process “to achieve a coordinated and cohesive development outcome”.¹²⁴

183. WBLUS made similar recommendations in respect of LC10: Ladies Mile.¹²⁵

Chapter 24 and Section 32 Evaluation for LCU 24: Arrowtown South

184. Despite the recommendations contained in the WBLUS, Chapter 24 of the Proposed Plan does not propose an “Arrowtown Precinct” for the

¹¹⁹ WBLUS, March 2017, Final Report, page 33.

¹²⁰ Ibid, page 35, paragraph 5.31.

¹²¹ Ibid, page 51, paragraph 8.39.

¹²² Ibid, Appendix L, page 1.

¹²³ Ibid, Final Report, page 7, paragraph 1.26.

¹²⁴ Ibid, page 39, paragraph 6.16.

¹²⁵ See for example, WBLUS, Final report, page 25, and page 7, paragraph 1.26.

Arrowtown South land (LCU 24), but instead proposes it be included within the WBRAZ.

185. The Council's section 32 evaluation in respect of LCU 24 states:

"The WB Study recommended consideration be given to a similar urban parkland type precinct in the vicinity of Arrowtown (Arrowtown Precinct), together with the integration of defensible edges and the implementation of a structure plan process to address amenity, landscape and infrastructure issues.

The Council have no current plans to develop the Arrowtown Golf Course for urban development and since the WB Study was prepared the Arrowtown area has not been subject to any structure planning process. The Golf Course itself is identified as Open Space and Recreation: Community Purpose Golf Course Zone and other areas have been included in the WBRAZ, to reflect that it is also part of the wider WB amenity landscape, and it is appropriate to apply the WBRAZ at this time. Any provision for subdivision or development beyond that provided for in the WBRAZ should require a comprehensive structure plan process to be completed and incorporated in a future Variation or Plan Change."¹²⁶

186. The above statement reflects the extent to which the LCU 24 land is addressed in the section 32 report, despite the fact that notified Chapter 24 does not give effect to the recommendations contained in the WBLUS in respect of the land (noting again that the WBLUS is the primary justification for and underpins the entire notified Chapter).
187. The section 32 report contains no evaluation of the option recommended by WBLUS for the Arrowtown South land, nor an evaluation of the costs of the notified WBRAZ. Nor does it identify any other reasonably practicable options to the proposed WBRAZ, such as a deferred or future urban zone (discussed further shortly), as is required by section 32(1)(b) of the Act. It is submitted that the section 32 report is deficient in this respect.
188. In contrast to the treatment of the Arrowtown South land, the Ladies Mile land is not addressed by/included in Stage 2 of the Proposed Plan,

¹²⁶ Section 32 Report, Chapter 24 Wakatipu Basin, page 27.

including Chapter 24. For this land, the Council's section 32 evaluation states:

“Although it is still considered part of the wider WB amenity landscape the Ladies Mile Area is deliberately not included in the WBRAZ under this Variation and is not subject to an additional Ladies Mile Gateway Precinct. The Council is currently progressing plans to carefully manage urban development in this area, to address the above issues and to address the need to facilitate urban growth in the future in suitable locations such as this in an efficient way. Other factors include that it may be subject to a Special Housing Area Application or a future detailed plan variation. More detailed assessment of a range of factors such as transport infrastructure capacity is required in order to complete a detailed plan change for this area.”¹²⁷

189. It is submitted the Council is being inconsistent and unfair in its treatment of the Arrowtown South and the Ladies Mile land without reasonable justification for or an evidential basis which supports the difference in approach.
190. For reasons not clearly explained, the Council has decided to exclude the Ladies Mile land from the application of Stage 2 of the Proposed Plan and Chapter 24, and to do further work in respect of the land's urbanisation (as recommended by WBLUS), but not to do the same for the Arrowtown South land despite WBLUS recommending the same planning response for both areas.
191. The Council's treatment of the Ladies Mile land, and its investigations in respect of its urbanisation, are in spite of the fact that the Council's own evidence in respect of Stage 2 of the Proposed Plan, and that of NZTA¹²⁸, is that further development along Ladies Mile (or anywhere in the Basin) will have significant adverse effects on the SH6 Shotover River Bridge. Specifically, Mr Smith's evidence, for the Council, is that:

“Any application that provides for additional residential development along Ladies Mile will in my view cause significant traffic effects along SH6.”¹²⁹

¹²⁷ Ibid, page 26.

¹²⁸ Evidence of Matthew Gatenby for NZTA dated 13 and 27 June 2018.

¹²⁹ Evidence of David Smith, dated 28 May 2018, paragraph 7.22.

192. It is submitted that the Council's inconsistency in its treatment of the Ladies Mile and Arrowtown South land is unfair to landowners and suggests it is "picking winners", which is unreasonable and can not be endorsed by the Act.
193. It is submitted that it is only fair to landowners that the Arrowtown South land be treated in the same manner as the Ladies Mile land, as per the recommendations contained in the WBLUS. It is submitted that this could be achieved by:
- (a) A decision of the Panel that zones the land for residential activity at urban densities.
 - (b) A decision of the Panel that places a deferred or future urban zoning on the land.
 - (c) Withdrawal of the Arrowtown South land (or some it, including BHT's land) from Stage 2 of the Proposed Plan, on the proviso that it will be addressed by the next stage of the Proposed Plan (Stage 3), prior to the notification of which the Council will investigate and prepare an appropriate zone which gives effect to the recommendations contained in the WBLUS.
 - (d) Failing any of the above, a decision of the Panel that zones the Arrowtown South land (or BHT's land) WBLP which, on the evidence and in light of the WBLUS, is a far more appropriate outcome than the notified WBRAZ.
194. These potential outcomes are discussed further below, and in the evidence of Mr Brown, for BHT.¹³⁰

A Live Urban Zone

195. It is accepted that a decision on Stage 2 of the Proposed Plan which zones the Arrowtown South land for residential activities at urban densities is premature, given there is presently no detailed evidence in respect of this outcome, or the mechanics of any such live zone.

¹³⁰ Dated 15 June 2018.

196. It also appears, from counsel's review, that there is no scope for a decision by the Panel that zones the Arrowtown South land for residential activities at urban densities.

A Deferred or Future Urban Zone

197. Mr Langman, for the Council, expresses some concern regarding the use of deferred or future urban zonings. However, deferred zones are a long established method under the Act, and have been recently considered and endorsed by the Independent Hearings Panel in respect of the Auckland Unitary Plan. Mr Brown addresses this in his evidence and attaches the Auckland Unitary Plan Future Urban Zone example, which he says could apply, subject to some adaptations, to the Arrowtown South land. A further analysis of this Future Urban Zone is contained in **Appendix C**.
198. It is submitted that a deferred or future urban zone could be an appropriate method for addressing the Arrowtown South land given it appears to be agreed between the Council's and BHT's witnesses that the land should be urbanised, subject to only one outstanding issue; timing. The deferral could be tied to the preparation of a structure plan for the area so as to ensure a coordinated and cohesive development outcome, as per the recommendation in WBLUS, and provision of reticulated infrastructure, for example.
199. It is submitted that a deferred or future urban zoning, with tightly focussed provisions, including objectives and policies, would better ensure the Arrowtown South land's availability for future urbanisation, noting Mr Brown's evidence is that if the land is zoned WBRAZ, it is unlikely to be a resilient holding pattern, because residential development within the LCU can be supported from a landscape perspective, meaning any application for a non-complying resource consent under the WBRAZ provisions will likely pass the section 104D gateway tests.¹³¹
200. It is submitted a deferred or future urban zoning would be a far more appropriate outcome for the land in light of both the Council's and BHT's evidence, and would be fairer than the notified WBRAZ zoning, in that it would provide landowners with certainty of future outcomes, even though it

¹³¹ Evidence off Jeff Brown, paragraph 17(a)(i).

may render their land as unsuitable for residential development in the meantime.

201. Counsel has investigated whether there is scope for a decision in favour of a deferred or future urban zoning, and from a review of submissions it (unfortunately) appears there may not be.

Withdrawal of Arrowtown South Land from Stage 2 of Proposed Plan

202. Given there appears to be no scope for a decision of the Panel that zones the Arrowsouth land for residential activities at urban densities, or one which places a deferred or future urban zoning on the land, it is submitted that the most appropriate, reasonable and fair manner in which to address the land is for the Council to withdraw it from Stage 2 of the Proposed Plan and to commence investigations for an urban type residential zoning which gives effect to the recommendations contained in the WBLUS, for notification as part of Stage 3 of the Proposed Plan.
203. Preparation of an urban residential zone would likely require the preparation of a structure plan for the area by the Council in consultation with landowners (noting the area is in multiple ownership) and investigation of infrastructure provision. It is submitted that on evidence of Mr Hadley,¹³² the latter could be readily addressed, with any necessary funding obtained through development contributions.
204. BHT acknowledges that the Panel has no ability to direct the Council as to the matters it must address in Stage 3 of the Proposed Plan, and that the scope of options it has before it for decision are the notified WBRAZ at one end of the scale (being the most restrictive option), and the WBLP at the other (being the least restrictive option), and anything in between (which could include retention of the status quo). It is submitted that, In terms of these options, a WBLP zoning is superior to the notified WBRAZ. This is addressed further in the discussion of the evidence below.

The Evidence

205. BHT has pre-lodged expert infrastructure, traffic, landscape and planning evidence in support of its submission for a WBLP zoning of its McDonnell

¹³² Evidence of James Hadley, dated 15 June 2018.

Road land. The Council has lodged infrastructure, traffic and planning evidence in response.

206. No other party has pre-lodged evidence that relates directly to the zoning of BHT's land, and while a number of submissions have been lodged in support of the zoning sought by BHT, none have been lodged in opposition.

Infrastructure

207. Ms Jarvis¹³³ for the Council, and Mr Hadley¹³⁴ for BHT, agree that BHT's land can be serviced for potable, waste and storm water utilising methods that are independent of and do not impact upon the Council networks, and that no issues therefore arise in respect of infrastructure services for the land.

Traffic and Transportation

208. Mr Smith for the Council agrees with Mr Penny¹³⁵ that access arrangements and internal roading requirements for BHT's land can be addressed satisfactorily.¹³⁶
209. It is also agreed between these witnesses that development of the land under a WBLP zoning (which would enable the creation of eight residential lots) would generate two additional peak hour movements over the SH6 Shotover River Bridge. Mr Smith states that this is a small increase which would generally be considered "*insignificant*" in isolation from other development, but that "*when considered in the context of cumulative traffic effects*" it will "*negatively impact on the performance of the transport network*".¹³⁷
210. Mr Smith also states that "*given the cumulative increase in traffic volumes on McDonnell Road...an assessment of the efficiency and safety of the intersection of Arrowtown Lake Hayes Road/ McDonnell Road/Malaghans Road should be undertaken.*"¹³⁸

¹³³ Rebuttal evidence of Andrea Jarvis dated 27 June 2018, paragraph 4.4

¹³⁴ Evince of James Hadley dated 15 June 2018.

¹³⁵ Evidence of Tony Penny dated 15 June 2018.

¹³⁶ Rebuttal evidence of David Smith dated 27 June 2018, paragraph 7.2

¹³⁷ Ibid, paragraph 7.4.

¹³⁸ Ibid, paragraph 7.3.

211. Importantly, Mr Smith's evidence is that in isolation, traffic effects from a WBLP zoning of BHT's land will be insignificant.
212. It is submitted that his recommendation that an assessment of the Arrowtown Lake Hayes Road/ McDonnell Road/Malaghans Road intersection be undertaken is unreasonable when the zoning sought by BHT will create only 8 new lots, and produce only 2 peak hour traffic movements.
213. It is submitted that Mr Smith's evidence suffers from a lack of perspective in this respect and should be given no weight. Mr Penny's evidence should instead be preferred.

Landscape

214. Ms Pfluger, for BHT, has prepared comprehensive landscape evidence¹³⁹ in which she concludes that rural residential development is not an uncharacteristic land use activity in the locality and that the change in the landscape character of BHT's land that will occur if it is zoned WBLP will be in character with the surrounding environment.¹⁴⁰ Overall she supports a WBLP zoning for the land, including the various amendments to the WBLP provisions sought by BHT.
215. Ms Pfluger also concludes that if an urban zoning is instead pursued for BHT's land and the wider area, *"it will result in a different landscape character and amenity outcome than if a WBLP zoning is applied, however [it]...would also be appropriate given the area's proximity to Arrowtown, its confining attributes, and its changing landscape character as a result of developments that are already underway and/or consented."*¹⁴¹
216. The Council has not presented any landscape evidence that supports the notified WBRAZ for BHT's land (nor the Arrowtown South LCU generally), nor which rebuts Ms Pfluger's evidence. This is not surprising given Ms Gilbert, the Council's landscape witness, was one of the authors of the WBLUS which recommends the Arrowtown South land be urbanised.

¹³⁹ Dated 15 June 2018.

¹⁴⁰ Ibid, paragraph 22.

¹⁴¹ Ibid, paragraph 88.

217. Ms Gilbert does make some brief comment on BHT's submission in her rebuttal evidence however where she states:¹⁴²

"Ms Yvonne Pfluger has prepared landscape evidence on behalf of Boxer Hill Trust. Ms Pfluger supports an amended Precinct with an average lot size of 1ha and a minimum lot size of 2,500m² on the submitter's land on the west side of McDonnell Road and adjacent the consented Arrowtown Lifestyle Retirement Village.

I have no objection to the evidence filed by Ms Pfluger."

218. Ms Pfluger's evidence is therefore uncontested and, it is submitted, should be given full weight by the Panel.

Planning

219. As referenced above, Mr Brown has prepared planning evidence in respect of BHT's submission in which he concludes that a WBLP zoning is a more efficient use of BHT's land than the notified WBRAZ, and better achieves the higher order objectives and policies of the Proposed Plan.¹⁴³
220. He concludes that the WBLP is not a better option than an urban zone however because the WBLP zone would likely foreclose efficient urban use of the land.¹⁴⁴
221. As noted earlier, Mr Brown considers the WBRAZ is not a resilient holding pattern for land because, as the landscape evidence demonstrates, the land can easily absorb new development at a scale and form that would not adversely affect the amenity values of neighbouring properties, and is located within a wider area with significant development already established or consented, (including the high density retirement village to the immediate south), meaning that even in the circumstance of rules requiring non-complying consent for subdivision below a minimum lot area of 80ha (as notified for the WBRAZ), an application for a non-complying density would likely pass both s104D tests.¹⁴⁵

¹⁴² Dated 27 June 2018, paragraph 20.1 and 20.2.

¹⁴³ Evidence of Jeff Brown dated 15 June 2018, paragraph 29.

¹⁴⁴ Ibid, paragraph 30.

¹⁴⁵ Ibid, paragraph 17(a)(i).

222. Mr Brown considers the best option is for the Council to withdraw BHT's land from Stage 2 of the Proposed Plan and commence work on the necessary background investigations, and then initiate a new variation to or stage of the Proposed Plan for a live urban zone.¹⁴⁶
223. Mr Langman does not comment on this option in his evidence. He instead maintains that the WBRAZ is the most appropriate zone for BHT's land, but does not address Mr Brown's opinion that it is unlikely to be a resilient holding pattern.
224. In maintaining that the WBRAZ is the most appropriate option for BHT's land Mr Langman does not evaluate the option against the higher order provisions of any relevant statutory plans, nor whether it achieves the purpose of the Act. He offers no assessment of the benefits or costs of the WBRAZ, and so the deficiencies of the Council's section 32 report are not remedied by his evidence.
225. Mr Langman's evidence raises some uncertainty as to whether the Council will urbanise the Arrowtown South land in the future at all, by way of his paragraph 3.14, where he states:
- "While there are opportunity costs involved in retaining the Amenity Zone rather than Precinct, this, in my view, is outweighed by the public benefits of having well designed and integrated urban form that could last indefinitely (if it is to occur)."*
- (emphasis added)
226. In light of the above comment it appears that Mr Langman's evidence is, on the one hand, that BHT's land should be zoned WBRAZ so as to ensure it can be urbanised in the future, but then on the other, that in fact it may not be urbanised in the future at all.
227. It is submitted that Mr Langman's evidence suggests that the Council is, for the Arrowtown South land, "trying to have its cake and eat it too". The Council's entire justification for the WBRAZ appears to be that it will enable the land to be urbanised in the future, yet, on the evidence of Mr Langman, it is not prepared to commit to a course of action which ensures that.

¹⁴⁶ Ibid, paragraph 33.

228. Other than Mr Langman's (extremely brief) evidence the Council has provided no indication that it intends to urbanise the Arrowsouth land, nor any timeframes as to when that will occur. It is submitted the Council's approach is wholly unsatisfactory in circumstances where it is seized of the opportunity to do just that, via the extant District Plan Review process.
229. In the meantime, and for an interminable period, landowners are left with uncertainty of outcome and a zoning for their land which does not reflect or recognise its attributes, noting none of the landholdings within LCU are anywhere near 80ha, nor do they exhibit the landscape character that the WBRAZ seeks to protect.
230. It is submitted that if the Council is not prepared to do the work it ought to in respect of the future urbanisation of the Arrowtown South land, including BHT's land in particular, then the land should be zoned WBLP, which is a far better fit with the land patterning and characteristics of the area, and can be supported by a range of experts, including the Council's own landscape expert.

Summary of Evidence

231. Other than Mr Langman's very brief statement, the Council has presented no evidence as to its intention to urbanise the Arrowtown South land, or the timing of its work programme in respect of that.
232. In contrast, evidence has been presented by a range of experts in support of a WBLP zoning of BHT's land in preference to the notified WBRAZ. This includes evidence by the Council's own landscape witness.
233. BHT has made a submission on the Proposed Plan which, it is submitted, it is entitled to have determined. The Council appears to be asking the Panel to disregard BHT's submission because it has other plans for its land, albeit it has not disclosed those plans, nor presented any detailed evidence in respect them. It is submitted this is unfair to BHT, who has invested significantly in the Stage 2 process.
234. It is submitted that the evidence that has been presented in respect of BHT's land supports a WBLP zoning and demonstrates it is better than the notified WBRAZ, noting those are the two options between which the Panel must decide.

235. It is submitted that the Panel should prefer a WBLP zoning for BHT's land, as the least restrictive of the two options before it, because this zoning will promote the purpose of the Act by enabling people, including BHT, to provide for their wellbeing while addressing the effects of their activities.¹⁴⁷

¹⁴⁷ *Royal Forest and Bird v Whakatane DC* [2017] NZENVC51 at [59].

Conclusion

236. The Proposed Plan, as notified, is overly focussed on landscape matters. The Basin's landscapes are unique and important, but as section 7 landscapes, the Act does not require their absolute protection.
237. Nonetheless, THL's proposal for the HRZ will protect the landscape within which it is located. The HRZ will ensure the maintenance and enhancement of amenity values and of the quality of the environment, while also ensuring the efficient use and development of the land to which the Zone relates.
238. THL is committed to achieving high quality landscape driven outcomes, proven by the development it has carried out to date. It embraces an ethic of stewardship, underpinned by ideals of sustainability, and health and wellbeing of the land. THL is genuinely concerned about and committed to maintaining the landscape and the special qualities, characteristics and health of its land for future generations.
239. The HRZ is a bespoke zone that has been crafted with input from the full gamut of experts, but fundamentally its formulation has been landscape led. Development of the HRZ will enable THL to continue to play a custodial role for the property while ensuring that the valued characteristics and qualities of the property are maintained in perpetuity.
240. The vast majority of the property will be maintained as open space, and its accessibility to and enjoyment by the wider public will be enhanced by the provision of a walking and cycling trail, providing a greater community connection with the property and enabling people and the community to provide for their social and cultural wellbeing. In addition, the HRZ will bring significant and ongoing economic benefits to the community. These benefits will not be realised by the WBRAZ, and in this regard, the HRZ is the better, superior option.
241. BHT's proposal for a WBLP zone for its McDonnell Road landholding and the notified WBLP zoning of its Hogans Gully landholding will also ensure appropriate landscape outcomes, and are supported by two independent landscape witnesses. A WBLP zoning for these landholdings is a logical fit

with the surrounding land use patterning and will enable the efficient use of the land, without giving rise to any adverse effects.

Rebecca Wolt

Counsel for Trojan Helmet Limited and Boxer Hill Trust

APPENDIX A

Statutory Framework

1. When considering THL's, BHT's and other submissions on the Proposed Plans, and the section 42A reports and evidence, the Panel must do so within the framework of the Act, as detailed below.
2. The purpose of the preparation, implementation, and administration of district plans is to assist councils to carry out their functions in order to achieve the purpose of the Act.¹⁴⁸

Act's Purpose

3. The purpose of the RMA is, under section 5 of the Act, to promote the sustainable management¹⁴⁹ of natural and physical resources. Under section 6, identified matters of national importance¹⁵⁰ must be recognised and provided for and, under section 7, particular regard is to be had to the 'other matters' listed there which include kaitiakitanga, efficiency, amenity values and ecosystems. Under section 8, the principles of the Treaty of Waitangi are to be taken into account.
4. Section 5 is a guiding principle which is intended to be followed by those performing functions under the RMA, rather than a prescriptive provision subject to literal interpretation.¹⁵¹
5. In the sequence of '*avoiding, remedying or mitigating*' under section 5(2)(c):¹⁵²
 - (a) 'avoiding' means 'not allowing' or 'preventing the occurrence of';

¹⁴⁸ Section 72 of the Act.

¹⁴⁹ As that phrase is defined in s 5(2) of the RMA.

¹⁵⁰ Relating to the natural character of the coastal environment, the protection of outstanding natural features and landscapes, significant indigenous vegetation and habitats, the maintenance and enhancement of public access to the coastal marine area, lakes and rivers, the relationship of Maori and the culture and traditions with their ancestral lands, waters, sites, waahitapu and other taonga and the protection of historic heritage and customary rights.

¹⁵¹ *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38 (King Salmon).

¹⁵² *Ibid.*

- (b) *'remedying'* and *'mitigating'* indicate that developments which might have adverse effects on particular sites can nonetheless be permitted if those effects are mitigated and/or remedied.
 - (c) The word *'while'* in section 5(2) means "at the same time as".
6. Section 5 is to be read as an integrated whole. The wellbeing of people and communities is to be enabled at the same time as the matters in section 5(2) are achieved.¹⁵³

Section 31

7. Section 31 sets out councils' functions for the purpose of giving effect to the RMA. Importantly, these include (*inter alia*):
- (a) *"the establishment, implementation, and review of objectives, policies and methods, to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district"*¹⁵⁴; and
 - (b) *"the control of any actual or potential effects of the use, development, or protection of land"*¹⁵⁵

Sections 32 and 32AA

8. Section 32 sets out the legal framework within which a council (and thus the Panel) must consider the submissions, evidence and reports before it in relation to a proposed plan, in conjunction with the matters specified in section 74.
9. Under section 32, an evaluation report on a proposed plan must examine whether proposed objectives are the most appropriate way to achieve the purpose of the Act, and whether the provisions are the most appropriate way of achieving the objectives. To do that, a council must identify other reasonably practicable options to and assess the efficiency and effectiveness of the proposed provisions through identifying the benefits and costs of the environmental, economic, social and cultural effects, including opportunities for economic growth and employment

¹⁵³ Ibid

¹⁵⁴ Section 31(1)(b)

¹⁵⁵ Section 31(1)(b).

10. Section 32AA requires a further evaluation to be undertaken for any changes made or proposed to a proposed plan since the section 32 evaluation was completed. This further evaluation must either be published as a separate report, or referred to in the decision making record in sufficient detail to demonstrate it was carried out.

District Plan Preparation (Sections 74 and 75)

11. A council's (and the Panel's) decision on a proposed plan must be in accordance with (relevantly):¹⁵⁶
- (a) the council's functions under section 31; and
 - (b) the provisions of Part 2; and
 - (c) its obligation to prepare and have regard to an evaluation report prepared in accordance with section 32; and
 - (d) any regulations.
12. Additionally, when preparing or changing a district plan a council *shall have regard* to the instruments listed in section 74, which include any proposed regional policy statement, proposed regional plan and any management plans and strategies prepared under other Acts. It must *take into account* any relevant planning document recognised by an iwi authority. It must also have *particular regard* to an evaluation report prepared under section 32.
13. Under s 75, a council *must give effect to* any national policy statement, any New Zealand coastal policy statement and any regional policy statement, and *must not be inconsistent with* a water conservation order or a regional plan (for any matter specified in subsection 30(1)).
14. Finally, under section 75(1), district plan policies must state the objectives for the district plan; the policies to *implement* the objectives, and the rules (if any) to *implement* the policies.
15. The meaning of the terms 'have regard/particular regard to', 'take into account', 'not be inconsistent with' and 'give effect to' is set out below.

¹⁵⁶ Section 74(1) of the Act

APPENDIX B

The Long Bay/Colonial Vineyard test incorporating the amendments to Section 32 made by Section 70 of the Resource Management Amendment Act 2013

General Requirements

1. A district plan should be designed in accordance with¹⁵⁷, and assist the council to carry out – its functions¹⁵⁸ so as to achieve, the purpose of the Act.¹⁵⁹
2. When preparing its district plan the council (and thus the Panel) must give effect to a national policy statement, New Zealand coastal policy statement or regional policy statement.¹⁶⁰
3. When preparing its district plan the council (and thus the Panel) shall have regard to any proposed regional policy statement.¹⁶¹
4. In relation to regional plans:
 - (a) the district plan must not be inconsistent with an operative regional plan for any matter specified in section 30(1) or a water conservation order¹⁶²; and
 - (b) shall have regard to any proposed regional plan on any matter of regional significance etc.¹⁶³
5. When preparing its district plan the council (and thus the Panel):
 - (a) shall have regard to any management plans and strategies under any other Acts, and to any relevant entry on the New Zealand Heritage List and to various fisheries regulations (to the extent that they have a bearing on resource management issues in the

¹⁵⁷ RMA s 74(1).

¹⁵⁸ As described in s 31 RMA.

¹⁵⁹ RMA ss 72 and 74(1)(b).

¹⁶⁰ RMA s 75(3)(a)-(c).

¹⁶¹ RMA s 74(2).

¹⁶² RMA s 75(4).

¹⁶³ RMA s 74(2)(a).

- region)¹⁶⁴, and to consistency with plans and proposed plans of adjacent authorities;¹⁶⁵
- (b) must take into account any relevant planning document recognised by an iwi authority;¹⁶⁶ and
 - (c) must not have regard to trade competition.¹⁶⁷
6. The district plan must be prepared in accordance with any regulation.¹⁶⁸
 7. A district plan must¹⁶⁹ also state its objectives, policies and the rules (if any) and may¹⁷⁰ state other matters.
 8. A council has obligations to prepare an evaluation report in accordance with section 32 and (the Panel must have) have particular regard to that report.¹⁷¹
 9. A council (and the Panel, as necessary) also has obligations to prepare a further evaluation report under section 32AA where changes are made to the proposal since the section 32 report was completed.¹⁷²

Objectives

10. The objectives in a district plan are to be evaluated by the extent to which they are the most appropriate way to achieve the purpose of the RMA.¹⁷³

Provisions¹⁷⁴

11. The policies are to implement the objectives, and the rules (if any) are to implement the policies.¹⁷⁵
12. Each provision is to be examined, as to whether it is the most appropriate method for achieving the objectives of the district plan, by:

¹⁶⁴ RMA s 74(2)(b).

¹⁶⁵ RMA s 74(2)(b).

¹⁶⁶ RMA s 74(2)(b).

¹⁶⁷ RMA s 74(3) .

¹⁶⁸ RMA s 74(1)(f).

¹⁶⁹ RMA s 75(1).

¹⁷⁰ RMA s 75(2).

¹⁷¹ RMA s 74(1)(d) and (e).

¹⁷² RMA s 32AA

¹⁷³ RMA s 32(1)(a).

¹⁷⁴ Defined in s32(6), for a proposed plan or change as the policies, rules or other methods that implement or give effect to, the objectives of the proposed plan or change.

¹⁷⁵ RMA s75(1).

- (a) identifying other reasonably practicable options for achieving the objectives;¹⁷⁶
- (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including:¹⁷⁷
 - (i) identifying and assessing the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth and employment that are anticipated to be provided or reduced;¹⁷⁸ and
 - (ii) quantifying these benefits and costs where practicable;¹⁷⁹ and
 - (iii) assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.¹⁸⁰

Rules

13. In making a rule the council (and thus the Panel) shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.¹⁸¹

Other Statutes

14. The council (and thus the Panel) may be required to comply with other statutes.

¹⁷⁶ RMA s32(1)(b)(i).

¹⁷⁷ RMA s32(1)(b)(ii).

¹⁷⁸ RMA s32(2)(a).

¹⁷⁹ RMA s32(2)(b).

¹⁸⁰ RMA s32(2)(c).

¹⁸¹ RMA s76(3).

APPENDIX C

Auckland Unitary Plan – Future Urban Zone

1. The Auckland Unitary Plan (**AUP**) contains a Future Urban Zone (**FUZ**) which is a form of deferred or transitional zoning. The FUZ is applied to greenfield land that has been identified as suitable for urbanisation within the next 30 years.¹⁸²
2. Within the FUZ land may be used for a range of general rural activities but cannot be used for urban activities until the land is re-zoned for urban purposes. This is achieved by way of a number of directive objectives and policies such as Objective H18.2(4) “*Urbanisation on sites zoned Future Urban Zone is avoided until the sites have been rezoned for urban purposes*” and non-complying activity status for more than one dwelling on a site. Subdivision is also a non-complying activity within the FUZ.
3. To assist with the implementation of the FUZ the Auckland Council has a future urban land supply strategy that sits outside the AUP and which integrates the timing of ‘live’ zoning of the FUZ areas (through plan changes) with the timing of associated infrastructure rollout. The FUZ discourages any subdivision that would foreclose or compromise the efficient urban development of the land in the interim period before infrastructure provision and a live zoning.
4. The FUZ was included in the notified AUP and certain aspects of the zoning were challenged by some submitters. Its appropriateness was therefore assessed by the Unitary Plan Independent Hearings Panel (**IHP**) who was tasked with hearing submissions and making recommendations on the AUP.¹⁸³
5. The IHP recognised that the transitional purpose of the FUZ can create a “*number of issues where the potentially conflicting interests of strategic planning and property rights meet*”.¹⁸⁴

¹⁸² IHP Report to AC Topic 028 Future Urban Zone dated 22 July 2016 at page 6

¹⁸³ Auckland Council in its decision on the AUP accepted all the recommendations of the IHP on the FUZ other than making the activity status for subdivision non-complying rather than discretionary

¹⁸⁴ IHP Report to AC Topic 028 Future Urban Zone dated 22 July 2016 at page 6

6. One of those issues was the need to provide for future urban development of land while balancing this against enabling reasonable use in the interim period.
7. The IHP recognised that in the period before urbanisation occurs the degree of restriction on the use and development of the land must not render it incapable of reasonable use.¹⁸⁵ The IHP was satisfied that this was not an issue because it considered, notwithstanding Auckland Council's assertions to the contrary, that the FUZ was in reality a rural zone with the rules closely corresponding to those in the Rural Production Zone of the AUP.¹⁸⁶
8. In assessing the appropriateness of the FUZ the IHP considered a range of options to address the issues relating to the future urbanisation of land including:¹⁸⁷
 - (a) deleting the FUZ entirely and rely on the Rural Urban Boundary (**RUB**) and zone changes to manage transition and urbanisation;
 - (b) using the FUZ together with the RUB and zone changes; and
 - (c) using special housing area-type processes for all future urban zone type proposals (including business as well as residential areas).
9. In relation to the first option, while the IHP considered that the RUB was an appropriate method for managing growth, it considered relying on the RUB was insufficient by itself for two main reasons:¹⁸⁸
 - (a) it considered the rural environment needs to be managed differently depending on which side of the RUB it is on. Rural land outside of the RUB is anticipated to remain rural in the longer term, but land inside the RUB is anticipated to be rezoned in the short to medium term; and
 - (b) the medium timeframe of up to 30 years was considered to be sufficiently long that an intermediate regime was appropriate to control decision-making pending a change of zoning.

¹⁸⁵ Section 85 of the RMA

¹⁸⁶ IHP Report to AC Topic 028 Future Urban Zone dated 22 July 2016 at page 6

¹⁸⁷ IHP Report to AC Topic 028 Future Urban Zone dated 22 July 2016 at page 6

¹⁸⁸ IHP Report to AC Topic 028 Future Urban Zone dated 22 July 2016 at page 9

10. The IHP's preferred option was the second option (using the FUZ together with the RUB and zone changes) as it considered the FUZ method provides clear signals to landowners, infrastructure providers and developers of the suitability of the land for future urbanisation.¹⁸⁹ This method was also considered to be adaptable to circumstances where there is no RUB.
11. Another issue identified by the IHP was that efficient development overall can be hindered by small-scale ad hoc developments. The IHP considered it was necessary for the objectives and policies of the FUZ to make the transitional nature of the zone clear, enabling on-going rural use while preventing subdivision, use and development which might prevent or hinder sustainable urbanisation at an appropriate time in the future.¹⁹⁰
12. The IHP considered the "*primary method for managing the transition from rural to urban land use is to require careful planning of any substantial change, with full assessment of both the most appropriate methods and the effects (both positive and adverse) of urbanisation in advance of urban zoning. The format of structure planning, as set out in Appendix 1 of the Panel's recommendation version of the Plan (Appendix 1 - Structure plan guidelines), is the recommended guideline for such a planning exercise.*"¹⁹¹
13. Appendix 1 to the Auckland Unitary Plan provides a detailed set of guidelines for structure planning, and is attached to Mr Brown's evidence dated 15 June 2017.

Application of the Future Urban Zone concept to the Queenstown Proposed District Plan

14. The WBLUS identified LCU24 as being suitable for urbanisation, subject to a structure planning process to enable the creation of an Arrowtown Precinct.
15. While potential future urbanisation of LCU24 has been somewhat confirmed by the Council's Stage 2 evidence on BHT's rezoning request (Submission 2386), the notified Variation did not introduce a "precinct" for Arrowtown.

¹⁸⁹ IHP Report to AC Topic 028 Future Urban Zone dated 22 July 2016 at page 6

¹⁹⁰ IHP Report to AC Topic 028 Future Urban Zone dated 22 July 2016 at page 7

¹⁹¹ IHP Report to AC Topic 028 Future Urban Zone dated 22 July 2016 at page 8

16. Putting aside issues of scope which are discussed in the body of the legal submissions, a future urban zone over LCU24 could be an appropriate method for addressing the future urbanisation of this area if the Council is not ready to presently undertake the work required for a live urban zoning.
17. A FUZ would provide land owners with certainty of future (urban) land uses, while enabling the continuation of rural land uses in the meantime. A FUZ would provide clear direction that any future development of this land would be by way of a structure planning and rezoning process. The 'trigger' in the FUZ for a 'live' urban zoning of the land could be the preparing of a structure plan and provision of reticulated services, for example.