

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Hearing Stream 2 –
Rural, Rural
Residential, Rural
Lifestyle, Gibbston
Character, Indigenous
Vegetation and
Biodiversity, and
Wilding Trees chapters

**SYNOPSIS OF LEGAL SUBMISSIONS FOR
QUEENSTOWN LAKES DISTRICT COUNCIL**

HEARING STREAM 2 – RURAL

21 April 2016

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MAY IT PLEASE THE PANEL:

1. The following is a synopsis of the legal submissions for Queenstown Lakes District Council's (**Council**) that will be presented at the commencement of the Rural hearing on the Proposed District Plan (**PDP**). Full written legal submissions will be tabled, but for the Panel's and submitters' convenience a synopsis has been filed in advance in accordance with the Panel's Fourth Procedural Minute dated 8 April 2016.
2. The scope of the hearing is the Rural, Rural Residential, Rural Lifestyle, Gibbston Character, Indigenous Vegetation and Biodiversity, and Wilding Trees chapters of the PDP,¹ including any defined terms used within those chapters. Submissions seeking rezonings to or from any of the Rural zones are not being considered within this hearing stream, nor are submissions that seek to alter the boundaries of Significant Natural Areas (**SNAs**) on the planning maps.² There are also instances where submitters are seeking substantial changes to and/or site specific recognition within the objective/policy/rule framework of one of the rural zones, which would only be required if their rezoning submission is successful or is in effect a new replacement zone.³ As the two sets of relief are so intrinsically related, consideration by Council officers and consultants of those submissions on the objective/policy/rule framework, have been deferred to the rezoning hearings.
3. Council refers to and adopts the opening legal submissions presented at the Strategic Direction hearing, in terms of Council's functions and statutory obligations (section 3), relevant legal considerations (section 4), and whether various submissions are "on" Stage 1 of the PDP (section 7).⁴

SUMMARY OF LEGAL ISSUES FOR DETERMINATION BY THE PANEL

4. The only substantial issue of a legal nature identified at this time is that submissions have been made on the rules that relate to Building Restriction Areas (**BRAs**) at Glenorchy (Bible Face landform) and Ferry Hill respectively.

¹ Chapters 21, 22, 23, 33 and 34 respectively.

² Submissions seeking to delete an SNA completely, will be heard in Hearing Stream 2 as that will involve changes to the text in Chapter 33 as well as ancillary changes to the planning maps. Panel's Fifth Procedural Minute, 19 April 2016.

³ An example is the submission by Cardrona Alpine Resort Limited (615) seeking that the Cardrona Ski Area Sub Zone be renamed "Cardrona Alpine Resort Area" and that the zone is extended. CARL has also requested a number of changes to the rules for Ski Area Sub Zones in Table 7 of Chapter 22.

⁴ Opening Representation / Legal Submissions for Queenstown Lakes District Council, Hearing Streams 1A and 1B – Strategic Chapters in Part B of the Proposed District Plan, dated 4 March 2016.

In considering the submissions it has become apparent that the respective BRAs have not been notified on the planning maps.

KEY RESOURCE MANAGEMENT ISSUES

5. The Queenstown Lakes District's (**District**) rural areas are of significant conservation, economic and intrinsic value to the District. The key resource management issues for the rural area of the District are:⁵

- (a) management of the District's landscapes;
- (b) enabling and appropriately regulating the wide variety of rural productive activities which rely on resources in rural areas, allowing for existing and anticipated activities and rural amenity, whilst appropriately managing commercial activities and the Ski Area and Rural Industrial Sub zones;
- (c) managing residential activities in order to:
 - (i) prevent urban sprawl and maintain a consolidated urban form;
 - (ii) prevent reverse sensitivity effects on productive rural activities; and
 - (iii) maintain the unique characteristics of the rural areas;
- (d) the management of the surface of water on rivers and lakes;
- (e) recognising and responding to the natural and cultural heritage values of the rural areas, in that the rural areas of the District are home to significant landscapes and natural features, as well as significant indigenous vegetation and fauna; and
- (f) managing the District's landscapes from potential wilding tree spread.

6. The PDP responds to the different patterns of development and use of rural land by dividing the rural area in to four underlying zones.⁶ The zones, and their purposes, are described by Mr Barr in his section 42A reports and are

⁵ Key Resource Management Issues are set out in section 6 of each of the section 42A reports.

⁶ There are various sub-zones that sit over these underlying zones, in particular over the Rural Zone, for example the Ski Area and Industrial subzones.

briefly summarised below as we address the key changes made to each chapter in response to submissions, and the key outstanding matters.

HIGHER ORDER POLICY AND STATUTORY DIRECTION

7. The relevant higher order policy and statutory direction is detailed in each of the section 42A reports. Key higher order policy and statutory directions are identified below.

Otago Regional Policy Statement (RPS)

8. Relevant objectives and policies in the RPS highlight the importance of the rural resource both in terms of the productive resources of the rural area and the protection of the District's outstanding natural features and landscapes. Chapters 6 and 10 contain provisions on the subjects of water and biota, which are relevant to the PDP provisions relating to the surface of lakes and rivers.⁷

Proposed Regional Policy Statement (pRPS)

9. Of particular relevance in the pRPS is Objective 2.2, which provides that Otago's significant and highly-valued natural resources are identified, and protected or enhanced. Corresponding policies 2.2.3-2.2.6 address the identification and management of Outstanding Natural Features (**ONF**)/Outstanding Natural Landscapes (**ONL**) and special amenity landscapes. Schedule 4 of the pRPS sets out criteria for the identification of ONFs/ONLs, and landscape assessment matters for those same areas, to guide decision makers when considering proposals for activities within identified ONFs/ONLs.⁸

Strategic Direction objectives and policies

10. A number of objectives and policies that were the subject of Hearings Streams 1A and 1B are of relevance to the Rural Chapters.⁹ Some matters or issues are covered in the Council's reply version of Chapter 3 and it is therefore unnecessary for those matters to be specifically or separately addressed

⁷ Mr Barr, section 42A report, Chapter 33, paragraph 5.1(d).

⁸ Mr Barr, section 42A report, Chapter 33, paragraph 5.1(e) and paragraph 5.1(h)(ii).

⁹ In particular Objectives 3.2.1.6, 3.2.2.1, 3.2.4.1, 3.2.4.2, 3.2.4.3, 3.2.4.4, 3.2.4.7, 3.2.5.1, 3.2.5.2, 3.2.5.3, 3.2.5.4, 3.2.5.5, 3.2.7.1, 3.2.7.2, and 3.2.8.1, and the related policies, from revised Chapter 3 attached to the Council's right of reply for Hearings Stream 1A and 1B.

through the Objectives and Policies in the Rural Chapters. For example, this includes provisions relating to infrastructure and utilities (these are submitted to be adequately provided for under Objective 3.2.8.1.¹⁰). Strategic Direction Objective 3.2.2.1 is also relevant in that it seeks to ensure urban development occurs in a logical manner (in particular to promote compact urban form and to protect the District's rural landscapes from sporadic and sprawling development).

11. Specifically, the objectives and policies in the Indigenous Vegetation and Biodiversity chapter have been redrafted to align with the Chapter 3 Strategic Direction objectives. This ensures that the PDP is intended to maintain the District's indigenous biodiversity, while recognising and reconciling two potentially divergent aspects:

(a) the efficient use of land and overarching purpose of the RMA to promote the sustainable management of natural and physical resources; and

(b) that much of the District's low lands are the most highly modified and are favoured for land development, yet are identified as Land Environments New Zealand (**LENZ**) land environments that have 20% or less remaining in indigenous cover.

12. LENZ is a national classification of environments mapped across New Zealand's landscape. The basis of the mapping is described in detail in Mr Davis' evidence.¹¹

Part 2 of the RMA

13. Of particular relevance to this hearing is section 6 of the RMA which sets out the matters of national importance that shall be recognised and provided for, in particular:

(a) section 6(a), the preservation of wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;

¹⁰ For example, Mr Barr considers that the Strategic Objective Chapter provides sufficient framework for infrastructure and utilities, therefore separate objectives and policies in the Rural Chapters are not required (see paragraph 8.23 of the section 42A Report for Chapter 21 Rural).

¹¹ Mr Davis' evidence, section 4.

- (b) section 6(b), the protection of ONFs and ONLs from inappropriate subdivision, use and development;
- (c) section 6(c), the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (unlike other section 6 matters, section 6(c) does not include the qualifier "from inappropriate subdivision, use and development");
- (d) section 6(d), the maintenance and enhancement of public access to and along lakes, and rivers; and
- (e) section 6(e), the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other Taonga.

14. Section 7 sets out other matters that shall be had particular regard to. All are relevant to the Rural Zone, and the following especially so:

- (a) the efficient use and development of natural and physical resources;
- (b) the maintenance and enhancement of amenity values;
- (c) intrinsic values of ecosystems;
- (d) maintenance and enhancement of the quality of the environment;
- (e) any finite characteristics of natural and physical resources; and
- (f) the protection of the habitat of trout and salmon.

RURAL - CHAPTER 21

15. The Rural chapter develops detailed policies that relate to the relevant Goals and Strategic Direction objectives outlined in Chapter 3 of the PDP. The policies seek to ensure that growth can be accommodated in a sustainable way that does not have significant impacts on the natural values that draw people to the area, and drive the local economy.

16. The Rural chapter also expands on Strategic Goal 5 and the Landscape chapter, by providing the landscape assessment matters for ONFs/ONLs (matters of national importance), and the Rural Landscape Classification.
17. Within the Rural Zone there are 2 underlying sub zones – the Ski Area Sub Zone (which enables the continued development of ski area activities) and the Rural Industrial Sub Zone (which provides opportunities for industrial and yard based activities that support rural activities). There has been some attention on the former through submissions, but very little on the latter.
18. Key matters that are understood to be resolved through recommendations made in Mr Barr's evidence are:
- (a) farm buildings (Issue 3): reduction of the permitted density from 1 building per 25ha to 1 building per 50 ha;¹²
 - (b) other activities (Issue 6): Objectives 21.2.9 and 21.2.10 and the related policies have been amended to include wider recognition of other rural activities, and a new Policy 21.2.9.7 has been added to specifically identify the potential positive benefits of trails and support activities;¹³
 - (c) ski area activities within the ski area sub zones (Issue 7): changes to the definition of 'ski area activities' and a new definition of 'passenger lift systems' are recommended by Mr Barr.¹⁴ Ski Area Sub Zones are recognised as year-round destinations that have visitor accommodation.¹⁵ A new rule 21.5.X has been recommended for visitor accommodation as a restricted discretionary activity (subject to matters of discretion);
 - (d) informal airports (Issue 9): an exemption for the Department of Conservation for informal airports, except within 500m of a boundary;¹⁶ and

¹² Submission 145 (UCES). Mr Barr evidence, paragraphs 10.19 and 10.20.

¹³ Various submitters including 806 (QPL), 671 (Queenstown Trails Trust). Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 13.16 to 13.33.

¹⁴ Submitters 407 (Mount Cardrona Station) and 613 (Treble Cone Investments Limited). Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 14.16 to 14.21.

¹⁵ Submitters 610 (Soho Ski Area Limited), FS1229 (NZSki Ltd), 613 (Treble Cone Investments Ltd), 615 (Cardrona Alpine Resort Ltd). Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 14.30.

¹⁶ Submitter 373 (Department of Conservation). Mr Barr, section 42A Report, Chapter 21 Rural, at paragraph 16.34.

- (e) mining (Issue 14): the definition of 'exploration' has been inserted and the definition of 'mining activity' and 'prospecting' have been amended.¹⁷ The matters of control in Rule 21.4.31 have been amended to include reference to indigenous vegetation.¹⁸

19. Key areas of disagreement are understood to be:

- (a) farming activities and non-farming activities (Issue 1): the appropriate activity status for various activities (in particular farming activities but also visitor accommodation and tourism related activities, recreational activities and conservation activities);¹⁹
- (b) separation of buildings and activities (Issue 2): the appropriate setback of buildings from streams under Rule 21.5.4²⁰ and the appropriate setbacks for dairy farming related activities under Rule 21.5.5, 21.5.6 and 21.5.7;²¹
- (c) farm buildings (Issue 3): whether the ODP controlled activity regime should be reinstated;²²
- (d) residential activity (Issue 4): the activity status / need for rule 21.4.6 (requiring that more than one unit within a residential building platform as a non-complying activity)²³ and is a separate matter the activity status of subdivision and development in the ONL and ONF;²⁴
- (e) standards for structures and buildings (issue 5): requirements related to building colour and the maximum permitted size of buildings (see paragraphs **22(b)** and **22(c)** below for further detail);

¹⁷ Submitter 519 (New Zealand Tungsten Mining Company). Mr Barr, section 42A Report, Chapter 21 Rural paragraphs 21.11 to 21.20.

¹⁸ Submitter 706 (Forest and Bird). Mr Barr, section 42A Report, Chapter 21 Rural paragraphs 21.24.

¹⁹ Submitter 145 (UCES), Submitter 615 (Cardrona Alpine Resort Limited), Submitter 375 (Jeremy Carey-Smith), Submitter 407 (Mount Cardona Station). Mr Barr, section 42A Report, Chapter 21 Rural, at section 8.

²⁰ Mr Barr, section 42A Report, Chapter 21 Rural, at paragraph 9.9. There are various submitters both in support and opposed to this matter.

²¹ Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 9.12-9.38. There are various submitters both in support and opposed to these matters.

²² As requested by submitter 145 (UCES). Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 10.4.

²³ Submitter 414 (Clark Fortune McDonald & Associates Ltd). Mr Barr, section 42A Report, Chapter 21 Rural, at paragraph 11.11.

²⁴ Submitter 145 (UCES). Mr Barr, section 42A Report, Chapter 21 Rural, at paragraph 11.15 and 11.16.

- (f) other activities (Issue 6): a new definition of 'tourism activities'.²⁵ The limit of people for commercial recreation activities under Rule 21.5.21;²⁶
- (g) Wanaka Airport (Issue 7): whether a bespoke planning framework for Wanaka airport in the rural zone is appropriate or would be more appropriately addressed through other mechanisms,²⁷ and the activity status for the Runway End Protection Area;²⁸
- (h) informal airports (Issue 9): permitted activity standards for informal airports relating to the setback distances from roads and neighbouring properties, along with the restriction of flight numbers per week and noise related requirements;²⁹
- (i) surface of water on rivers and lakes (Issue 10): the location in the plan of provisions relating to activities on the surface of water,³⁰ the introduction of two new submitter requested policies regarding safety and protection of tourism activities,³¹ the wording of objectives and policies,³² and the activity status for non-motorised boating activities, the provision of public transport opportunities (wharves and jetties), and the operation of motorised boats on certain water bodies;³³
- (j) non notification of resource consent applications (Issue 11): this matter is supported by a number of submitters, however it remains in disagreement for those submitters in opposition;³⁴
- (k) landscape assessment matters (Issue 12): the content of the landscape assessment matters generally³⁵ (although these have

²⁵ Submitter 607 (Te Anau Developments Limited). Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 13.9 to 13.16.

²⁶ Submitter 122 (Skydive Queenstown Limited) seeks a higher limit that the notified 10 persons, while Submitter 489 (Bungy New Zealand and Paul Henry van Asch) seeks that the limit be 5 people. Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 13.12 to 13.13.

²⁷ Submitter 443 (QAC). Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 15.6 to 15.10.

²⁸ Submitter 443 (QAC) seeks permitted activity status. Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 15.11 to 15.15.

²⁹ Mr Barr, section 42A Report, Chapter 21 Rural, at section 16.

³⁰ Submitters 607 (Te Anau Developments Limited) and 621 (Real Journeys Limited). Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 17.2 to 17.4.

³¹ Submitter 621 (Real Journeys Limited). Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 17.5 to 17.7.

³² Various submitters. Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 17.7 to 17.23.

³³ Various submitters. Mr Barr, section 42A Report, Chapter 21 Rural, at paragraphs 17.25 to 17.57.

³⁴ Submitter 701 (Paul Kane) and 806 (QPL). Mr Barr, section 42A Report, Chapter 21 Rural, at section 18.

³⁵ Submitter 433 (QAC), 191 (Spark Trading NZ Ltd), 345 (J McQuilkin), 456 (Hogans Gully Farm Ltd), 251 (Powernet), 249 (Willowridge Developments Ltd), 608 (Darby Planning LP), 345 (John McQuilkin) and

been amended to an extent in the revised chapter which may resolve submissions);

- (l) other matters (Issue 13): matters relating to lighting and glare – although the changes recommended in the revised chapter may have resolved the submitters concerns,³⁶ as well as the appropriateness of Objective 21.2.8 relating to areas unsuitable for development;³⁷ and
- (m) mining (Issue 14): various amendments to objectives and policies relating to mining buildings and the location and extent of mining activities.³⁸

RURAL RESIDENTIAL AND RURAL LIFESTYLE – CHAPTER 22

- 20.** The purpose of the Rural Residential and Rural Lifestyle zones is to provide for residential living opportunities on the periphery of urban areas and amidst the Rural Zone. Both zones require a minimum allotment size, so that the character of the zone (including the buffer between rural and urban) can be maintained. The Rural Residential Zone has a higher density compared to the Rural Lifestyle Zone (1 household per 4000m² for the former compared to 1 household per 1 hectare for the latter).
- 21.** Key matters that are understood to be resolved through recommendations made in Mr Barr's evidence are:
 - (a) a decreased density in the Rural Residential Zone north of Lake Hayes;³⁹ and
 - (b) a change in activity status for Visitor Accommodation from non-complying to discretionary.⁴⁰

456 (Hogans Gully Farm Ltd). Mr Barr, section 42A Report, Chapter 21 Rural, paragraphs 19.19 to 19.25.

³⁶ Submitter 568 (Grant Laurie Bisset) and 383 (QLDC corporate submission). Mr Barr, section 42A Report, Chapter 21 Rural, paragraphs 20.6 to 20.10.

³⁷ Submitter 806 (QPL) and 636 (Crown Range Holding). Mr Barr, section 42A Report, Chapter 21 Rural, paragraphs 20.11 to 20.18.

³⁸ Various submitters. Mr Barr, section 42A Report, Chapter 21 Rural, section 21.

³⁹ Submission 26 (David Clarke). Mr Barr, section 42A Report, Chapter 22 Rural Residential and Rural Lifestyle, at paragraphs 16.1-16.14.

⁴⁰ Submission 497 (Arcadian Triangle). Mr Barr, section 42A Report, Chapter 22 Rural Residential and Rural Lifestyle, at paragraph 9.3.

22. Key areas of disagreement are understood to be:

- (a) density requirements - a number of submitters have requested that Rule 22.5.12.2, which requires a maximum of 1 residential unit on sites less than 2ha, is removed and a density limit of 1 residential unit per hectare is imposed;⁴¹
- (b) requirements related to building colour (similar to issues in the Rural Zone, Rule 21.5.15) – it is noted that changes are recommended to the rule in light of submissions, but it is not known at time of filing this synopsis whether this addresses submitters' concerns (it is worth mentioning that the rule will create a lower number of resource consents than the status quo, which requires a controlled activity consent for all buildings and alterations);⁴² and
- (c) deletion of the maximum permitted standard for size of buildings, which is 500m² (again this standard will create a lower number of resource consents than the status quo).⁴³

GIBBSTON CHARACTER ZONE – CHAPTER 23

23. The purpose of the Gibbston Character Zone is to provide primarily for viticulture and commercial activities with an affiliation to viticulture, within the confined space of the Gibbston Valley. The proposed zone is submitted to have improved on its equivalent in the ODP, and to be more enabling, in the following ways:

- (a) the construction of buildings within an approved platform is introduced as a permitted activity⁴⁴ (similar to the Rural Zone), and there is the ability for alterations to existing buildings not located within a building platform;⁴⁵

⁴¹ Mr Barr, section 42A Report, Chapter 22 Rural Residential and Rural Lifestyle, at, paragraph 8.4 and submitters referenced in footnote 8 of that evidence.

⁴² Submission 368 (Anna-Marie Chin and Phil Vautier), Submission 497 (Arcadian Triangle). Mr Barr, section 42A Report, Chapter 22 Rural Residential and Rural Lifestyle, at paragraphs 12.6-12.12.

⁴³ Submission 497 (Arcadian Triangle). Mr Barr, section 42A Report, Chapter 22 Rural Residential and Rural Lifestyle, at paragraphs 12.13-12.21. Note also Dr Read's evidence on this standard. He view is that the 500m² figure is too conservative, and that the appropriate permitted activity standard is 300m².

⁴⁴ Controlled activity in the ODP.

⁴⁵ Discretionary activity in the ODP.

- (b) landscape assessment criteria have been refined to reduce repetition, and to assist with investigation and consideration of whether a proposal is acceptable in terms of landscape character, visual amenity, the design and density of a proposal;
- (c) the construction and use of winery buildings up to 500m² is a controlled activity and over 500m² is a restricted discretionary activity;⁴⁶ and
- (d) industrial activities associated with wineries and underground cellars up to 300m² is a permitted activity.⁴⁷

24. Mr Barr has also made the following recommendations, which are understood to have addressed some submitters' concerns:

- (a) an exemption to the non-notified rule for controlled activity winery and farm building applications, where access is onto the State Highway (in Provision 23.6.2);^{48/49}
- (b) broadening of the range of activities contemplated in the Gibbston Character Zone, through amendments to Objective 23.2.1 and related policies;⁵⁰ and
- (c) frost fans are exempted from the height rule and the blades from the requirement to comply with colour controls.⁵¹

25. The following are the key outstanding matters for this zone:

- (a) a requirement for dwellings within 80m of the seal edge of the State Highway to also comply with minimum noise levels;⁵² and

⁴⁶ Restricted discretionary activity for the construction of any winery building in the ODP.

⁴⁷ Controlled activity in the ODP.

⁴⁸ Submission 719 (NZTA). Mr Barr, section 42A Report, Chapter 23 Gibbston Character Zone, at paragraph 7.13.

⁴⁹ Similar recommendations are made to Provision 21.6.1 in the Rural Zone.

⁵⁰ Submission 377 (Mt Rosa Wines). Mr Barr, section 42A Report, Chapter 23 Gibbston Character Zone paragraph 7.21.

⁵¹ Submission 12 (W. Murray). Mr Barr, section 42A Report, Chapter 23 Gibbston Character Zone paragraphs 8.12 to 8.18.

⁵² Submission 719 (NZTA). Mr Barr, section 42A Report, Chapter 23 Gibbston Character Zone paragraph 7.10 - development rights are limited to farming and industrial activities associated with viticulture, so noise sensitive activities are not likely to establish as of right and the rule is not necessary.

- (b) recognition of regionally significant infrastructure within objective 23.2.1, which instead sets out that viticulture is a key land use of the Zone – although the objective has been softened in response to other submissions which may address Transpower's concerns.⁵³

NEW ZEALAND FIRE SERVICE (NZFS) (SUBMISSION 438)

26. This relief is addressed separately in these submissions as it relates to the Rural, Rural Residential, Rural Lifestyle and Gibbston Character chapters. The NZFS has sought that compliance with the NZFS Code of Practice SNZ PAS 4509:20035 (in relation to water supply and access in non-reticulated areas) be a permitted standard in each of these zones.
27. For the Rural⁵⁴, the Rural Lifestyle⁵⁵ and the Gibbston Character⁵⁶ zones, Mr Barr has rejected the relief sought on the basis that the requirement is unnecessary and is already covered through other mechanisms (namely the Memorandum of Understanding between the Council and NZFS). In addition, he considers that this matter is best left to current practice that firefighting provision and design is undertaken through either subdivision or through a land use resource consent.
28. However, for the Rural Residential Zone Mr Barr has recommended a change to the provisions to recognise that requirements relating to firefighting and water supply may not be captured in all situations (given buildings can be built as a permitted activity, without a previous subdivision or land use consent granted). The updated provision 22.5.X at Table 2: Standards Rural Residential and Rural Lifestyle Zones contains the essential elements of the Code of Practice and the Memorandum of Understanding between the QLDC and NZFS.⁵⁷ The recommended rule is considered to provide more certainty and be more practicable than the rule recommended by the NZFS.

INDIGENOUS VEGETATION AND BIODIVERSITY – CHAPTER 33

29. One of the key changes recommended by the Council in response to the DoC and Forest and Bird submissions, is the removal of the word 'compensation'

⁵³ Submission 805 (Transpower). Mr Barr, section 42A Report, Chapter 23 Gibbston Character Zone paragraph 7.22.

⁵⁴ Mr Barr, section 42A Report, Chapter 21 Rural, at paragraph 20.5.

⁵⁵ Mr Barr, section 42A Report, Chapter 22 Rural Residential and Rural Lifestyle, at paragraph 16.4.

⁵⁶ Mr Barr, section 42A Report, Chapter 23 Gibbston Character Zone, at paragraph 7.17.

⁵⁷ Mr Barr, section 42A Report, Chapter 22 Rural Residential and Rural Lifestyle, at paragraph 16.8.

from Policy 33.1.1.8 as notified, to ensure that 'compensation' and 'biodiversity offsetting' are not misconstrued as being the same.

- 30.** The Environment Court in *Day v Manawatu-Wanganui Regional Council*⁵⁸ has recently held that 'offset' means:

A measurable conservation action designed to achieve no net loss and preferably a net gain of biodiversity on the ground once measures to avoid, minimise and remedy have been implemented.

- 31.** In the Council's submission, biodiversity offsetting is appropriately provided for by Policy 33.2.1.8 of the revised chapter, which requires, among other things, that:

- (a) works will only be considered to be a biodiversity offset when avoidance, remediation and mitigation have occurred (or can be shown to not be possible) and that any biodiversity offset is additional to these; and
- (b) proposed biodiversity offsets must contain an explicit loss and gain calculation and should demonstrate the manner in which no net loss, and preferably net gain, can be achieved.

- 32.** The following are understood to be the key outstanding matters for the indigenous vegetation and biodiversity chapter:

- (a) definitions - whether the application of water where it would constitute clearance in certain circumstances associated with dryland cushion field plants⁵⁹ and over-sowing should be included in the definition of 'Clearance of Vegetation', and whether a definition of 'biodiversity offsetting' and 'no net loss' should be included in Chapter 2;⁶⁰

⁵⁸ [2012] NZEnvC 182, at page [3-43].

⁵⁹ Submissions 373 (DoC) and 706 (Forest and Bird). Mr Barr, section 42A Report, Chapter 33 Indigenous Vegetation and Biodiversity paragraphs 9.14-9.20.

⁶⁰ Submission 373 (DoC). Mr Barr, section 42A Report, Chapter 33 Indigenous Vegetation and Biodiversity, Executive Summary and at paragraphs 9.12-9.13.

- (b) the use of the Land Environments of New Zealand Threatened Environment Classification System maps to identify acutely and chronically threatened environments;⁶¹
- (c) the appropriateness of a lower area of permitted indigenous vegetation clearance, from 5000m² to 500m²;⁶²
- (d) whether the 'significance criteria' identified in PDP Policy 33.2.10 should determine permitted activity status and, if so, whether there would be any permitted removal of indigenous vegetation in areas that qualify as an SNA;⁶³
- (e) whether a specific exemption is appropriate for indigenous vegetation clearance within the Ski Area Sub Zones, where the land is in the DoC estate (both National Park or DoC reserve) and land administered under the CPA approval has been obtained by DoC;⁶⁴
- (f) whether a provision be added, which states that ONLs and SNAs are not considered to be 'natural areas' for the purposes of the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (**NESETA**);⁶⁵ and
- (g) site specific relief relating to SNAs.⁶⁶

WILDING TREES – CHAPTER 34

- 33.** The purpose of the Wilding Trees chapter is to prevent the spread of wilding exotic trees, which is the term used for the natural regeneration or seedling spread of exotic trees, occurring in unintended locations and not managed for forestry production.

⁶¹ Submissions 784 [Jeremy Bell Investments]. Mr Barr, section 42A Report, Chapter 33 Indigenous Vegetation and Biodiversity, Executive Summary and at paragraph 12.45.

⁶² Submissions 784 [Jeremy Bell Investments]. Mr Barr's evidence on this matter can be found in his Executive Summary and at paragraph 12.45 of the section 42A report.

⁶³ Submissions 373 (DoC) and Further Submission 1040 (Forest and Bird). Mr Barr, section 42A Report, Chapter 33 Indigenous Vegetation and Biodiversity paragraph 9.21 to 9.28.

⁶⁴ Submissions 572 (NZ Ski), 610 (Soho Ski), 608 (Treble Cone Investments). Mr Barr, section 42A Report, Chapter 33 Indigenous Vegetation and Biodiversity paragraph 12.30.

⁶⁵ Submission 805 (Transpower). Mr Barr, section 42A Report, Chapter 33 Indigenous Vegetation and Biodiversity paragraph 12.4.

⁶⁶ Submissions seeking to delete an SNA completely, will be heard in Hearing Stream 2 as that will involve changes to the text in Chapter 33 as well as ancillary changes to the planning maps. Panel's Fifth Procedural Minute, 19 April 2016. Mr Barr, section 42A, Chapter 33, paragraph 4.4 and 4.5.

- 34.** Key changes recommended by Mr Barr in his evidence are:
- (a) allow for wilding trees with control measures - recommended policies 34.2.1.2, 34.2.1.3 and recommended rule 34.4.2 allow for planting of Radiata pine as a discretionary activity (note that submitters have supported the notified rule, which makes planting of Radiata pine a prohibited activity);⁶⁷ and
 - (b) additions of species to Rule 34.4.1 being the list of prohibited species.⁶⁸
- 35.** The following are understood to be the key outstanding matters for this chapter:
- (a) whether wilding tree spread affects water yield;⁶⁹ and
 - (b) discretionary activity status for the planting of Radiata pine.

WITNESSES

- 36.** The Council will call the following evidence:
- (a) Mr Craig Barr, Planner, who is the author of all five section 42A reports, which address:
 - (i) the objectives and policies of the chapters and the resource management issues that the chapters respond to; and
 - (ii) submissions on each chapter;
 - (b) Dr Stephen Chiles, on acoustic matters related to informal airports (relevant to the Rural chapter only);
 - (c) Dr Marion Read, on landscape matters relevant to the Rural, Rural Residential, Rural Lifestyle, and Gibbston Character chapters;

⁶⁷ Submissions 9 (Terry Drayton), 117 (Maggie Lawton), 286 (Urs & Rosalie Metzger), 332 (Rachel Brown), 386 (Lisa & Greg Johnston & Inwood), 458 (Simon Beale), 600 (Federated Farmers of New Zealand), 784 (Jeremy Bell Investments Limited), 829 (Anderson Branch Creek Ltd), FS1209.

⁶⁸ Submissions 501 (Woodlot Properties Limited), 289 (A Brown), 281 (Wakatipu Reforestation Trust) 339 (Evan Alty), 373 (Department of Conservation), 706 (Forest and Bird NZ), and FS1255.

⁶⁹ Submissions 339 (Evan Alty), 706 (Forest and Bird NZ) - Mr Barr has rejected this on the basis that plantings of trees large enough to affect water yield would be forestry activity.

- (d) Mr Glenn Davis, an ecologist who gives evidence on the Indigenous Vegetation and Biodiversity, and Wilding Trees chapters; and
- (e) Mr Philip Osborne, an economist who provides evidence in relation to economic matters for the Rural and Indigenous Vegetation and Biodiversity chapters.

37. At the time of filing this synopsis, evidence from submitters has not yet been filed. In opening legal submissions, counsel will address key areas of contention raised through this evidence. For responses to specific submissions, the tables in Appendix 2 of each Officer's Report sets out whether the Council has accepted, accepted in part or rejected each of those submission points.

DATED this 21st day of April 2016



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