

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

**Decision No. [2025] NZEnvC 74**

IN THE MATTER of the Resource Management Act 1991

AND appeals under Clause 14 of the First  
Schedule to the Act

BETWEEN TUSSOCK RISE LIMITED

(ENV-2018-CHC-121)

(ENV-2021-CHC-59)

Appellant

AND QUEENSTOWN LAKES DISTRICT  
COUNCIL

Respondent

Court: Environment Judge P A Steven  
Environment Commissioner C J Wilkinson

Hearing: 10 December 2024

Appearances: G Todd and R Hill for the appellant  
H Harwood and S Richardson for the respondent

Date of Decision: 14 March 2025

Date of Issue: 14 March 2025

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**DECISION OF THE ENVIRONMENT COURT**

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A: The appeal is allowed.

B: Costs are reserved.

TUSSOCK RISE LIMITED v QUEENSTOWN LAKES DISTRICT COUNCIL



## REASONS

### Background

[1] In 2018 Tussock Rise Limited ('Tussock') filed an appeal against Stage 1 of the Proposed Queenstown Lakes District Plan ('PDP'). In 2021 Tussock filed a second appeal against Stage 3 of the PDP.

[2] Tussock's first appeal (ENV-2018-CHC-121), filed in Stage 1 of the Review,<sup>1</sup> sought the rezoning of its land from General Industrial and Service Zone ('GISZ') to Low Density Residential zoning ('LDSRZ'). Tussock's second appeal (ENV-2021-CHC-59), filed in Stage 3 of the Review, sought that its land be rezoned Business Mixed Use Zone ('BMUZ').

[3] As both appeals addressed the same block of land owned by Tussock, it was agreed that the appeals would be determined together. Tussock later clarified, in a memorandum dated 28 April 2023, that the relief it intended to pursue was the rezoning of its land from GISZ to BMUZ.

[4] Accordingly, this decision addresses the relief sought by Tussock in relation to the decision of the Queenstown Lakes District Council ('the Council') on submissions to Stage 3 of the PDP ('the appeal').

### The appeal

[5] The appeal relates to a mostly vacant 9.3ha block of land at Connell Terrace, Wanaka.<sup>2</sup>

[6] The PDP includes the site within a GISZ, being subject to a Connell

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<sup>1</sup> In Stage 1 QLDC had not intended to encompass the zoning of the site. However, TRL's appeal was found valid in a determination declining QLDC's strike out application in [2019] NZEnvC 111, at [82]-[83] and [91].

<sup>2</sup> A bus depot is located at its south-eastern end.

Terrace Structure Plan (Structure Plan). In its original submission Tussock sought to rezone the land to a BMUZ which was not supported by the Council, the decision being to leave the site within the GISZ.

[7] Prior to the hearing, Tussock amended its relief to a split-zoning comprising a mix of a GISZ and BMUZ, according to an amended site-specific Structure Plan.<sup>3</sup> BMUZ is sought for land covering a 67,895m<sup>2</sup> area along the western part of the site, with a GISZ on the balance of the site (25,390m<sup>2</sup>) toward the east.

[8] Further refinements were sought at the hearing in the form of:

- (a) a new objective and policy suite to be added to Chapter 16 to better accord with the amended Structure Plan;
- (b) amendments to the Chapter 27 Structure Plan policy to reflect the Structure Plan changes.

[9] The Structure Plan divides the BMUZ into four activity areas, three of which adjoin that part of the site that is to remain GISZ. In this location, residential and visitor accommodation activities are required to be located on the first and higher levels of any building so that commercial and/or business activities retain primacy with the street interface, in the result that this part of the site could not be developed solely for residential use.

[10] Beyond recording that observation, we see no utility in speculating on the future use of the site as a range of options would be available under the mixed-zone approach, including industrial and service activities. We agree that development within any BMUZ within Wanaka will be market driven.

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<sup>3</sup> By memorandum filed on 28 August 2023, which was reflected in the supplementary/rebuttal evidence filed on 20 October 2023. The amendments followed consultation with s274 parties to the appeal, all of whom had elected not to participate in the hearing.

## Site and locality

[11] The site is located on a flat elevated terrace 4 to 5m higher than the adjacent properties on its northeastern and northwestern boundaries.

[12] Land to the north and northeast boundaries of the site is zoned GISZ, much of which has been developed (some under the former district plan and resource consents) for a mix of industrial<sup>4</sup> (comprising approximately 42% of the adjacent sites), commercial offices, residential units, retail activities and licensed premises (comprising the balance), being a mix of activities not representative of the intended purpose of the GISZ.<sup>5</sup>

[13] The southeastern boundary from the Ballantyne Road end to Connell Street is retained to the terrace edge. The adjoining LDSRZ land to the south and southwest of the site is presently being developed into 117 residential sections (Pembroke Terrace).

[14] The balance of that zone is subject to a further application for subdivision consent for a further eight residential lots near the southwestern corner of the site, separated by a 1,085m<sup>2</sup> local purpose reserve comprising a pedestrian access with connections to the site and to surrounding land.<sup>6</sup>

## Competing zones

### *GISZ*

[15] The GISZ is to provide for the establishment, operation, and long-term viability of industrial and service activities. The GISZ seeks to ensure a range of site sizes are available, including for industrial and service activities which require larger buildings and more space for the purpose of outdoor storage and

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<sup>4</sup> Which includes an existing concreting batching plant.

<sup>5</sup> Evidence of Mr Dent, at [26].

<sup>6</sup> Evidence of Mr Dent, at [19] and [20].

manoeuvring of vehicles, including heavy vehicles.<sup>7</sup> Although industrial and service activities are permitted within the zone, buildings are a restricted discretionary activity with a height limit of 7m.

[16] New offices, retail and commercial activities are to be avoided<sup>8</sup> within the GISZ (through non-complying activity status), unless ancillary to industrial or service activities, and residential and visitor accommodation activities are prohibited.<sup>9</sup>

[17] The GISZ includes land surrounding Tussock's site along Connell Terrace, Frederick Street, Ballantyne Road and Gordon Road. Relevantly, the Structure Plan that applies to this GISZ identifies:

- (a) the location of a road connection between Connell Terrace and Gordon Road; and
- (b) two building restriction areas ('BRAs') within the site on the southwest and northeast boundaries with the southwestern building line restriction area requiring landscaping treatment. The BRAs are for the purpose of separating potentially conflicting land uses within an adjoining (on the southwest boundary) an area of LDSRZ.

[18] The BRA along the southwestern boundary is required to have landscaping that is either:<sup>10</sup>

- (a) mounding 3-5m height and 15-20m width with predominantly evergreen planting with a height of 5-6m; or
- (b) a 30m strip of dense predominantly evergreen planting with a height of at least 8m.

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<sup>7</sup> Evidence of Mr Dent, at [26].

<sup>8</sup> Policy 18A.2.2.1.

<sup>9</sup> The GISZ rule 18A.4.5 gives permitted activity status to these 'lawfully established' non-industrial or service activities.

<sup>10</sup> See rule 27.7.16.2.

[19] Neither the road connection nor the landscaping within the southwestern BRA required under the Structure Plan have been established.

### ***BMUZ***

[20] The BMUZ would enable development consistent with the intention of the zone, to provide for complementary commercial, business, retail and residential uses that supplement the activities and services provided by town centres.

[21] Development within the BMUZ is subject to comprehensive design controls that provide for a quality internal urban environment while ensuring the wider urban and landscape context is acknowledged so as to provide for meaningful integration.<sup>11</sup>

[22] All buildings within the BMUZ require a restricted discretionary activity resource consent. An urban design guide provides guidance for the design of development within the BMUZ,<sup>12</sup> the purpose being to achieve high quality design outcomes,<sup>13</sup> providing a significantly better urban outcome for Wanaka than the GISZ would produce on this site. These provisions provide guidance on design solutions for the interface with the adjoining residential subdivision.

[23] The BMUZ part of the site would be subject to these provisions, although additional design controls are proposed encompassing the BRA along the western boundary which is to be removed. The BRA on the eastern boundary would convert to a landscape strip.

[24] Tussock seeks to adopt all other BMUZ provisions except that it seeks:

- (a) an increase in the building setback for lots adjoining properties on Gordon Road, Ballantyne Road and Frederick Street/Connell Terrace

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<sup>11</sup> Evidence of Mr Neill, at [40].

<sup>12</sup> See “Business Mixed Use Design Guide 2021” as per rule 16.5A.1.

<sup>13</sup> See “The Purpose of This Guide” at p 4 of the Design Guide.

from 3m to 4m;

- (b) a requirement that any residential activities and visitor accommodation be restricted to the first floor and above in buildings within the BMUZ;
- (c) a restriction on the location of bedrooms within any building within an area (depicted on the Structure Plan) adjacent to the Firth Concrete Batching site.

### **Witness caucusing**

[25] Following an exchange of evidence-in-chief, the witnesses caucused, and produced joint witness statements ('JWS') on planning, urban design, transport, acoustics and economics.<sup>14</sup>

[26] As a result of that caucusing:

- (a) matters relating to traffic, transport and acoustics were resolved such that they need no further consideration;
- (b) urban design issues were narrowed to differing opinions on relative pedestrian connectivity of the site for BMUZ activities; and
- (c) the economic experts agreed that there would be no adverse effects in terms of a potential undersupply of GISZ, and/or a potential oversupply of residential/mixed use land, albeit for different reasons. Outstanding issues related to consequential economic effects- (agglomeration, transport efficiencies, and externalities on residential effects).

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<sup>14</sup> The council did not seek leave to respond through evidence on the apartments revised relief discussed in its rebuttal evidence although the amendments were effectively traversed through caucusing and the resulting JWSs.

*Urban design JWS*

*Interface issues*

[27] The urban design experts (Mr Wallace and Mr Neil) identified a very narrow area of disagreement. They agreed that:

- (a) adverse visual effect will be no more than minor from new buildings and development, from either the appellant's revised position or the PDP zoning, when viewed from the north or south of the site;
- (b) replacement of the northeastern building restriction area with a landscape area as shown on the amended Structure Plan would be acceptable and desirable from urban design perspective, and would better assist to provide more certainty with screening views into the site when viewed from the east from the Three Parks area, and would break up the building mass of industrial buildings better than the current building restriction area; and
- (c) there are sufficient controls contained within the BMUZ and mixed-use design guidelines to manage the interface along the southwestern boundary of the site adjoining the LDSRZ.

[28] Related to these interface issues, and of relevance in the context of our s32(2)(a) considerations, for Tussock, Mr Neil considers that:

- (a) removal of the building restriction area if the site is to be rezoned BMUZ would provide a better urban design outcome;
- (b) use of the BRAs has the effect of stagnating relatively large areas of useable land within the site; and
- (c) the BRAs create a 'no man's land' between the backs of industrial buildings and residential lots.<sup>15</sup>

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<sup>15</sup> Evidence of Mr Neill, at [29].



[29] Mr Neil considers that the BMUZ on part of the site will result in a superior outcome for the site and the wider Wanaka urban area given its pronounced elevation and resulting visibility from adjacent locations.

[30] However, for the Council Mr Wallace considers that the decision version of the Structure Plan provides an equally valid urban design response to management of the transition between industrial and residential zones.

*Connectivity*

[31] Mr Neil considers that there are sufficient connections via the footpath/cycleway and road connection proposed to the adjacent LDSRZ areas and to the town centre which will provide access to amenity options ( for instance employment, recreation, schooling and supermarket shopping) within a walkable distance as follows:<sup>16</sup>

- (a) from the site to the Wanaka Hotel in the Wanaka CBD the distance is 2.5km/30minutes;
- (b) to the edge of the Wanaka Town Centre the distance is 1.5km/18 minutes;
- (c) to Sir Tim Wallis Drive BMUZ the distance is 500m/6 minutes; and
- (d) to Te Tura o Take Karara (the nearby primary school) the distance is 1km/12 minutes.

[32] In Mr Neil's opinion the site is able to integrate well with the immediate LDSRZ and wider urban context. In terms of its connection to the wider Wanaka area for active transport modes, it is not an isolated or car-dependant location.

[33] Mr Wallace considers that the location of the site and its immediate and wider context is such that its overall accessibility relative to other areas of Wanaka

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<sup>16</sup> Based upon an average walking speed of 800m as the minute walk (or 12 minutes per km). See Evidence of Mr Neill, at [60] to [62].

means it is unsuitable for the high density residential and commercial development enabled by the BMUZ

[34] Mr Wallace considers that the site location is better suited to the provision of the industrial needs of existing and future residents without the need to travel to new, more remote areas on the outskirts of Wanaka.

[35] Mr Wallace relies on the NZ Household travel survey to assess the average trip leg for pedestrians as being a distance of 1km/15 minutes.<sup>17</sup> He also referred to the Waka Kotahi 2009 pedestrian planning and design guide's adoption of a five to ten-minute walk based upon a 400-800m walking distance at an average speed of 6km per hour.

### *Economics JWS*

[36] For Tussock, Mr Ballingall gave evidence as to the remaining and predicted industrial land supply within the district, setting out the facts, assumptions, and methodology he had used.

[37] His evidence states that he had (conservatively)<sup>18</sup> explored a range of estimates of supply, reflecting uncertainty around development capacity and the difficulty of exactly replicating the method used in past estimates. He identified areas not strictly zoned for industrial activity, including the BMUZ which were excluded from his consideration.<sup>19</sup>

[38] Mr Ballingall concluded that there is no shortage of industrial land in Wanaka and the region, on his conservative estimates of supply and potentially

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<sup>17</sup> Evidence of Mr Wallace, at [7.7].

<sup>18</sup> For instance, he excluded a 10.5ha area of industrial capacity attributed to land with a BMUZ in the 2020 business land capacity estimate, this being a zone in which industrial activity would not be accommodated. See Evidence of Mr Ballingall, at [26].

<sup>19</sup> On his understanding of the rules, industrial activities are not permitted within this zone. See Evidence of Mr Ballingall, at [26](b).

over-optimistic estimates of demand.<sup>20</sup>

[39] For the Council, Ms Hampson produced a statement of evidence containing her own estimates as the efficiency of current industrial, retail and commercial zoning in the Wanaka ward over the medium term (10 years), concluding that there is likely to be a surplus to meet this demand, as a result of Stage 3 zoning decisions.

[40] Her estimates derive from her business development capacity assessment ('BCDA') which involved a modelling exercise.<sup>21</sup>

[41] In answer to questions, Ms Hampson stated that some of the industrial employment was allocated to the BMUZ in the model, that being a zone where some activities associated with particular typologies (i.e. the construction industry) could be accommodated as a permitted activity in either zone (for example trade suppliers or yard space).<sup>22</sup>

[42] Following caucusing, the economic experts recorded their agreement in the Economics JWS that:

- (a) there is sufficient capacity for industrial and service development over the medium and long term in Wanaka and that loss of part of the site has no impact;
- (b) there is sufficient capacity for BMUZ within existing zones within Wanaka for the medium and long term, and as such, there is no shortfall, on the available evidence, that the BMUZ relief addresses;
- (c) the rezoning of part of the site to BMUZ would have a neutral impact on that sufficiency.

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<sup>20</sup> This surplus was updated in his rebuttal to between 27.8ha and 78.5ha across the district in 2048. See Rebuttal Evidence of Mr Ballingall, at [16].

<sup>21</sup> Ms Hampson provided some insight into the inputs of this model in answer to questions in cross-examination although she also described the BDCA as "quite complex". See NOE at page 111, line 20.

<sup>22</sup> Meaning that Mr Ballingall's estimates are more conservative than Ms Hampson's.

[43] The experts considered whether a surplus of capacity in the medium term is inefficient, although they held differing opinions on that:

- (a) Mr Ballingall considers it is economically inefficient for a resource to be left idle when there is insufficient demand for it. He considers that a more flexible zoning, providing more choice for landowners and businesses is a more efficient resource allocation; and
- (b) Ms Hampson considers that a surplus of land supports competition which brings associated economic benefits. If zoned GISZ, Ms Hampson sees no reason this site could not be developed sooner than other greenfield GISZ land within Wanaka. She considers that it need not sit idle over that period of time.

[44] The Economics JWS further records agreement that the economic efficiency of a surplus of development capacity for business activity (under either zoning) is neutral, based on existing demand projections.

[45] However, they had differing opinions on whether the proposed site is a suitable/efficient location for retail (including Large Format Retail) commercial service activity in the context of the Wanaka urban environment.

[46] They agreed that there are economic costs and benefits of enabling retailing via the BMUZ, although they disagree on the balance between these:

- (a) Mr Ballingall considers that increased retail and hospitality competition generates economic wellbeing benefits in terms of choice and potentially lower prices;
- (b) Ms Hampson considers the potential for the BMUZ portion to develop as a retail/hospitality node although she does not consider that it is an efficient location for a 'proxy' centre. This is due to a lack of a dense residential catchment, and it is not on a main arterial. She further considers that this would create potential for adverse effects on the existing centre hierarchy and the development of the BMUZ

in Three Parks by distributing retail activity over an additional location. Her view was that rules that manage distributional effects of retail and other activity on existing zones should be considered.

[47] Neither expert quantified economic costs and benefits, however, if developed for retail, they agreed that the BMUZ may support net additional businesses and employment relative to GISZ if fully developed, and potentially provide competition, through consumer choice.

[48] Although Mr Ballingall did not foresee any net economic costs arising from that scenario, Ms Hampson considers that there could be distributional effects on the centre network and other zones that provide for retail, office, and visitor accommodation.<sup>23</sup>

[49] They consider that the long-term strategic costs and benefits relative to full GISZ. This was a further area of disagreement:

- (a) Ms Hampson considers that the long-term economic benefits of retaining the site capacity for fully GISZ outweighs the benefits from BMUZ on part of the site in the short-medium term;
- (b) Mr Ballingall holds the opposite view.

[50] As to the demand for housing, they agreed that this is significant and that the district has struggled to supply housing that meets demand, particularly more affordable housing.

[51] They agree that providing for housing capacity could offer some benefit, although Ms Hampson does not consider that this is the optimal location for apartments, and that the site is more strategic for GISZ capacity, given the significant capacity for housing in other zones.

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<sup>23</sup> Ms Hampson did not address this issue in her evidence-in-chief.

*Planners JWS*

[52] The planning joint witness statements agreed on the key objectives and policies of the PDP with regard to the key issues identified in the urban design and economic evidence relating to:

- (a) the suitability of the site for BMUZ which would allow high density residential and commercial, in terms of accessibility and connectivity; and
- (b) the strategic and long-term benefits of retaining the site or GISZ in terms of consolidation of land use.

[53] The planners JWS notes the agreement of the transport and acoustic experts as to the neutral impact in relation to matters within their expertise if the site were to be rezoned by the GISZ or BMUZ.

[54] Relevant objectives and policies are identified by the planners as being:

- (a) Strategic Objectives 3.2.1.5; 3.2.2; 3.2.2.1; 3.3.4; 3.3.9;<sup>24</sup> and
- (b) Objective 4.2.2A, and Policies 4.2.2.2 and 4.2.2.3.

[55] Adopting the Council's paraphrasing of these provisions, the combined effect is to direct that land is allocated into zones in a logical and strategic manner that:

- (a) connects, integrates and builds on existing urban development;
- (b) achieves healthy, safe and desirable places to live and work, with higher density residential in close proximity to town centres; and
- (c) avoids:
  - (i) non-industrial activities within industrial areas, and

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<sup>24</sup> These give effect to the partially operative Regional Policy Statement and the NPS-UD.

- (ii) commercial zoning that is likely to undermine the Wanaka town centre.

### **Statutory framework**

[56] The statutory framework for our consideration of the competing zoning options need only be briefly described; in relation to s32 considerations, our evaluation is to determine which is the most appropriate method for achieving the relevant objectives within the PDP, these being contained (primarily) in Chapters 3 and 4.

[57] The proposed methods (notably, the proposed rules) must also be evaluated with regard to the actual and potential effects on the environment of the activities they enable, including potential future effects.

[58] Other matters of relevance to our evaluation include:

- (a) provisions of part 2;
- (b) the Council's functions under s31; and
- (c) relevant national policy statements.

[59] We agree that relevant PDP objectives and policies flesh out and give local effect to Part 2 such that it is not necessary to consider those provisions, as are the councils' function and relevant higher order policy instruments, save for some metres of observation and interpretation of those relevant PDP policies in light of the National Policy Statement – Urban Development 2020 ('NPS-UD').<sup>25</sup>

[60] In the context of a s32 evaluation, we are required to make a value judgement as to what is the most appropriate, i.e. the most suitable, suite of provisions when measured against relevant PDP objectives.

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<sup>25</sup> As submitted by counsel in the opening submissions for Tussock, at [29].

## NPS-UD

[61] By Policy 2, the Council must have at least sufficient development capacity to meet expected demand for housing and for business over the short, medium and long term, which for this Council,<sup>26</sup> in order to be sufficient, must meet the expected demand plus the appropriate competitiveness margin.<sup>27</sup>

[62] The sufficiency of the development capacity for industrial activities was a central focus of the hearing and closing submissions.

### Overview of the parties' approach

#### *Tussock*

[63] Tussock opened on the basis that:<sup>28</sup>

Without any apparent dispute as to adverse effects on either lack of supply for industrial zoning in Wanaka, or oversupply of residential and mixed-use activities, ... the Court is therefore faced with a relatively simple urban design and spatial planning question as to what is the most appropriate zoning outcome for the site.

[64] Mr Todd contends that the answer to this question is driven by the urban development strategic objectives in chapters 3 and 4 of the PDP, this being determined by 'common sense' observations on the ground, as to:<sup>29</sup>

... whether it is most appropriate and desirable to locate industrial activities on primely located high amenity and highly visible land (which requires stagnation of land through BRAs to reduce interface issues with residential development), or whether a higher better use is available for the land in the form of quality designed

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<sup>26</sup> As a Tier 2 urban environment. See Appendix 1: Tier 1 and 2 urban environments and local authorities, at Table 2 of the NPS-UD.

<sup>27</sup> Being a margin of development capacity, over and above the expected demand in order to support choice and competitiveness in housing and business land markets. See 3.22(1) of the NPS-UD.

<sup>28</sup> Opening submissions for Tussock, at [8].

<sup>29</sup> Opening submissions for Tussock, at [9].



and well-articulated buildings for mixed use purposes. ...

[65] Tussock's case is that the latter option is "undoubtedly the most appropriate having regard to relative efficiencies and effectiveness of competing options under s32 of the Act".<sup>30</sup>

[66] On our site visit, which we undertook prior to (and again, following completion of) the hearing, we were invited to make observations of the following features of the site and locality:

- (a) the nature of existing and ongoing development north and northeast of the site within the GISZ;
- (b) the elevated views and aspect of the site and its interface with residential development to the sought and anticipated pedestrian routes from that development into the site;
- (c) visibility into the site in terms of the relative competing urban design outcomes; and
- (d) the temporary activities occurring on the site itself.

[67] In terms of the s32 considerations, Mr Todd further noted that the proposed rules are to be evaluated with regard to the actual and potential effects on the environment of the activities enabled by the competing plan provisions.

[68] Tussock's case is that the revised relief seeks the most appropriate rezoning option in that it will achieve:

- (a) net positive urban design outcomes in terms of visual effects into the site and for Wanaka, and no adverse visual amenity effects;
- (b) neutral economic efficiency effects on (under)supply for industrial zoning or (over)supply of mixed use and business capacity;
- (c) positive benefits of increased housing capacity on the site for the

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<sup>30</sup> Opening submissions for Tussock, at [10].

Wanaka community, net additional business and employment opportunities, and potential competition through choice for consumers; and

- (d) no adverse economic effects from loss of agglomeration of industrial benefits, travel inefficiencies, or issues relating to managing effects of externalities of industrial zoning.

[69] These points were reiterated in closing submissions, in which Tussock's position was stated as being that the rezoning option would result in a significant net positive benefit in terms of achieving the relevant high order chapters 3, 4 and 16 PDP provisions, has no more than minor adverse effects as far as it serves the intentions of:

- (a) creating a more efficient use of land through an orthodox transition of residential to industrial land use having regard to relevant objectives;
- (b) providing for a more compatible zoning option consistent with the urban development intentions of the PDP and its future spatial planning document, which would consolidate residential employment and other mixed use business outcomes within an urban growth boundary and in a way which reflects appropriate land use having regard to relevant objectives (4.2.2.2 and 4.2.2.3);
- (c) creating a more competitive land supply outcome for urban purposes; and
- (d) provision of more affordable housing and apartment/attached style housing options within an urban growth boundary.

[70] Mr Todd was critical that the Council's case theory had changed between opening and closing submissions, influenced by the evidence of Ms Hampson, introduced at the hearing, which we shortly discuss.

### *The Council*

[71] The Council continued to oppose Tussock’s amended relief.

[72] The Council opened its case on the basis that a rezoning of part of the site (6.8ha) to BMUZ would be contrary to the strategic objectives of the PDP. Among other things, the Council contended that this rezoning would:<sup>31</sup>

- (a) result in a sub-optimum urban form that does not build on historic land uses, nor integrate well into the existing environment;
- (b) displace future industrial and service activities away from the single, cohesive industrial area in Wanaka in the long term;
- (c) unnecessarily introduce sensitive activities into an established industrial zone creating reverse sensitivity effects and reducing the ability for neighbouring sites to adapt and utilise the increased flexibility anticipated by GISZ; while also
- (d) reducing the convenience and agglomeration benefits of a single industrial area in the long term.

[73] In closing submissions, the Council submitted that the retaining the GISZ for the site is the most appropriate way to achieve the PDP’s strategic objectives and policies. In terms of strategic objective 3.2.2.1 it said:<sup>32</sup>

- (a) Retaining a GISZ would ensure urban development occurs in a logical manner to promote a compact and well designed and integrated form.
- (b) A BMUZ zoning would be illogical as it would also bring forward the need to find land for new industrial activities outside of the UGB [Urban Growth Boundaries]. There is no other space within the UGB that can accommodate industrial activities. In contrast, the activities enabled by the BMUZ can be accommodated in a range of other zones and areas throughout the UGB.
- (c) A GISZ would build on historic urban development patterns. The site has been zoned for industrial in the ODP [operative District Plan] and is part

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<sup>31</sup> Opening submissions for the Council, at [1.4].

<sup>32</sup> Closing submissions of the Council, at [7.2].

of a continuous industrial area.

- (d) A GISZ would contribute to a built environment that provides healthy and safe places to live, work and play. A GISZ zone ensures that there will not be new reverse sensitivity effects for existing industrial activities. A BMUZ creates a risk of reverse sensitivity effects (however modest) that need not be taken, because there is no shortfall of land supply or any other strategic issue that a BMUZ would address.

### *Amended population growth projections*

[74] The evidence of the economists had relevance in the context of the NPS-UD. In preparation of their respective written statements and the JWS, the economic experts used the Council's population projections published in 2022.<sup>33</sup>

[75] The experts had also relied upon, amongst other information, the Council's Housing Development Capacity Report<sup>34</sup> and the Council's Business Development Capacity Assessment ('BDCA 2017'),<sup>35</sup> which was the subject of an interim update in March 2020.<sup>36</sup>

[76] In the preparation of her evidence-in-chief, Ms Hampson had used this information in forming her opinion on the demand for business (including for industrial/service activities) over the short to medium term, this being the timeframe for assessing a plan change.

[77] Mr Ballingall had addressed the long-term need. During caucusing they agreed to provide conclusions on both, agreeing that in the short, medium and long term there is sufficient capacity for industrial/service activity growth.

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<sup>33</sup> Ms Hampson referred to the projections dated October 2018 and March 2022. See Evidence of Ms Hampson at [4.6].

<sup>34</sup> Queenstown Lakes District Housing Development Capacity Report, Main Report 2021, Market Economics, September 2021.

<sup>35</sup> Queenstown Lakes District Business Development Capacity Assessment 2017, Market Economics, November 2018.

<sup>36</sup> Queenstown Lakes District Business Development Capacity Assessment Interim, Update Addendum, Market Economics, March 2020.

[78] However, during the hearing, Ms Hampson sought to produce 2024 population/growth projections to replace the 2022 projections used in the preparation of the experts' evidence, and in caucusing. Ms Hampson relied on the updated growth projections to support a reconsidered position on the long term need for industrial/service activity land. The projections indicated higher growth numbers in the Wanaka ward than in 2022 (almost doubling). Although these updated projections had not been modelled, they supported Ms Hampson's opinion that the site should remain GISZ.

[79] However, the updated projections had not been pre-circulated to the appellant, nor was the appellant (or the court) forewarned that these would be produced. During the hearing, admission of that evidence was challenged due to the prejudice to Tussock, whose expert had not been afforded an opportunity to properly consider the same.<sup>37</sup>

[80] After the lunch adjournment, Mr Ballingall was cross-examined on the implications of those projections in terms of the demand for industrial land.<sup>38</sup>

[81] In answers given by Mr Ballingall in cross-examination, he said:

... a larger population will demand more of everything. And that will increase the demand for industrial, but it will also increase the demand for house. It will also increase the demand for commercial and retail activities;

[82] And:<sup>39</sup>

... the first order requirement for those people will be to find a place to live. And then to be able to buy things in their house, to go to a shop, whatever it might be. I'm not sure the first-order priority would be demanding a whole lot more industrial-type output. So I think the first-order priority, if there were a surge,

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<sup>37</sup> Mr Ballingall was provided the updated projections during the lunch break.

<sup>38</sup> The updated projections had been published by the Council on its website in April 2024 according to counsel for Tussock. See Tussock closing submissions, at [13].

<sup>39</sup> NOE at p 31, from l 21.

would be to make sure they had places to live.

[83] The relevance of those updated growth projections assumed prominence in the closing submissions of the Council in relation to the strategic benefit of retaining a larger portion of the site as GISZ.

[84] Counsel submitted that the rate of change between the 2022 and 2024 growth projections, which is described as ‘exponential’, means that the predictions about land supply and demand must be approached with some caution, submitting that a shortfall in the availability of industrial land could arise sooner than anticipated, supporting adoption of the Council’s long-term strategy of retaining GISZ within the Urban Growth Boundaries (‘UGB’) and avoiding the need for an earlier plan change.

#### *Other capacity considerations*

[85] The site has been zoned for industrial purposes since 2013, or 2014. Although Tussock gave evidence of a previous unsuccessful attempt at marketing lots within a subdivision for industrial activities, we are unable to find on the basis of that evidence that there is no demand for industrial land. We had also heard evidence that other nearby GISZ land (on Enterprise Drive) had been subdivided, sold and developed over the same period of time.

[86] Ms Hampson referred to problems within the district of landowners land-banking land although she acknowledged that within Wanaka, that issue appeared to arise only with land zoned for residential and commercial use, further acknowledging that 79% of land zoned for business purposes is owned by the one developer, Willowridge, who is the owner/developer of Three Parks.<sup>40</sup>

[87] Under Tussock’s mixed -zone proposal, and accounting for the area of land

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<sup>40</sup> That landowner owns over 50% of the vacant industrial land. See NOE, at p 100, from 15.

within the BRAs, an estimated gross area of 3.3ha would be developable for industrial/services activities compared to 6.07ha under the status quo.

[88] Ms Hampson agreed that retaining some industrial capacity is helpful, although she considers that there are stronger benefits for retaining the whole of the site for future growth or industrial and service activity in Wanaka than would arise if developed under a BMUZ, in respect of which there would be no strategic benefits.

[89] She further considered that the competition benefit from having another owner of business zoned land would be neutral.

### *Potential distributional effects*

[90] Ms Hampson's concerns at the potential for distributional effects are predicated on the BMUZ part of the site being developed for retail. However, as she accepted in answers to questions from the court, that this wasn't an assessment undertaken in her evidence-in-chief, arising only in her conferencing on the costs and benefits of the competing zoning options.

[91] Ms Hampson explained the complementary role of the Three Parks centre (which has Business Zone) with the town centre, with its core role as a large format retail centre, stating that the proposed BMUZ could have distributional effects on the Three Parks Zone, if developed for large format retail.

[92] She acknowledged that the BMUZ along the corridor alongside Sir Tim Wallis Drive also makes provision for large format retail. No distributional effects assessment was undertaken when putting in place that zoning. However, Ms Hampson does not consider that the sites within that corridor of BMUZ would be wide enough to support large format retail, unlike the site's BMUZ precincts.

[93] We accept that this position does contradict the agreement recorded in the JWS, that 'economic' efficiency of a surplus of development capacity for business

activity on the site is largely neutral. Accordingly, we set aside Ms Hampson's concerns as to the potential for distributional effects.

***Benefits of increased housing capacity***

[94] Tussock considers that the site will provide a high-quality urban environment for higher density living typologies, which is consistent with the Council's own policy approach in progressing its 'Urban Intensification Variation'.<sup>41</sup>

[95] The purpose of that planning initiative is to address the reported shortfall of affordable housing, and particularly, the forecast increase in demand for attached housing typologies and smaller units.

[96] The relevance of this variation is that it demonstrates that despite an apparent available capacity for residential housing in the district, the clear Council policy is that further capacity, particularly including affordable housing typologies, is required to be enabled in other suitable locations.

[97] We agree with Mr Neill, that the BMUZ on part of the site will lend itself to such outcomes. We do not agree with the Council's witnesses that the site is not in a suitable location for residential.

***Benefits of agglomeration***

[98] Ms Hampson considers that there are agglomeration benefits from a single, centrally located, established industrial area in terms of travel efficiencies, and in terms of the externalities of industrial zoning. In answer to cross-examination, Ms Hampson clarified that the potential for externalities to arise is more related to

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<sup>41</sup> Which implements policy 5 of the NPS-UD, which directs councils to enable more height and density in certain locations, while aiming to implement the wider NPS-UD directive of ensuring well-functioning urban environments that meet the changing needs of the district's diverse communities and future generations.



the location of a future industrial zoning if the removal of this site from GISZ reduces future capacity.

[99] Mr Ballingall considers that any agglomeration benefits in terms of transport efficiencies would be very small in the Wanaka context, given the diversity of the Wanaka economy and lack of any notable specialisation. He states that his opinion is supported by the Waka Kotahi evaluation manual, which suggests that agglomeration benefits are more likely to be relevant in larger cities.

[100] As to the potential for externalities, we are satisfied with the evidence of Mr Ballingall that this rezoning will have no impact on industrial land capacity in the longer term. Moreover, the site (a greenfield site) is adjacent to an existing LDSRZ with residential development underway but not yet completed, and existing industrial activity.

[101] Although some residential development will be enabled under the BMUZ, this zoning on part of the site would only shift the location of the boundary where any potential externalities *might* arise.<sup>42</sup> We consider that the BMUZ is an appropriate transition from residential to industrial/service activity.

### ***PDP Strategic Policy direction***

[102] The key PDP strategic directions are identified in the Planners JWS, and were summarised in *Beresford v QLDC*<sup>43</sup> as having the following intentions:<sup>44</sup>

- (a) assign UGBs with the purpose of helping to manage the growth of urban areas “within distinct and defensible urban edges” (Obj 4.2.1 and related policies);

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<sup>42</sup> Residential may or may not be included within development closest to the boundary of the GISZ.

<sup>43</sup> *Beresford v Queenstown Lakes District Council* [2024] NZEnvC 182. This case was more focussed on the effects of urban encroachment on rural areas and landscapes than the case before us.

<sup>44</sup> At [189].

- (b) seek to achieve “a compact, integrated and well-designed” urban form within UGBs (Obj 4.2.2.A and related policies<sup>45</sup>);
- (c) contain urban development to be within UGBs for various reasons including to maintain and enhance the environment and rural amenity and protect ONF/Ls (Obj 4.2.2B and related policies);
- (d) define UGBs for Wanaka and Lake Hawea Settlement that, relevantly (Pol 4.2.2.21):
  - (i) are based on existing urbanised areas;
  - (ii) identify sufficient areas of urban development and the potential intensification of existing urban areas to provide for predicted visitor and resident population increases in the upper Clutha basin over the plan;
  - (iii) have community support as expressed through strategic community planning processes;
  - (iv) utilise the Clutha and Cardrona rivers and the lower slopes of Mt Alpha as natural boundaries to the growth of Wanaka;
  - (v) avoid spalling and sporadic urban development across the rural areas of the upper Clutha Basin.
- (e) not use rural land outside of the UGB for urban development into the change to the PDP amends the UGB and zoned additional land for urban development purposes (Pol 4.2.2.22).

[103] More relevantly, we refer back to the summary of the strategic directions in chapter 3 of the PDP, in respect of which we had adopted the Council’s paraphrasing in paragraph 55 of this decision. These provisions direct that land is allocated into zones in a logical and strategic manner that:

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<sup>45</sup> Which we note are inconsistent with Chapter 3 SO 3.2.2, being an objective emphasised by the Council as of relevance to our determination. This objective addresses Strategic issue 2 which is that growth pressure impacts on the functioning and sustainability of urban areas, and risks detracting from rural landscape, particularly its outstanding natural features and outstanding natural landscapes, which was an issue of relevance in *Beresford* but not in the case before us.

- (a) connects, integrates and builds on existing urban development;
- (b) achieves healthy, safe, and desirable places to live and work, with higher density residential in close proximity to town centres; and
- (c) avoids:
  - (i) non-industrial activities within industrial areas, and
  - (ii) commercial zoning that is likely to undermine the Wanaka town centre.

### **Our consideration**

[104] Tussock’s zoning proposal will be consistent with and achieve the directives, as would the GISZ.<sup>46</sup>

[105] As to Tussock’s proposal, we note in particular that:

- (a) this location, while historically having an industrial zoning, contains an existing mix of industrial and business (non-industrial) uses, not all of which was permitted under that zone. Tussock’s proposal will provide a buffer (BMUZ) between the existing and new industrial uses and the LDSRZ;
- (b) the BMUZ will function as a more effective and appropriate interface with the residential land to the southwest and towards commercial and mixed-use to the north;
- (c) the relative economic efficiencies in the use of the site favour Tussock’s proposal, when considering the sterilising effect of the BRAs. A building restriction area may be a valid urban design technique, although, where developable land is a highly valued resource, it is an inefficient use of land;
- (d) retention of the GISZ in case of a longer-term shortfall (described by Tussock as a ‘just in case’ approach) creates a relative inefficiency in

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<sup>46</sup> Objectives 3.2.2; 3.2.2.1; 3.2.3; 3.2.3.2; 3.2.6; 3.2.6.1 and 4.2.2A.

the s32 context compared to using the land for BMUZ, which would enable provision of a more immediate demand for an increase in supply of housing capacity, while also increasing competition in the supply of BMUZ land within the district.

[106] Although we received no evidence addressing potential distributional effects of the proposed BMUZ on Three Parks,<sup>47</sup> we note that the protection afforded by Objective 3.3.4 is to the Queenstown and Wanaka town centres.

[107] We are satisfied that the site is sufficiently proximate for walking and active transport to existing urban development, recreation, and employment areas within Three Parks.

[108] Mr Todd further notes that there is no clear direction from the PDP or the NPS-UD that spatial planning must be solely dictated by pedestrian access/walkability issues, although these are inevitably relevant factors that bear on the achievement of a well-functioning urban environment.

[109] However, as is also noted by Mr Todd, the adjoining new residential areas to the south and west of the site are in fact further from walkable amenities and will achieve access to them through the site itself.<sup>48</sup> Similarly, in relation to the proximity of the site to the Town Centre.

[110] Tussock's revised relief includes a BMUZ zone, with restrictions across large parts of the site to allow for residential and visitor accommodation activity on the first floor and above<sup>49</sup> directing a mixed business/commercial outcome which is potentially inherently self-sufficient.<sup>50</sup>

[111] We disagree with the Council that the site offers low (not optimal) amenity

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<sup>47</sup> Beyond Ms Hampson's brief comment made about that in the Economics JWS.

<sup>48</sup> Opening submissions for Tussock, at [41](a).

<sup>49</sup> The height limit would allow 3-storeys.

<sup>50</sup> Opening submissions for Tussock, at [46].

for residential activities. The elevated nature of the site means that it has good solar access with views as good as many parts of Wanaka, and that people might be happy to live in this location.<sup>51</sup>

[112] Accordingly, Tussock's rezoning proposal will appropriately implement the strategic direction of chapters 3 and 4, more so than if the site is to retain a GISZ.

[113] As to the amended growth projections, it is for the court to determine whether the updated growth projections ought to be given any weight, in favour of the statements from the economic experts contained in the JWS.

[114] We accept and emphasise Tussock's submissions that evidence should always be exchanged following due process, in preference to the 'surprise attack' approach. This prior non-disclosure was regrettable and to the extent that it was adopted, as a litigation strategy, it is an unhelpful approach. As a matter of etiquette and fairness to Tussock, and in the interest of assisting the court, the information should have been discussed with counsel in advance of the hearing.

[115] Mr Ballingall had been denied the opportunity to properly reconsider the implications for the supply of land across all zones. Indeed, Ms Hampson's consideration of the implications of these updated growth projections was also incomplete.

[116] We are more inclined to agree with Mr Ballingall's criticism of Ms Hampson's position that meeting the increased demand for industrial supply should take priority over demand for more homes.

[117] Accordingly, we agree with Mr Ballingall that it would be better to over supply accommodation than under supply accommodation in the region, especially

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<sup>51</sup> Which Ms Hampson agreed in cross-examination. See NOE, p 117, 118.

if there is to be exceedingly high population growth.<sup>52</sup>

[118] As to this, we note the agreement of the economic experts recorded in the JWS that:<sup>53</sup>

... there is a significant demand for housing and the district has struggled to supply housing that meets that demand (especially more affordable housing).

The experts agree that providing for housing capacity on the site (via the BMUZ) could offer some benefits to the Wanaka community.

[119] As we were further reminded in Tussock's closing submissions, the demand projections discussed in their evidence, including the JWS, already incorporate a competitiveness margin in relation to the capacity for business development land (including industrial), to account for occasions where the growth projections are too low, as they are required to do under the NPS-UD.<sup>54</sup>

[120] Accordingly, we prefer to rely on the 'considered' evidence of the economic experts as contained in the JWS, namely, that either zoning option is neutral in terms of land capacity.

[121] We note that the Council had accepted recommendations from the independent hearing panel (IHP) to decline the relief by Tussock, accepting the evidence of Ms Hampson, while further noting that it had recommended against the GISZ of land on the eastern side of Ballantyne Road (with the Three Parks area) in favour of a rezoning to a mix of Three Parks Business/BMUZ.

[122] Ms Hampson had relied on the retention of the Tussock site within a GISZ to support her conclusion that there is sufficient land to cater for the projected

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<sup>52</sup> On the basis that if migration continues, new residents will need to be able to secure a job before finding a home.

<sup>53</sup> See Issue 6, at p 7.

<sup>54</sup> The margin accounts for the possibility that the demand in the short/medium term could be 20% higher and 15% higher in the long-term.

long-term demand for industrial and service activities.<sup>55</sup>

[123] We accept that the evidence before this court moved on from that which was before the IHP. In particular, Ms Hampson and Mr Ballingall have further considered, as reflected in the Economics JWS, the medium and longer-term capacity in light of the Council's acceptance of the IHP's recommendations.

[124] The Council had accepted recommendations from the IHP to decline the relief by Tussock, accepting the evidence of Ms Hampson, while further noting that it had recommended against the GISZ of land on the eastern side of Ballantyne Road (with the Three Parks area) in favour of a rezoning to a mix of Three Parks Business/BMUZ.

[125] Ms Hampson had relied on the retention of the Tussock site within a GISZ to support her conclusion that there is sufficient land to cater for the projected long-term demand for industrial and service activities.<sup>56</sup>

[126] We accept that the evidence before this court moved on from that which was before the IHP. In particular, Ms Hampson and Mr Ballingall have further considered, including at a court-facilitated caucusing, the medium and longer-term capacity in light of the Council's acceptance of the IHP's recommendations.

[127] This has resulted in an agreed position on capacity (in the medium and longer-term) in the Economics JWS referred to in detail earlier in this decision. We have a better insight (albeit incomplete) into the assumptions used in the BDCA as we have earlier referred to, than was apparent on the face of the report comprising the IHP recommendations.

[128] Accordingly, we find that there is an evidential basis for a different decision, noting that the relief being sought before this court involves retention of part of

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<sup>55</sup> IHP Report 20:3 Chapter 18A dated 12 January 2021, at [186].

<sup>56</sup> IHP Report 20:3 Chapter 18A dated 12 January 2021, at [186].

the site as GISZ.

[129] Accordingly, Tussock’s appeal is allowed:

- (a) the site is to be rezoned to a mix of BMUZ<sup>57</sup> and GISZ<sup>58</sup> as depicted on amended plan of zoning and the amended Structure Plan attached to this decision as Appendix A and Appendix B;<sup>59</sup>
- (b) additional and consequential changes are to be made to provisions in Chapters 16 and 27 of the PDP as follows:

|        |   |   |
|--------|---|---|
| 16.5.3 | <p>Residential and visitor accommodation activities</p> <p>All residential activities and visitor accommodation;</p> <p>16.5.3.1 on sites adjoining Gorge Road in Queenstown located within 10m of the boundary adjoining Gorge Road; or</p> <p>16.5.3.2 on sites adjoining Sir Tim Wallis Drive in Three Parks Wanaka located within 10m of the boundary adjoining Sir Tim Wallis Drive; or</p> <p>16.5.3.3 on sites located in Area’s ‘A’, ‘B’, and ‘C’ in the Connell Terrace BMUZ on the structure plan at 27.13.13</p> <p>Shall be restricted to first floor level or above, with the exception of foyer and stairway spaces at ground level to facilitate access to upper levels.</p> | <p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>(a) the effects of residential and Visitor accommodation activities at ground floor level on surrounding buildings and activities;</li> <li>(b) the location of residential and visitor accommodation activities at ground floor level relative to the public realm;</li> <li>(c) the maintenance of active and articulated street frontages.</li> </ul> |
|--------|---|---|

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<sup>57</sup> Comprising approximately 6.7ha.

<sup>58</sup> Comprising approximately 2.5ha.

<sup>59</sup> Attached to the supplementary and rebuttal evidence of Mr Dent dated 20 October 2023, as Appendices [A] and [B].



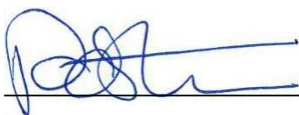
27.7.16.2 Any subdivision that does not comply with the Connell Terrace Structure Plan located in Section 27.13.13.

For the purposes of this rule:

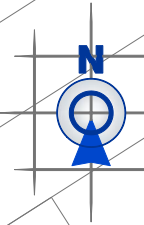
- a. any fixed roads shown on the Structure Plan may be moved no more than 20 metres;
- b. the boundaries of the landscaped area may be moved up to 5 metres; and
- c. Landscaping within the landscape area on the eastern boundary of the Structure Plan shall be:
  - i. Planted using native trees and shrubs;
  - ii. A minimum of 30% of the planting must be of species that will achieve or exceed a mature height of 7m;
  - iii. Planting shall be evergreen.


[130] The parties are to consider whether the Structure Plan should be included within all relevant PDP chapters, given that the landscaping requirement for the GISZ part of the site will be relevant when land use activities are established in addition to being relevant at the subdivision stage. That is an issue for the parties to decide.

For the court

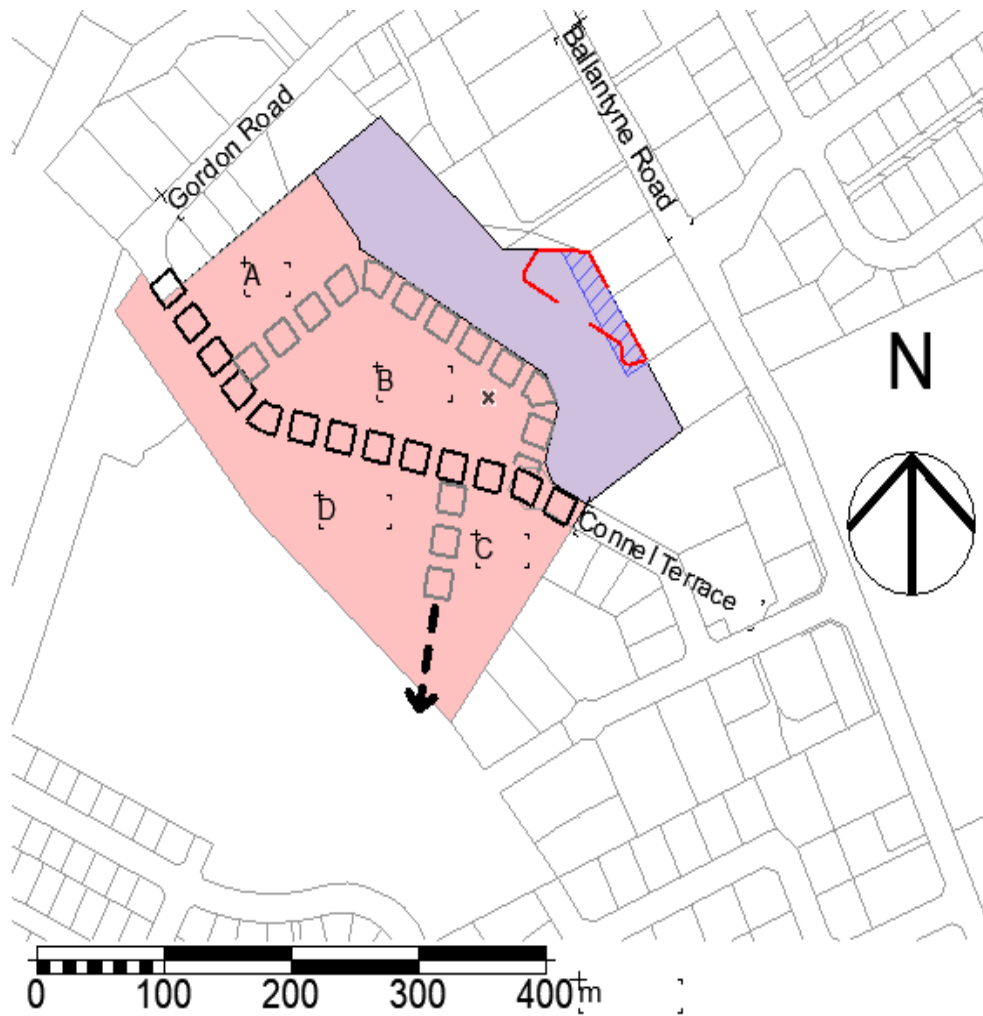







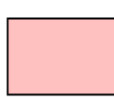
**P A Steven**  
**Environment Judge**



|  |   |   |   |   |  |                       |           |   |                        |
|--|---|---|---|---|--|-----------------------|-----------|---|------------------------|
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Appendix B



-  Landscaped Area
-  Indicative Primary Road
-  Indicative Secondary Roads
-  Indicative Pedestrian Link
-  General Industrial and Services Zone
-  Business Mixed Used Zone

