

**QUEENSTOWN-LAKES DISTRICT COUICL  
PROPOSED DISTRICT PLAN HEARING – STREAM 1B**

**IN THE MATTER**

of a hearing on submissions to the Proposed  
District Plan (Stream 1B) pursuant to clause 8B of  
the First Schedule to the Resource Management  
Act 1991

**BY NEW ZEALAND TUNGSTEN MINING LIMITED**

Submitter

**CABO LIMITED**

Further Submitter

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**EVIDENCE OF CAREY VIVIAN  
(PLANNER)  
26 February 2016**

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## **1. Qualifications and Experience**

- 1.1 My name is Carey Vivian. I hold the qualification of Bachelor of Resource and Environmental Planning (Hons) from Massey University. I have been a full member of the New Zealand Planning Institute since 2000. I am a director of Vivian + Espie Limited, a resource management and landscape planning consultancy based in Queenstown. I have been practising as a resource management planner in twenty-one years, having held previous positions with Davie Lovell-Smith in Christchurch; and the Queenstown Lakes District Council (QLDC), Civic Corporation Limited, Clark Fortune McDonald and Associates and Woodlot Properties Limited in Queenstown.
- 1.2 I have read the Code of Conduct for Expert Witnesses contained within the Environment Court Practice Note 2014 and agree to comply with it. This evidence is within my area of expertise, except where I state that I am relying on information I have been given by another person. I confirm that I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed herein.

## **2. Purpose and Scope of this Evidence**

- 2.1 The purpose of this evidence is to impartially assist the Hearings Panel on matters within my expertise of resource management planning in relation to the submission by NZ Tungsten Mining Limited (NZTML) and the further submission of Cabo Limited (CL) on the Proposed District Plan (PDP). It is restricted to the parts of the submissions which relate to Chapter 3 Strategic Direction and Chapter 6 Landscapes.
- 2.2 NZTML have sought a number changes to the PDP to recognise the importance of exploration and mining activities within the District. NZTML hold two exploration permits and a prospecting permit within the district, and have been exploring since 2001. They also have resource consent to undertake exploration drilling in the Mt. Alfred area and currently have a resource consent application being processed by Council to conduct drilling within the Whakaari Conservation Area, (RM151033 prepared by David Consulting limited). Vivian+Espie have been assisting NZTML in the Mt. Alfred area but have not been involved in the resource consent in the Whakaari Conservation Area.
- 2.3 CL is the entity which own Wyuna Station in Glenorchy. CL has opposed NZTML submission in its entirety. I understand<sup>1</sup> that CL's primary concern is focussed on mining issues affecting Glenorchy and more specifically the Mt Judah Road area. I also understand that CL are generally opposed to any

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<sup>1</sup> From CL director Mr Tom Tusher.

*“exploring and prospecting”* activity in the Glenorchy Heritage Landscape and specifically would oppose any exploration or prospecting on the Mt. Judah Road. I also understand that CL support the protection of the existing and historical mine sites on the Mt. Judah Road but are opposed to re-opening any of those sites for exploration or mining, or to the potential for any new sites along the Mt. Judah Road to be given any form of permission for exploration, prospecting, or mining.

- 2.4** I note that Mt. Judah Road is included within the freehold of Wyuna Station. I have been told, as stated above, that CL are unlikely to ever grant access for a mining activity and do not wish to see any change in legislation (including the PDP) that would encourage such activity.
- 2.5** As stated above, this evidence is presented on behalf of both NZTML and CL on the high level objectives and policies of Chapter 3 Strategic Directions and Chapter 6 Landscapes. Although the submitters appear to be opposed to one another when it comes to future mining activity in the District, they both accept that this evidence is prepared on the basis it is in accordance with the Environment Court’s code of practice which has an overriding duty to impartially assist the Court (or Hearings Panel in this case) in my area of expertise of resource management planning and not advocate for the party who engages me. For that reason I am comfortable preparing this evidence on both of my client’s submissions.
- 2.6** I note, for completeness, that I had no involvement in the preparation of NZTML submission or CL further submission prior to preparing this evidence. I did prepare a submission for CL in support of a notified Rural Lifestyle Zone on part of Wyuna Station. I understand that submission is to be heard as part of the mapping hearing.
- 2.7** For the record I note that expert witnesses must also declare any interest they have in the outcome of the proceeding. I note that I partake in recreational gold mining with my children (but have never actually found any gold).

### **3. Context**

**3.1** I note the NZTML submission seeks a number of definitions be amended or inserted in the PDP. Many of these definitions are then relied upon in the requested changes to the objectives and policies. I outline these definitions below so that the context of the NZTML submission on Chapters 3 and 6 can be fully understood. I understand NZTML will be invited to a hearing on these definitions later this year. The relevant definitions include:

**3.2** Add the following new definition for Exploration as follows:

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

**3.3** Add a new definition of Mining as follows:

*“Mining—*

*(a) means to take, win, or extract, by whatever means,—*

*(i) a mineral existing in its natural state in land; or*

*(ii) a chemical substance from a mineral existing in its natural state in land; and*

*(b) includes—*

*(i) the injection of petroleum into an underground gas storage facility; and*

*(ii) the extraction of petroleum from an underground gas storage facility; but*

*(c) does not include prospecting or exploration for a mineral or chemical substance referred to in paragraph (a)”*

**3.4** Amend the definition of Mining Activity as follows:

*“Mining Activity*

*(a) means operations in connection with mining, exploring, or prospecting for any mineral; and*

*(b) includes, when carried out at or near the site where the mining, exploration, or prospecting is undertaken,—*

*(i) the extraction, transport, treatment, processing, and separation of any mineral or chemical substance from the mineral; and*

*(ii) the construction, maintenance, and operation of any works, structures, and other land improvements, and of any related machinery and equipment connected with the operations; and*

*(iii) the removal of overburden by mechanical or other means, and the stacking, deposit, storage, and treatment of any substance considered to contain any mineral; and*

*(iv) the deposit or discharge of any mineral, material, debris, tailings, refuse, or wastewater produced from or consequent on the operations; and”*

**3.5** Add a new definition of Mining Building as follows:

*"Means a building (as defined) necessary for the undertaking of mining activities (as defined)"*

**3.6** Amend the definition of Prospecting so it is defined as "Mineral Prospecting" as follows:

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

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

**3.7** Amend the definition of "Temporary Activity" as follows:

*"Means the use of land, buildings, vehicles and structures for activities of short duration and are outside the usual use of a site, that include the following:*

- *Temporary events*
- *Temporary filming*
- *Temporary activities related to building and construction*
- *Temporary exploration and prospecting*
- *Temporary military training*
- *Temporary storage*
- *Temporary utilities*
- *Temporary use of a site as an airport for certain community events*

*A temporary activity does not include the extension of an activity authorised by a resource consent where in contravention to any conditions of the resource consent."*

**3.8** I note for the record in preparing this evidence I have had the benefit in reading the section 42A reports produced by Mr Matthews and Mr Barr.

**3.9** In preparing this evidence I am mindful of the amended mandatory legal criteria the Panel must consider as set out in Colonial Vineyard v Marlborough District Council [2014] NZEnvC 55. This includes:

- (a) *Accords with section 75(1) and assists the Council to carry out its functions (s 31) so as to achieve the purpose of the Act (s 72).*
- (b) *Gives effect to National Policy Statements that are relevant (section 73(3)(a));*

- (c) Gives effect to the Otago Regional Policy Statement (section 75(3)(c));
- (d) Has had regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register (section 74(2)(b));
- (e) Takes into account any relevant planning document recognized by an iwi authority;
- (f) Does not have regard to trade competition (section 74(3)).

**3.10** I confirm, to the best of my knowledge, that (a) and (c) are of most relevance hearing of these particular chapters of the PDP. I confirm the recommendations contained in this evidence all assist the Council to carry out its functions so as to achieve the purpose of the Act. I also confirm that I have paid attention to the objectives and policies of the Otago Regional Policy Statement in making the recommendations. However, due to time constraints, I have been able to include a detailed assessment of those provisions within this evidence.

## **4. Chapter 3 Strategic Directions Submissions**

### **4.1 New Policy 3.2.1.3.3**

- 4.1.1** NZTML submission point **519.9** seeks a new Policy 3.2.1.3.3 be inserted to recognise the significant economic contributions from mining in the Queenstown Lakes District.
- 4.1.2** The submission states that mining in this District has contributed to significant economic opportunities for centuries, and has been vital for creating and sustaining employment. These positive effects are still felt today and should be adequately provided for in the District Plan.
- 4.1.3** The submission also states that modern day mining techniques are innovative and sustainable, and can contribute to diversification of the District's economic base.
- 4.1.4** NZTML seek the addition of the following new policy 3.2.1.3.3:

*“Encourage innovative and sustainable mining activity in suitable areas where this will not cause permanent degradation of landscape character.”*

- 4.1.5** CL further submission **FS1356.9** opposes this submission in its entirety.

### **Discussion**

4.1.6 NZTML seeks this new policy be inserted under Objective 3.2.1.3 which reads:

*“Enable the development of innovative and sustainable enterprises that contribute to diversification of the District’s economic base and create employment opportunities.”*

4.1.7 In my opinion the outcome sought by NZTML with the new policy sought by NZTML can be better achieved by amending the first half of Policy 3.2.1.3.1. Policy 3.2.1.3.1 encapsulates a wide variety of activities to accommodate business growth and diversification (which includes exploration and mining). I do not agree with the words “Provide for” in Policy 3.2.1.3.1 as that is directive and not in accordance with the enabling intent of the RMA. I also consider Policy 3.2.1.3.1 should conclude with the words “within the District” to ensure its application to all areas.

**Recommendation**

4.1.8 I therefore recommend that submission point **519.9** by NZTML and the further submission **FS1356.9** by CL are accepted in part by instead amending Policy 3.2.1.3.1 as follows:

*“3.2.1.3.1 ~~Provide for~~ Enable a wide variety of activities throughout the District, and including a sufficient capacity within of commercially zoned land within urban areas, to accommodate business growth and diversification at a district wide scale.”*

**Section 32 Matters**

4.1.9 *Appropriateness:* I consider it is appropriate to amend Policy 3.2.1.3.1 to make enabling (rather than directive) and the addition of a reference to the District to assist in interpretation at the macro scale. My recommended amendments clarify the intent of Policy 3.2.1.3.1 consistent with Objective 3.2.1.3.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	Amending the policy ensures it is enabling rather than directive.	Amending the policy is effective as interpretation is improved.

	Assists interpretation of the objective at the macro scale.	
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## 4.2 Objective 3.2.1.4

**4.2.1** NZTML submission point **519.10** supports Policy 3.2.1.4 in part in so far as it recognises the importance utilising rural land beyond the primary sector. The submission states that a number of tourism, residential, viticulture, employment, and conservation activities are currently undertaken in the rural zones and should continue to be provided for. The submission states the Objective should be expanded to encompass these other activities in the Rural Zone specifically.

**4.2.2** The submission also states that the wording of 'sensitive approach' is also inconsistent with RMA terminology and should be amended to reflect the sustainable management purpose. The meaning of "sensitive approach" is unclear. Note that mining is a higher-value use of land than farming, and that it can be a short term use of land.

**4.2.3** NZMTL seeks the deletion of Objective 3.2.1.4 and replace as follows:

*“Recognise and provide for the potential for rural areas to diversify their land use by:*

- enabling tourism, employment, recreational, and residential based activities*
- accommodating a diverse range of activities and industries that have a functional need to be located in rural areas.*

*While taking into account any effects on rural amenity landscape character, healthy ecosystems, and Ngai Tahu values rights and interests”*

**4.2.4** CL further submission **FS1356.10** opposes this submission in its entirety.

### **Discussion**

**4.2.5** Objective 3.2.1.4 as publicly notified reads:



*“Recognise the potential for rural areas to diversify land use beyond the strong productive value of farming, provided a sensitive approach is taken to rural amenity, landscape character, healthy ecosystems, and Ngai Tahu values, rights and interests.”*

**4.2.6** I agree with NZTML’s submission insofar as seeks this objective be amended to be less specific and the term “sensitive approach” need revising. I also consider the addition of the words *“functional need to be located in rural areas”* is important in this policy to ensure inappropriate diversification does not occur.

**Recommendation**

**4.2.7** I recommend that NZTML submission point **519.10** and CL further submission point **FS1356.10** be accepted in part by amending Objective 3.2.1.4 as follows:

*“~~Recognise~~ Acknowledge the potential for some rural areas to diversify land use beyond the ~~strong productive value of traditional pastoral farming~~ where there is a functional need to be located in rural areas, provided a ~~sensitive~~ effects based approach is taken ~~to~~ on resource management issues such as rural amenity, landscape character, healthy ecosystems, and Ngai Tahu values, rights and interests.”*

**Section 32 Matters**

**4.2.8** *Appropriateness:* I consider it is appropriate to amend the Objective to focus it on some rural areas (not all rural areas) and on resource management effects. I also consider it appropriate to delete subjective terminology.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	Amending the policy provides a more appropriate focus on effects of the specified resource management issues.	Amending the policy is effective as it is more certain and does not use subjective terminology.

### 4.3 Policy 3.2.4.2.2

4.3.1 NZTML submission point **514.11** supports this policy for the reason it is important to provide resource users with ample scope when proposing ways of addressing residual effects of development. Biodiversity offsets, even when made available under a workable framework (which does not exist at present in New Zealand), are not always a suitable tool for mitigation of residual effects as they may not always be cost-effective or practicable. NZTML therefore consider the option of other compensatory measures must always be made available.

4.3.2 NZTML seeks to retain Policy 3.2.4.2.2.

4.3.3 CL further submission **FS1356.11** opposes this submission in its entirety.

#### **Discussion**

4.3.4 Policy 3.2.4.2.2 reads:

*“Where adverse effects on nature conservation values cannot be avoided, remedied or mitigated, consider environmental compensation as an alternative.”*

4.3.5 I agree with reasons expressed in the submissions for retaining this policy.

#### **Recommendation**

4.3.6 I recommend that NZTML submission point **519.11** is accepted and CL further submission **FS1356.11** is rejected by adopting Policy 3.2.4.2.2 as publicly notified.

#### **Section 32 Matters**

4.3.7 *Appropriateness:* I consider the policy is appropriate for the reasons stated.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Some adverse effects on nature conservation	Ensures the option of compensatory measures	Retaining the policy is an effective framework for

values may result.	is available.	environmental compensation.
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#### 4.4 Objective 3.2.4.5

4.4.1 NZTML submission point **519.12** supports this objective with amendment to make it consistent with section 6 (a) of the RMA. The submission notes that mining and quarrying are eligible to be considered appropriate activities in many instances because these activities can be carried out only where there are economic mineral deposits.

4.4.2 NZTML seeks that Objective 3.2.4.5 is amended as follows:

*“Preserve ~~or enhance~~ the natural character of the beds and margins of the District’s lakes, rivers and wetlands and protect them from inappropriate subdivision, use and development.”*

4.4.3 CL further submission **FS1356.12** opposes this submission in its entirety.

#### **Discussion**

4.4.4 I agree with the NZTML submission that the wording of this policy is inconsistent with section 6(b) of the RMA which only relates to preservation of natural character against inappropriate development. In my opinion the word “preserve” includes a certain amount of maintenance and as such the inclusion of the word maintenance is unnecessary.

#### **Recommendation**

4.4.5 I recommend that the submission of NZTML submission point **519.12** is accepted and the further submission of CL **FS1356.12** rejected by adopting Objective 3.2.4.5 as follows:

*“Preserve ~~or enhance~~ the natural character of the beds and margins of the District’s lakes, rivers and wetlands and protect them from inappropriate subdivision, use and development.”*

### **Section 32 Matters**

- 4.4.6 *Appropriateness:* I consider the amended Objective is the most appropriate way of achieving the purpose of the RMA as it is consistent with section 6(b) and where possible exceeds section 6(b).

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	Amending the objective ensures section 6(b) matters are exceeded where possible.	Amending the objective is effective as it provides for preservation and enhancement of natural character where possible.

### **4.5 Policy 3.2.4.7.1**

- 4.5.1 NZTML submission point **519.13** opposes the wording in this policy for the reason it detracts from the meaning and should be amended to better reflect RMA purpose and terminology.
- 4.5.2 The submission states that opportunities to provide public access to natural land in the rural zone in particular will not always be appropriate in the instance of private subdivision and development.
- 4.5.3 NZTML seeks that Policy 3.2.4.7.1 is amended as follows:

*“Opportunities to provide safe public access to the natural environment are considered sought at the time of plan change, subdivision or development.”*

- 4.5.4 CL further submission **FS1356.13** opposes this submission in its entirety.

### **Discussion**

- 4.5.5 I record that I am a Trustee of the Queenstown Trails Trust. In that role we consider public access issues on a daily basis. In my opinion the question is not about the opportunity to provide “safe” public access as there are standards that deal with safety issues in terms of the design of proposed access (which relates to various grades of access). In my opinion the key issue is the desirability of the proposed

public access, which takes into account locational factors (potential use), design (including safety) and future maintenance obligations.

**Recommendation**

**4.5.6** I recommend that the submission of NZMTL **156.13** and the further submission of CL **FS1356.13** be accepted in part by adopting Policy 3.2.4.7.1 in an amended form as follows:

*“Opportunities ~~for, and the desirability of, to provide~~ providing public access to the natural environment are considered sought at the time of plan change, subdivision or development.”*

**Section 32 Matters**

**4.5.7** *Appropriateness:* I consider the amended Policy is the most appropriate way of achieving the purpose of the RMA, in particular sections 6(d) and 7(c). The amendment to include “the desirability of public access” is appropriate in terms of a number of factors required to be considered in creating public access.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	Amending the policy ensures the desirability of the public access is also considered at the time of an application.	Amending the policy is effective as it provides for public access, including its desirability, to be considered at the time of an application.

**4.6 Policy 3.2.4.8.1**

**4.6.1** NZTML submission point **519.14** opposes this policy for the reason that the issue of greenhouse gas emissions is addressed under the Climate Change Response Act 2002 regime.

**4.6.2** The submission states that this policy does not adequately provide for efficient use of resources as often development has to occur where the resources are, so can't be concentrated.

**4.6.3** NZTML seeks that Policy 3.2.4.8.1 is amended as follows:

*~~“Concentrate–Encourage development where possible within existing urban areas, promoting higher density development that is more energy efficient and supports public transport to limit increases in greenhouse gas emissions in the District.”~~*

**4.6.4** CL further submission **FS1356.14** opposes this submission in its entirety.

#### **Discussion**

**4.6.5** I agree with the reasons given in the NZTML submission. “Development” is a term used on the Plan that encompasses many different types of activities throughout the entire district, not just urban areas. Some development, such as mining, can only occur where the resources are. I also consider the words “to locate” necessary to give meaning to the policy. I also consider the word “existing” before “urban areas” is unnecessary.

**4.6.6** With respect to that part of the submission which seeks to delete reference to greenhouse gas emissions I defer that legal counsels submissions.

#### **Recommendation**

**4.6.7** I recommend that the submission of NZTML **159.14** is accepted and the further submission by CL **FS1356.14** is rejected by adopting Policy 3.2.4.8.1 in an amended form as follows:

*~~“Concentrate–Encourage urban development to locate, where possible, within existing urban areas, by promoting higher density development that is more energy efficient and supports public transport to limit increases in greenhouse gas emissions in the District.”~~*

noting paragraph 4.6.6 above.

### **Section 32 Matters**

- 4.6.8** Appropriateness: I consider the amended Policy is the most appropriate way of achieving the purpose of the RMA. The amendments sought to the policy ensure that development is encourage where possible to urban areas, without jeopardising development that can only occur in rural areas.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	Amending the policy ensures development is located, where possible, in urban areas which will result in energy efficiency and public transport positives.	Amending the policy is effective as clarifies its intended purposes, however still permits development outside of urban areas where it is impossible to locate within urban areas (such as mining).

### **4.7 Objective 3.2.5.1**

- 4.7.1** NZTML submission point **519.15** opposes the wording in this objective for the reason it should be amended to better reflect RMA purpose and terminology.
- 4.7.2** The submission states that protection of natural character should be considered in light of sustainable management of resources.
- 4.7.3** NZTML seeks Objective 3.2.5.1 is amended as follows.

*Protect Avoid, remedy or mitigate adverse effects on the natural character of Outstanding Natural Landscapes and Outstanding Natural Features from inappropriate subdivision, use and development.*

- 4.7.4** CL further submission **FS1356.15** opposes this submission in its entirety.

### **Discussion**

4.7.5 I consider the words “*natural character*” are too narrow and agree with the section 42A recommendation to change this to “*quality*” (albeit in the plural).

4.7.6 I do not agree with NZTML’s submission that “Protect” should be replaced with “*Avoid, remedy or mitigate adverse effects on the ...*”. However I do agree with the insertion of the word “inappropriate” to focus the protection as is required under the 6(b) of the RMA (and is used in the overriding Goal).

**Recommendation**

4.7.7 I recommend that the submission of NZMTL **156.15** and the further submission of CL **FS1356.15** are accepted in part by adopting Objective 3.2.5.1 in an amended form as follows:

*“Protect ~~natural character~~ the qualities of the District’s Outstanding Natural Landscapes and Outstanding Natural Features from inappropriate subdivision, use and development.”*

**Section 32 Matters**

4.7.8 *Appropriateness:* I consider the recommended amended Policy is the most appropriate way of achieving the purpose of the RMA. The amendments ensure all the qualities of the District’s ONL’s and ONF’s are protected from inappropriate subdivision use and development consistent with section 6(b) of the RMA.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	Amending the policy ensures all the qualities of the District’s ONL’s and ONF’s are protected from inappropriate development. Not just natural character.	Amending the policy is effective in protecting the qualities of the landscape from inappropriate development.

**4.8 Policy 3.2.5.1.1**



4.8.1 NZTML submission point **519.16** supports this objective with amendment to make it consistent with section 6 (b) of the RMA.

4.8.2 NZTML seeks amendment to Policy 3.2.5.1.1 as follows;

*“Identify the district’s Outstanding Natural Landscapes and Outstanding Natural Features on the District Plan maps, and ~~protect~~ avoid, remedy, or mitigate adverse effects on them from the adverse effects of inappropriate subdivision, use and development.”*

4.8.3 CL further submission **FS1356.16** opposes this submission in its entirety.

#### **Discussion**

4.8.4 I note that the section 42A report recommends this policy is deleted. I agree with that recommendation as the current wording it adds nothing. The detail of this policy is better dealt with in the Landscapes chapter.

#### **Recommendation**

4.8.5 I recommend that the submission of NZMTL **156.16** and the further submission of CL **FS1356.16** are rejected by deleting this policy under another submission.

#### **Section 32 Matters**

4.8.6 As per the section 42A report.

### **4.9 New Policy 3.2.5.1.2**

4.9.1 NZTML submission point **519.17** seeks a new policy be adopted to recognise that some areas identified as ONL/ ONF are not pristine environments and a level of development might be appropriate in some circumstances.

4.9.2 NZTML seek the following new policy:

*“Adopt performance standards for land use activities, including mining activities, which manage their adverse effects on the Outstanding Natural Landscapes and Outstanding Natural Features.”*

**4.9.3** CL further submission **FS1356.17** opposes this submission in its entirety.

**Discussion**

**4.9.4** I agree that there is merit in adopting a policy under this Objective which refers to performance standards for land-use activities in the rural areas. However I do not agree that specific reference needs to be made to mining. I also consider that any such policy should refer to the qualities of the District’s ONL’s and ONF’s.

**Recommendation**

**4.9.5** I recommend that the submission of NZMTL **156.17** is accepted in part and the further submission of CL **FS1356.17** is rejected by adopting the amended new policy:

*“Adopt performance standards for land-use activities in order to avoid, remedy or mitigate their adverse effects on the qualities of the District’s Outstanding Natural Landscapes and Outstanding Natural Features.”*

**Section 32 Matters**

**4.9.6** *Appropriateness:* I consider the recommended Policy is an appropriate way of achieving the purpose of the RMA. The recommended policy supports the Plans enabling intent that some land-sue activities can occur in the ONL’s and ONF’s provided adverse effects are avoided, remedied or mitigated.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	Adopting the new policy strengthens the enabling intent of the Plan provided performance standards are met.	Adopting the new policy effective in avoiding, remedying or mitigating the adverse effects of land-use activities son ONL’s and ONF’s.

#### 4.10 Objective 3.2.5.2

- 4.10.1 NZTML submission point **519.18** opposes the wording in this objective and seeks that it is amended to better reflect RMA purpose and terminology.
- 4.10.2 The submission states the wording in particular is unclear and does not allow for appropriate development
- 4.10.3 NZTML submission seeks amendment to Objective 3.2.5.2 as follows.

*~~“Minimise—Avoid, remedy or mitigate the adverse effects on natural landscapes effects of from in appropriate subdivision, use or development in specified Rural Landscapes.”~~*

- 4.10.4 CL further submission **FS1356.18** opposes this submission in its entirety.

#### **Discussion**

- 4.10.5 The section 42A report recommends (paragraphs 12.104 and 105 – Page 33) that this Objective is deleted and replaced with a newly worded policy as follows:

*“Maintain and enhance the landscape character of the Rural Landscape Classification, whilst acknowledging the potential for managed and low impact change.”*

- 4.10.6 I agree the newly worded policy is an improvement on the proposed policy as the uncertainty of the term “minimise” is recommended to be deleted consistent with NZTML submission.

#### **Recommendation**

- 4.10.7 I recommend that the submission of NZMTL **156.18** and the further submission of CL **FS1356.18** are accepted in part by deleting this policy in its entirety and replacing it with a new policy as worded in the section 42A report .

#### **Section 32 Matters**

4.10.8 As per the section 42A report paragraph 12.109 (Page 34).

#### 4.11 Policy 3.2.5.2.1

4.11.1 NZTML submission point **519.19** supports this policy in part. The submission, however, seeks the wording in this objective should be amended to better reflect RMA purpose and terminology. The submission seeks the word "manage" is inserted here to replace "minimise" as this term encompasses the use, development and protection of resources.

4.11.2 NZTML seeks to amend Policy 3.2.5.2.1 as follows:

*"Identify the district's Rural Landscape Classification on the district plan maps, and ~~minimise~~ manage the effects of subdivision, use and development on these landscapes."*

4.11.3 CL further submission **FS1356.19** opposes this submission in its entirety.

#### **Discussion**

4.11.4 I note that the section 42A report recommends this policy is deleted at paragraph 12.105 (Page 33). I agree with that recommendation as the current wording it adds nothing. The detail of this policy is better dealt with in the Landscapes chapter.

#### **Recommendation**

4.11.5 I recommend that the submission of NZMTL **156.19** and the further submission of CL **FS1356.19** are rejected by deleting this policy under another submission.

#### **Section 32 Matters**

4.11.6 As per the section 42A report paragraph 12.109 (Page 34).

#### 4.12 Objective 3.2.5.3

4.12.1 NZTML submission point **519.20** supports this policy in part. The submission states that the wording in this objective should be amended to better reflect RMA purpose

and terminology. The submission also states that any unnecessary or ambiguous wording should be deleted.

**4.12.2** The submission also notes that mining and quarrying are location-specific; mining and quarrying can be done only where economic mineral deposits occur. That is also the case for a number of other activities, such as renewable electricity generation.

**4.12.3** The submission seeks that Objective 3.2.5.3 is amended as follows.

*~~“Direct new~~ Encourage subdivision, use or development to occur in those areas which have potential to absorb change ~~without~~ while recognising the importance of detracting from landscape and visual amenity values except in the case of the development of location-specific resources.”*

**4.12.4** CL further submission **FS1356.20** opposes this submission in its entirety.

#### **Discussion**

**4.12.5** The section 42A report inserts the word urban into this policy. As such the policy is of little relevance to the rural area. I do however consider that the word “Encourage” is better than “Direct” as it is consistent with the enabling intent of the RMA. I also consider the words “of the District” should be inserted to give the Objective some context.

#### **Recommendation**

**4.12.6** I recommend that the submission of NZMTL **156.20** is accepted in part and the further submission of CL **FS1356.20** is rejected by amending this policy as follows:

*~~“Direct~~ Encourage new urban subdivision, use or development to occur in those areas of the District which have potential to absorb change without detracting from landscape and visual amenity values.”*

#### **Section 32 Matters**

**4.12.7 Appropriateness:** I consider the recommended Policy is an appropriate way of achieving the purpose of the RMA as it encourages urban development to occur in those areas of the District that has potential to absorb such change.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	Amending the policy ensures the District plan remain enabling in accordance with the intent of the RMA and not directive.	Amending the policy is effective in enabling new urban subdivision in those parts of the District that can absorb such.

#### **4.13 Policy 3.2.5.4.1**

**4.13.1** NZMTL submission point **519.21** opposes this policy. The submission states that this policy may present conflict with case law insofar as the particular weighting of cumulative effects, the permitted baseline, and the future environment are well developed through legislation and case law and applied by councils. Elevating the consideration of cumulative effects in a policy may have unintended consequences on future decision making.

**4.13.2** NZTML seeks the deletion of Policy 3.2.5.4.1.

**4.13.3** CL further submission **FS1356.21** opposes this submission in its entirety.

#### **Discussion**

**4.13.4** I defer to legal submissions on this part of the submission.

#### **Recommendation**

**4.13.5** If the Panel accept the case put forward in legal submissions then it is appropriate to accept the submission of NZTML **519.21** and reject the submission of CL **1356.21**.

#### **4.14 Objective 3.2.7.1**

- 4.14.1 NZTML submission point **519.22** supports this Objective in part insofar as it seeks to recognise that council must act in accordance with the principles of the Treaty and its partnership with Ngai Tahu.
- 4.14.2 However, the submission states that this objective is considered to be in conflict with Goal 3.2.7 "Council will act in accordance with the principles of the Treaty of Waitangi and in partnership with Ngai Tahu".
- 4.14.3 The submission states that this objective should not provide a higher threshold requirements than its overarching goal, and that if not tempered by less directive wording this will result in unintended consequences. Absolute protection will not enable potential future opportunities. A lower weighting such as recognise and provide for is suggested as this will still allow the Council to meet its Treaty obligations of active protection, but will allow them flexibility in specific circumstance to provide for this.
- 4.1.4.4 The submission also states that this Objective is also potentially in conflict with the objectives and policies in the Tangata Whenua Chapter.
- 4.14.5 NZTML submission seeks that Objective 3.2.7.1 is amended as follows:

*"Recognise and provide for Ngai Tahu values, rights and interests, including taonga species and habitats, and wahi tupuna"*

- 4.14.6 CL further submission **FS1356.22** opposes this submission in its entirety.

#### **Discussion**

- 4.14.7 The Section 42A report accepts this part of the submission. I agree with that assessment and for brevity adopt that analysis.

#### **Recommendation**

- 4.14.8 I recommend that the submission of NZMTL **156.22** is accepted in part and the further submission of CL **FS1356.20** is rejected by amending this policy as follows:

*“~~Protect~~ Recognise and provide for Ngai Tahu values, rights and interests, including taonga species and habitats, and wahi tupuna”*

### **Section 32 Matters**

4.14.9 I rely on the section 32 evaluation undertaken in the section 42A report.

## **5. Chapter 6 Landscape Submissions**

### **5.1 Policy 6.3.1.3**

5.1.1 NZTML submission point **519.23** support this Policy with an amendment to provide adequately for the case-by-case consideration of development proposals, their merits, their likely effects, and proposals for managing those effects, in accordance with the letter and spirit of the RMA.

5.1.2 The submission notes that mining and quarrying are examples of appropriate development because these activities are location-specific; mining and quarrying can be done only where economic mineral deposits occur.

5.1.3 NZTML seek to amend Policy 6.3.1.3 as follows:

*“That subdivision and development proposals located within the Outstanding Natural Landscape, or an Outstanding Natural Feature, be assessed against the assessment matters in provisions 21.7.1 and 21.7.3 ~~because subdivision and development may be inappropriate in many locations, meaning successful applications will be those that meet the higher standards that location in these areas would reasonably impose.~~”*

5.1.4 CL further submission **FS1356.23** opposes this submission in its entirety.

### **Discussion**

5.1.5 I refer to Page 1-4 of the Operative District Plan. In describing Discretionary Activities the Environment Court rewrote this section to justify the imposition of a no minimum lot size, discretionary regime for subdivision and development in the Rural General Zone.



5.1.6 The words have effectively been transposed from this section of the ODP to a policy within the PDP. However they are not transposed exactly. In the ODP there is reference to the relevant activities being inappropriate in almost all locations within the zone, with a particular emphasis on the Wakatipu Basin. In the PDP the reference is *to inappropriate in many locations*. That, does not, in my opinion make sense when referring to ONL's and ONF's. If this section is to were remain in the PDP I prefer the ODP wording with respect to ONL's and ONF's.

5.1.7 However I consider these words are inappropriate to be included in this policy. The reason for this is that was never the intent of the words in the ODP and as a policy it makes little sense. I therefore agree with the submission on NZTML that they should be deleted.

5.1.8 I note for the record that the above statement from the ODP has not been transferred into Chapter 1 when describing discretionary activities. The Council may wish to revisit this, as I consider it is very important in applying the discretionary regime to ONL's and ONF's.

### **Recommendation**

5.1.9 I recommend that the submission of NZMTL 156.23 is accepted and the further submission of CL FS1356.20 is rejected by amending this policy as follows:

*"That subdivision and development proposals located within the Outstanding Natural Landscape, or an Outstanding Natural Feature, be assessed against the assessment matters in provisions 21.7.1 and 21.7.3 ~~because subdivision and development may be inappropriate in many locations, meaning successful applications will be those that meet the higher standards that location in these areas would reasonably impose.~~"*

### **Section 32 Matters**

5.1.10 *Appropriateness:* I consider the recommended Policy is an appropriate way of achieving the purpose of the RMA. The first section of the policy is key in establishing a policy framework for the assessment matters. The second part of the policy, which I recommend be deleted, is confusing and therefore inappropriate.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	The amended policy will result in better understanding and application of the policies.	The amended policy will be effective in ensuring the application of assessment matters to ONL's and ONF's.

## 5.2 Policy 6.3.1.11

5.2.1 NZTML submission point **519.24** opposes this Policy. NZTML seeks the wording in this Policy be amended to better reflect RMA purpose and terminology. They submit that this policy sets a higher threshold of protection than provided for in section 6 without justification in the section 32 report.

5.2.2 NZTML seeks amendment to Policy 6.3.1.11 as follows.

*“Recognise the importance of ~~protecting~~ avoiding, remedying, or mitigating adverse effects on landscape character and visual amenity values, particularly as viewed from public places.”*

5.2.3 CL further submission **FS1356.24** opposes this submission in its entirety.

### **Discussion**

5.2.4 I agree with NZTML insofar as the policy sets a higher threshold of protection than provided for in section 6 of the RMA. To that extent I consider the amended wording as suggested by NZTML is a vast improvement. However overall I consider this policy is unnecessary under Objective 6.3.1 and if there is scope (via other submissions) then I recommend it is deleted. The Council should instead rely on the Objectives and Policies contained in 6.3.2, 6.3.3.and 6.3.5 to manage such effects.

### **Recommendation**

5.2.5 My alternative recommendation to above (should there be no scope to delete the policy) is to accept the submission by NZTML 519.24 and reject the further submission of CL 1356.24 by adopting the amended policy as follows:

*“Recognise the importance of ~~protecting~~ avoiding, remedying, or mitigating adverse effects on landscape character and visual amenity values, particularly as viewed from public places.”*

**Section 32 Matters**

**5.2.6** *Appropriateness:* I consider the deleting this policy or adopting the recommended Policy is an appropriate way of achieving the purpose of the RMA.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	The amended policy will result in better understanding and application of the policies. The amended policy is consistency with the effects based regime of the RMA.	The amended policy will be effective in ensuring adverse effects are avoided, remedied or mitigated.

**5.3 Objective 6.3.2**

**5.3.1** NZTML submission point **519.25** opposes this Objective. The submission states that in light of the 2014 King Salmon Supreme Court decision, the provision as worded would prevent all modification or expansion of existing development and that would be too restrictive.

**5.3.2** Certainly, cumulative effects should be considered, and it is appropriate to have a suitable plan provision that addresses the issue.

**5.3.3** NZTML seeks Objective 6.3.2 be amended as follows:

*“Avoid remedy or mitigate adverse cumulative effects on landscape character and amenity values caused by incremental subdivision and development.”*

**5.3.4** CL further submission **FS1356.25** opposes this submission in its entirety.

### **Discussion**

- 5.3.5** I have been involved in Plan Change 13 to the Mackenzie District Plan for many years now. This exact issue was subject to an Environment Court interim decision [2014] NZEnvC118. I presented evidence in that case supporting the addition of the words “or mitigate” after the word “avoid” to be consistent with the intent RMA.
- 5.3.6** I understand that the Environment Court has held that these words are to be read conjunctively, as being of equal importance rather than steps on a continuum. The supreme Court noted in *Environmental Defence Society Inc v The NZ King Salmon Company Ltd*, in the context of consideration of policies in the NZCPS19 and section 5(2)(c), that avoid takes its ordinary meaning or “not allow” or “prevent the occurrence of”.
- 5.3.7** While I accept it must be open to those preparing plans to use the words individually, I consider that whether or not the words should be so used will depend on context. Obviously avoiding all development would protect values but that is not what the Act requires in respect of adverse effects.
- 5.3.8** The *King Salmon* case involves the interpretation of a policies that employ the term ‘avoid’ in isolation in the NZCPS and, in doing so, indicates a ‘directive’ or ‘bottom line approach’. As such it was found that the existence of *any* adverse effects on a coastal ONL effectively barred the proposed development.
- 5.3.9** While a District Plan sits at a different level in the hierarchy of plans to the NZCPS, it is conceivable that since the majority of the Rural Area is an ONL, the similar use of avoid in isolation could create a barrier to development effectively trumping the enabling aspects of the zone. This would not, in my opinion, represent sustainable management of natural and physical resources.
- 5.3.10** One way of looking at this question is to ask what mischief the Council is trying to prevent by omitting the option of mitigation? In my experience in this District, mitigation of adverse cumulative effects is standard practice in any application within an ONL. And if an adverse cumulative effect can be effectively mitigated, why should a policy require that it only be avoided?

**5.3.11** Whether or not the mitigation is effective would need to be judged in the circumstances of the individual development, which, if buildings are involved, that would at least be a discretionary activity.

**5.3.12** Although calling my approach “unusual” and potentially unlawful (I was saying in practice you look at whether adverse effects could be mitigated first, and if they couldn’t be mitigated, then they must be avoided), the Environment Court still found in favour of my client’s case at paragraph 13 of the interim decision [2014] NZEnvC118 where it stated:

*“Section 6(b) of the RMA requires local authorities to protect ONLs from inappropriate subdivision and development. If there are adverse effects then prima facie they are inappropriate and therefore should be avoided. However, given the potential benefits from a proposal which causes such effects, it may be appropriate to allow the effects if suitably mitigated. Thus we consider avoidance comes first of reasonably possible. “*

**5.3.13** I consider that same principle should equally apply to this policy. In terms of cumulative effects there is no need to avoid them if they can appropriately be mitigated.

### **Recommendation**

**5.3.14** I recommend that the submission of NZTML **519.25** is accepted and the further submission of CL **1356.25** is rejected by adopting the amended policy as follows:

*“Avoid remedy or mitigate adverse cumulative effects on landscape character and amenity values caused by incremental subdivision and development.”*

### **Section 32 Matters**

**5.3.15** *Appropriateness:* I consider the recommended amended Policy is the most appropriate way of achieving the purpose of the RMA.

Costs	Benefits	Effectiveness & Efficiency
Nil.	The amended policy will result in better understanding and application of the policies. The amended policy is consistency with the effects based regime of the RMA.	The amended policy will be effective in ensuring adverse cumulative effects are avoided, remedied or mitigated.

#### 5.4 Policy 6.3.3.2

5.4.1 NZTML submission point **519.26** supports this Policy in part. NZTML seek an amendment to provide reasonably for development proposals to be made and considered and for consistency with submission points made elsewhere.

5.4.2 NZTML seek amendment to Policy 6.3.3.2 as follows:

*“Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Landscapes adjacent to Outstanding Natural Features would not degrade to a significant degree the landscape quality, character and visual amenity of Outstanding Natural Features.”*

5.4.3 CL further submission **FS1356.26** opposes this submission in its entirety.

#### Discussion

5.4.4 I agree with the intent of NZTML submission. However I consider the proposed wording can be improved by deleting unnecessary text and makes it effects based.

#### Recommendation

5.4.5 I recommend that the submission of NZTML **519.26** and the further submission of CL **FS1356.26** be accepted in part by amending this Policy as follows:

*“Ensure subdivision and development in ~~the Outstanding Natural Landscapes and Rural Landscapes~~ adjacent to an Outstanding Natural*

Features ~~would~~ does not degrade adversely affect the landscape quality, character and visual amenity values of that Outstanding Natural Features.”

**Section 32 Matters**

**5.4.6** *Appropriateness:* I consider the recommended amended Policy is the most appropriate way of achieving the purpose of the RMA. In particular the recommended policy is consistent with section 6(b) and section 7(c).

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	The amended policy will result in better understanding and application of the policies. The amended policy is consistency with the effects based regime of the RMA.	The amended policy will be effective in ensuring adverse effects are avoided, remedied or mitigated adjacent to ONF's.

**5.5 Objective 6.3.4**

**5.5.1** NZTML submission **519.27** supports this Objective for the reason that the term “maintain” is taken to encompass the concept of avoiding, remedying and mitigating the effects of development.

**5.5.2** NZTML seeks to retain Objective 6.3.4.

**5.5.3** CL further submission **FS1356.27** opposes this submission in its entirety.

**Discussion**

**5.5.4** I support NZTML submission for the reasons stated in the submission. I also note the section 42A report recommends adoption of this policy.

**Recommendation**

- 5.5.5 I recommend that NZTML submission **159.27** is accepted and the further submission of CL **FS1356.27** is rejected by adopting Objective 6.3.4 as proposed.

### **Section 32 Matters**

- 5.5.6 No further section 32 evaluation is necessary.

## **5.6 Policy 6.3.4.1**

- 5.6.1 NZTML submission point **519.28** supports this Policy in part. NZTML seek an amendment is to provide reasonably for development proposals to be made and considered, and for consistency with submission points made elsewhere.

- 5.6.2 NZTML seek to amend Policy 6.3.4.1 as follows:

*“Avoid, remedy or mitigate the adverse effects of subdivision and development that would degrade the important qualities of the landscape character and amenity values. In situations where particularly where there is no or little capacity to absorb change ~~adverse effects must be managed to be no more than minor.~~”*

- 5.6.3 CL further submission **FS1356.28** opposes this submission in its entirety.

### **Discussion**

- 5.6.4 I have previously discussed the use of the terms avoid, remedy and mitigate with respect to other landscape policies. That same reasoning applies to this policy.

- 5.6.5 I support the intent of the NZTML submission, however consider the requested policy is difficult to understand and follow. I have therefore recommended a rewrite of the policy below.

### **Recommendation**

- 5.6.6 I recommend that NZTML submission **519.28** be accepted in part and further submission **FS1356.28** is rejected by adopting an amended policy as follows:



*“In situations where there is no or little perceived capacity to absorb change in the landscape, ensure that the adverse effects of subdivision and development on landscape character and amenity values are avoided or mitigated.”*

**Section 32 Matters**

**5.6.7** *Appropriateness:* I consider the recommended amended Policy is the most appropriate way of achieving the purpose of the RMA. In particular it is consistent with section 6(b) and section 7(c).

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	The amended policy will result in better understanding and application of the policies. The amended policy is consistency with the effects based regime of the RMA.	The amended policy will be effective in ensuring adverse effects are avoided, remedied or mitigated adjacent to ONF's.

**5.7 Policy 6.3.4.4**

**5.7.1** NZTML submission point **519.29** opposes this Policy for the reason, as worded, the provision takes no consideration of the merits of a mining project, the likely effects on the environment, and proposals for avoiding, remedying or mitigating those effects. NZTML uses the example of an underground mine which seems to have been overlooked, or of a mine being sited where few people are likely to ever see it.

**5.7.2** NZTML seeks to delete Policy 6.3.4.4 in its entirety.

**5.7.3** CL further submission **FS1356.29** opposes this submission in its entirety.

**Discussion**

**5.7.4** I consider this policy is an important one that should not be deleted. However the policy as proposed is cumbersome and can be improved. In my opinion, the need for

renewable electricity generation and mineral extraction is important for the development of the District. Sometimes those developments occur at the expense of landscape values. An example of this is gravel mining on the Shotover River for roading and construction. Effects of such needs (which may be temporary in nature) need to be balanced against landscape values, but however not at the expense of them.

**5.7.5** I consider that this policy should be reworded so that it balances that functional need of a rapidly growing economy against landscape values.

**Recommendation**

**5.7.6** I recommend that NZTML submission **519.29** be accepted in part and further submission **FS1356.29** is rejected by adopting an amended policy as follows:

*“Policy 6.3.4.4*

*Acknowledge there is a need to balance the protection of landscape values (character and amenity) against the desire for renewable electricity generation and mineral extraction in a rapidly growing economy.”*

**5.7.7** I note for the record that CL do not agree with my recommendation and instead rely on the section 42A recommendation to retain the policy as publicly notified.

**Section 32 Matters**

**5.7.8** *Appropriateness:* I consider the recommended Policy is the most appropriate way of achieving the purpose of the RMA.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	The amended policy is consistent with the effects based regime of the RMA.	The amended policy will be effective in ensuring competing interests are balanced against one another.

**5.8 Objective 6.3.7**

5.8.1 NZTML submission point **519.30** supports this Objective with amendment to provide reasonably for development proposals to be made and considered, and for consistency with submission points made elsewhere.

5.8.2 NZTML seeks to amend Objective 6.3.7 as follows:

*“Recognise and protect, maintain and enhance indigenous biodiversity where it contributes to the visual quality and distinctiveness of the District’s landscapes.”*

5.8.3 CL further submission **FS1356.30** opposes this submission in its entirety.

### **Discussion**

5.8.4 I agree with the submission by NZTML. “Protect” alone implies that indigenous biodiversity is in a pristine (or at least a semi-pristine) state. That is often not the case. In such circumstances, I consider it is appropriate to maintain and enhance indigenous biodiversity as well as sought by policy 6.3.7.1.

5.8.5 An example of where indigenous biodiversity has been maintained and enhanced is at Camp Hill in Glenorchy. There, the landowner, has taken a remnant forest and restored (and expanded it) to a pristine state worthy of protection. The restoration has also attracted wildlife, including bats, back into the forest.

5.8.6 There are many other examples in the Wakatipu Basin where indigenous biodiversity has been maintained and enhanced which will (in time) significantly contribute to the visual quality and distinctiveness of the landscapes.

### **Recommendation**

5.8.7 I recommend that NZTML submission **519.30** be accepted in part and further submission **FS1356.30** is rejected by adopting an amended policy as follows:

*“To recognise, ~~and protect,~~ maintain and enhance indigenous biodiversity where it contributes to the visual quality and distinctiveness of the District’s landscapes.”*

**5.8.8** I also recommend the Council include a definition of “indigenous biodiversity” in the PDP, noting that the PDP already contains a definition of “indigenous vegetation”.

**Section 32 Matters**

**5.8.9** *Appropriateness:* I consider the recommended Policy is the most appropriate way of achieving the purpose of the RMA.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	The amended policy recognises that maintenance and enhancement are also important for indigenous biodiversity protection.	The amended policy will be effective in ensuring protection of and improvement of the District’s biodiversity.

**5.9 Policy 6.3.7.1**

**5.9.1** NZTML submission point **519.31** supports this Policy for the reason it encourages the use of offsets and other compensatory measures, as part of a mitigation package. NZTML considers that is appropriate. NZTML submission notes that mining and quarrying are a temporary use of land.

**5.9.2** NZTML seeks to retain Policy 6.3.7.1 as follows:

*“Encourage subdivision and development proposals to promote indigenous biodiversity protection and regeneration where the landscape and nature conservation values would be maintained or enhanced, particularly where the subdivision or development constitutes a change in the intensity in the land use or the retirement of productive farm land.”*

**5.9.3** CL further submission **FS1356.31** opposes this submission in its entirety.

**Discussion**

5.9.4 This policy is discussed in paragraph's 9.177 to 9.180 of the section 42A report. I agree with that discussion and support the recommendation to retain the policy as publicly notified.

**Recommendation**

5.9.5 I recommend that NZTML submission **519.31** be accepted and further submission **FS1356.31** is rejected by adopting policy as publicly notified.

**Section 32 Matters**

5.9.6 No further section 32 evaluation is required.

**5.10 Policy 6.3.7.2**

5.10.1 NZTML submission point **519.32** supports this Policy in part. The NZTML submission states that the amendment is proposed to provide reasonably for development proposals to be made and considered, in context, and for consistency with submission points made elsewhere.

5.10.2 NZMTL seeks amendment to Policy 6.3.7.2 as follows:

*“Avoid, remedy and mitigate indigenous vegetation clearance where it would significantly degrade the visual character and qualities of the District's distinctive landscapes.”*

5.10.3 CL further submission **FS1356.32** opposes this submission in its entirety.

**Discussion**

5.10.4 Rather than specifying what should be avoided, I consider this policy would be more effective if it detailed the circumstances in which Council would consider enabling indigenous vegetation clearance. That, in my opinion, includes the necessity for clearing the indigenous vegetation and degree of degradation of the quality of the landscape concerned.

**Recommendation**

5.10.5 I recommend that NZTML submission **519.30** be accepted in part and further submission **FS1356.30** is rejected by adopting an amended policy as follows:

*~~“Avoid~~ To enable indigenous vegetation clearance only when ~~where it would~~ it is necessary and does not significantly degrade the visual character and qualities of the District’s distinctive landscapes.”*

**Section 32 Matters**

5.10.6 *Appropriateness:* I consider the recommended Policy is the most appropriate way of achieving the purpose of the RMA.

<i>Costs</i>	<i>Benefits</i>	<i>Effectiveness &amp; Efficiency</i>
Nil.	The amended policy recognises changes emphasis to enabling under certain circumstances.	The amended policy will be effective in ensuring protection of the District’s biodiversity.