

Before the Queenstown Lakes District Council

Under the Resource Management Act 1991

In the matter of a submission under clause 6, Schedule 1 of the Resource Management Act 1991 on Stage 3B of the Queenstown Lakes Proposed District Plan

**Wayfare Group Limited (#31024)**

Submitter

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**Legal Submissions for Wayfare Group Limited**

18 June 2021

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## Introduction and Executive Summary

- 1 These legal submissions are presented on behalf of Wayfare Group Limited (**Wayfare**) in respect of the proposed rezoning of the Walter Peak Site (**Site** or **Walter Peak**) as 'Walter Peak Tourism Zone'.
- 2 Simply put, this Site has, since before the inception of the Resource Management Act 1991 (**RMA**), always been zoned and recognised as an appropriate location for tourism and visitor industry activities.<sup>1</sup> Walter Peak Station, once established through European colonisation / survey and sale, was never regarded 'just' as a high-country station but also as a place along the lake to visit and that regularly hosted visitors. It has first and foremost, long been used as a premier destination for locals, visitors and tourists<sup>2</sup>. It is submitted that secondary to this, although still of course important, it is recognised as part of a wider landscape with intrinsic values and which is enjoyed as part of a scenic (although distant) view for the public, when looking from the Lake and from developed areas of Queenstown and surrounds.
- 3 The Wayfare vision is to continue to support this developed cultural and visitor legacy, to foster its story and allow the history of the high country farm as a premium tourist destination to thrive, despite the Council's apparent intention through the Queenstown Lakes Proposed District Plan (**PDP**) to disincentivise such development and diversification.
- 4 The PDP, which seeks to zone the Site Rural Visitor Zone (**RVZ**), represents a significant loss of opportunity and certainty through down-zoning. The proposed RVZ from the Council is not only an anomaly for the Site itself (when considering past and present development and zoning history) but also across the rest of the Plan.<sup>3</sup>
- 5 It is submitted that **consistency** is very important, beyond equity, in order to maintain conditions to promote sustainable management and the economic, social, and cultural wellbeing of people and communities. **Continuity** should be reflected in maintaining social and economic conditions.

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<sup>1</sup> Refer context included in Mr Farrell's evidence in chief, at [15]–[16], noting that: Tourism development / activity has been engrained in the district's local planning framework for Walter Peak since it was zoned Rural T (Tourist Development) in the 1978 notified Lakes Queenstown Wakatipu Combined District Scheme

<sup>2</sup> Evidence in chief of Ms Ailsa Cain, at [49].

<sup>3</sup> Comparing in particular the similar intentions, locations, and outcomes for Ski Area Subzones, and the comparatively restrictive Rural Zone (which does not offer the same development objectives of the RVZ).

- 6 The Submitter's proposal will:
  - (a) Reflect the history and development of the Site, its cultural and historical associations;
  - (b) Protect landscape values which contribute to the wider ONL within which the Site sits from inappropriate development, while acknowledging it is appropriate for some changes to landscape character to occur; and
  - (c) Provides for economic diversity and benefits in the context of section 32, which are greater than what the Council's proposed RVZ for the Site will achieve.
- 7 Conversely, the Council's proposed down-zoning of the Site is effectively rendering a distant and unjustified perceived public benefit as of predominant importance<sup>4</sup>. Critically, this is not based upon any actual (rather than perceived) landscape and development outcomes that have occurred on the Site, publicly raised concerns, or public submissions.

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<sup>4</sup> Referring principally to the evidence of Ms Mellsop and Mr Mathee that the ONL will not be protected and Ms Mellsop's view that that development would result in significant adverse effects on the naturalness, expressiveness, scenic (including visual coherence) and shared and recognised values of the northern Eyre Mountains ONL.

- 14 Economic effects and alternative uses of land
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### **Background and historic use and development of site**

- 16 Mr Schofield covers the detailed planning history of the Site and is not repeated here. In the past there has been extensive development either permitted through zoning or consented for the Site which has not been fully implemented. The Submitter does not rely on those previous development rights as a baseline assessment for this rezoning, but as per case law discussed below, this is relevant context for the panel to consider in determining the most appropriate zoning outcome.
- 17 Wayfare had a legitimate expectation that the PDP plan provisions would not be changed (or at least not in such a significant way as is currently proposed) without a compelling public interest and reason requiring the change. As detailed in the evidence of Mr Schofield and Mr Farrell, such a public interest has not been cited in Council's s32 analyses supporting the down-zoning. There was no problem or imminent threat.
- 18 The planning framework for management and development of Walter Peak in the Operative Rural Visitor Zone (and previous Tourism zonings) have been in place for decades, and as noted in the evidence of Mr Norris, Ms Black, and Mr Bridgman, have been relied on in terms of investment into the Site and business planning. While the longevity of a provision does not necessarily justify its retention, it is submitted that it could give rise to a legitimate expectation that development can continue proceed to the extent allowed by the rules except for some compelling public interest. Expectation should not be destroyed to provide a distant public benefit<sup>5</sup>. Where the existing controls (or in this case, those proposed by the Submitter) satisfy Part 2 of the Act, the relevant higher order planning provisions, and the section 32 analysis, there is no reason to change them.
- 19 It is perhaps this longevity of the historical development rights and zoning which also indicates to the public at large the development expectations for the Site. Thus no submissions were received in support of down-zoning the Site, and no further submissions were received on the Wayfare submission proposal to reinstate the more enabling framework. This further evidences

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<sup>5</sup> The only such benefit relied on appears to be that of visibility to the site from public spaces, including from developed areas such as the Town Centre of Queenstown Bay, Wilsons Bay, the Glenorchy Road and the lake itself.

the lack of a 'problem' or 'compelling public interest' justifying a down-zoning.

- 20 The down-zoning of significant portions of the Site, via an overlay of landscape protection, together with significantly tighter development provisions and performance standards, as well as higher order provisions restricting development within (non-Exclusion Zone) ONLs, amounts to what will essentially render the land incapable of reasonable use. Although case law on s85 often centre on 'open space zoning', when analysing provisions the subject of such cases, it is submitted that the present context proposed by the Council's RVZ is a not dissimilar, rendering much of what is meant to be in a more enabling visitor zone non-complying, in stark contrast to the surrounding rural general zone's general discretionary regime.
- 21 It is submitted that it is a long-established general legal principle that private land should not be zoned for reserve purposes unless the landowner agrees, or the land is unsuitable for development.<sup>6</sup>
- 22 The Courts have found that a private landowner would not be able to make reasonable use of land zoned for open space and as a general principle, it is not the role of private landowners to provide for general open space and the recreational needs of the community.<sup>7</sup> And that the appropriate method of establishing public open space is through designation or acquisition, not zoning.<sup>8</sup>
- 23 In the *Capital Coast Health* case the Court did not regard the matters of landscape and heritage or the history of the site justified a departure from the basic proposition that it is not the role of private landowners to provide open space for the community.
- 24 I encourage the Panel to critically evaluate the differences in reality between an open space zoning<sup>9</sup> and potential development that could go ahead in a 'high landscape sensitivity' overlay of an ONL, adjacent to an ONF, in the context of the QLDC PDP. Development under such a scenario is complex and difficult, and is tantamount to essentially regarding the Site as reserve for people to only be able to look upon to enjoy.

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<sup>6</sup> *Capital Coast Health Ltd v Wellington City Council Decisions W101 /98* (interim decision) and W4/2000 (final decision).

<sup>7</sup> *Ibid*, Interim Decision, at [165].

<sup>8</sup> *Ibid*, at [185].

<sup>9</sup> With an intent to avoid structures and maximize open space

- 25 In the Environment Court decision, *Golf (2012) Limited v Thames-Coromandel District Council*, the 'reasonable use' of land does not mean its financially optimum return.<sup>10</sup> But in this particular case, the significant retraction of development opportunity across such a large area of land, in the context of an already established tourism destination, is a weighty and relevant factor.
- 26 It is important to keep the burden on a private landowner in proportion to the public benefit of the restriction in the PDP, so that the restriction does not preclude reasonable economic use of the land, and the failure of the expert witnesses called by the Council to address economic effects / lack of this impact analysed in the s32 report is notable. Unlike many of the cases cited in the *Golf* decision which were unsuccessful in pursuing a s85 argument, it is relevant that Wayfare Group purchased this land in reliance of a zoning which enabled development that fitted with their strategic objectives for the land, and had it been known such a down zoning would occur, this might have affected or changed that long term investment decision.
- 27 In *Golf*<sup>11</sup> the Court considered that the planning history of the site was a relevant matter (in the context of considering a s85 argument advanced in respect of proposed plan provisions). This decision further went on to discuss the extent to which past planning provisions are relevant:
- 28 On considering Counsel's submission that the proposed plan needed to be 'forward looking' the Court noted:

[127] A fuller discussion of the consideration of the future under the RMA was undertaken by the Court of Appeal in *Queenstown-Lakes District Council v Hawthorn Estate Ltd & Anor*. That discussion, describing as artificial an approach that would limit enquiries to a fixed point in time, refers to other provisions in the RMA which entail considerations of what has occurred in the past. Notably, the term environment is found throughout the RMA. The definition of that term in s 2 RMA includes a range of things that do not just exist in the present but have come into existence over time, such as ecosystems and communities, natural and physical resources (as further defined, notably to include structures), amenity values (also further defined to mean the qualities and characteristics of an area that contribute to people's appreciation of its various

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<sup>10</sup> *Golf*, [148]

<sup>11</sup> *Golf (2012) Limited v Thames-Coromandel District Council* [2019] NZEnvC 112

attributes) and the broad range of human conditions which affect or are affected by those aspects of the environment. This broad sense of the environment plainly requires an appreciation of how the environment has come to be in the form it is.

[128] The passage in Shirley picks out the prospective elements of risk analysis in the definition of effect in s 3(e) and (f). Also integral to any analysis of effects are any past effect in s 3(c) and any cumulative effect which arises over time or in combination with other effects in s3(d). These aspects of effect necessarily require consideration of what has happened in the past so far as it is relevant to planning for the future.

[129] Even for the particular purpose of comprehending what the future environment may be like and making plans to promote sustainable management of resources going forward, an understanding of the past is at least desirable, otherwise those who cannot remember the past are condemned to repeat it.<sup>12</sup>

[130] It is true that there is no presumption in favour of the proposed plan as notified or as amended by the Council's decisions on submissions. As the Planning Tribunal held in *Leith v Auckland City Council*, quoting with approval from Palmer's *Local Government Law in New Zealand*: As a matter of principle an appeal to the Planning Tribunal is a true hearing de nova, with a complete rehearing of all evidence afresh . ... Accordingly, in appeals relating to content of a regional or district plan ... no onus rests on the appellant to prove that the decision of the body at first instance is incorrect. The appeal is more in the nature of an inquiry into the merits, in accordance with the statutory objectives and existing provisions of policy statements and planning. There is no presumption that the council decision is correct. Where an appeal relates to a rule, which brings into question a policy statement or other plan provision, there is no presumption that the related policy, plan, or rule is necessarily appropriate or correct. This statement has been confirmed by the Court many times since and remains correct.

[131] The Planning Tribunal in *Leith* also held that previous plan provisions do not affect the assessment of appropriate provisions in a proposed

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<sup>12</sup> George Santayana, *The Life of Reason* (1905), Vol. 1 *Reason in Common Sense*, Chap. XII *Flux and Constancy in Human Nature* , "Continuity necessary to progress."

plan, so that the evaluation of a proposed plan under s 32 RMA is not based on the operative plan. Although it is possible that the provisions of an earlier plan may have some value in the consideration of alternatives (in terms now of s 32(1)(b)(i) and the identification of other reasonably practicable options for achieving the objectives of the proposed plan), that is not assured. In preparing a district plan, a council is required to start with a clean sheet and focus on the purpose of the RMA. While that conclusion in Leith was in the context of a proposed plan notified shortly after the RMA came in to force and highlighted the differences between that Act and the Town and Country Planning Act 1977, the principles remain the same now.

[132] Notwithstanding the prospective view that needs to be taken both when preparing plans and when assessing applications for resource consent, one must also bear in mind that the environment in which plans and applications are considered exists as a result of what has happened in the past. The assessment of effects on the environment of allowing an activity must be in terms of the existing environment. Certainly, a plan must be forward-looking, but it must also be based on the existing environment. As a result, a planning or resource management assessment is never fully zero-based.

**(Citations omitted)**

- 29 After making these findings, the Court went on to consider that the development history and previous planning provisions for the Matarangi peninsula were relevant in considering how the site came to be developed and how it relates to the rest of the environment, concluding that previous planning provisions may also be identified as 'another option' in the context of a s32 analysis.
- 30 In considering this evaluation, the Court noted at [148] that 'There must always be at least a general regard to economic well-being as an element of the sustainable management of natural and physical resources.' Although in that case the appellants had not provided economic evidence on devaluation and comparative development options. In this rezoning, you have evidence before you from both a company perspective and an expert economics point of view that:
  - (a) Having cycle / hiking trails / horse-trekking / picnic locations provide positive benefits for people's well-being -day activities.



- (b) Provides a large venue that can accommodate tour groups & the likes of cruise ship parties – offering attractive to appeal to cruise ship passengers.
  - (c) Employment and funding of maintenance of TSS Earnslaw which might not otherwise be viable. Together Walter Peak and the TSS Earnslaw are a substantial business and drawcard attractions for Queenstown, meaning that other local businesses and the region as a whole benefit from their continued successful operation.
  - (d) Due to both global and local factors the nature of tourism is changing. As a significant business within the sector, the nature of Walter Peak's tourism offering (including the TSS Earnslaw) will also need to evolve to meet ever changing consumer preferences and macro conditions.
  - (e) Substantial investment has been made in Walter Peak, and it is highly likely that significant further investment will be needed. The precise scope and timing of this investment cannot be determined presently, however in order to justify that investment, it is critically important that there is an assured planning framework, especially given the fact that many investments will deliver no immediate or direct benefit, and instead are dependent on subsequent investments also being able to be undertaken.
- 31 It is therefore submitted that the Panel should consider, if the question is about public rights rather than private interest, what is the public interest advanced here in the Council's proposed plan? It is essentially protecting distant and fleeting views to a private landholding, by stagnating development in the same way as one might expect to see through open space or recreation zone provisions (but the latter usually affords at least an access and enjoyment element). This is very much a 'look but don't touch' outcome.
- 32 The *Golf* case went on to consider that downzoning of the Matarangi Site was appropriate, but this was in the instance of no economic evidence presented to weigh into a s32(1)(b) or s7(b) evaluation. As was discussed by the Court at [15], efficient use and development can include protection of a resource for its intrinsic values. This could be so where those values are unquantifiable and incommensurable with other values, if otherwise development of the valuable resource would be regarded as wasteful. Importantly in this Walter Peak rezoning, the 'efficiency' consideration can be guided by:

- (a) The landscape conclusions from Mr Skelton that the Site is capable of absorbing additional development as proposed by the Submitter<sup>13</sup>;
- (b) That such development would protect those values which contribute to the wider landscape being outstanding<sup>14</sup> (compared to the 'intrinsic' values expressed in *Golf*);
- (c) The economic and company evidence that the Submitter's proposal presents a greater financial return (and in turn benefits flow from the private to public realm)<sup>15</sup>;
- (d) Absence of any suggestion or evidence that the Submitter's proposal is a 'wasteful' use of a resource; and
- (e) The distinction from the *Golf* case, which noted the site the subject of downzoning was already substantially developed and has finite characteristics – compared to Walter Peak and Mr Skelton's evidence of capacity to absorb further development.

### **The Wayfare vision for Walter Peak**

- 33 As stated in Ms Black's evidence at [84] although significant development has been drawn up and consented in the past, the submitters are not relying on that as a baseline or analogy for future development intentions (although, as discussed above, that is a relevant contextual and s32 comparative matter).
- 34 COVID-19 has had a significant impact on tourism in this District and has resulted in the Wayfare Group re-examining the company's direction and alignment. It has a long-term commitment to owning and operating Walter Peak as a key tourism attraction in the Queenstown region and despite the hard hitting effects on tourism as a result of Covid, it continues to exemplify this. Wayfare Group has demonstrated that it has been a responsible owner, ensuring that its investment preserves and enhances the natural landscape and enables visitors to enjoy an immersive high country farm experience where they learn about New Zealand's history and rural economy. Its historical record is important because it demonstrates

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<sup>13</sup> Evidence in Chief of Mr Skelton, at 47.

<sup>14</sup> Ibid, at [7]; I consider the site has the ability to absorb appropriate development while maintain the values that contribute to the natural landscape being outstanding';

<sup>15</sup> Evidence in Chief of Mr Bridgman at 42-45, 52-57, 62-63

credibility and means greater reliance can be placed on its intentions for the Property and the fact that it will continue to be a responsible owner.

- 35 Development according to the Wayfare vision will seek to ensure that Walter Peak continues to be recognised as a comprehensive, integrated, self-sustaining, and unique tourist attraction that provides visitors with the opportunity for special insights into New Zealand's history and rural economy whilst affording them the opportunity to have an immersive experience in a high country sheep station on the shores of Lake Wakatipu.
- 36 Walter Peak offers a forum, close to Queenstown, where it can trial and showcase the company's sustainable tourism initiatives, alongside existing product offerings.
- 37 The vision statements contained in Mr Norris's evidence at [12] further evidence the stewardship reputation and commitment from this company, and how this has been incorporated to land management and development for Walter Peak to date. Continued inappropriate zoning for the Site will significantly jeopardise the above economic, social, cultural, and conservation benefits which can be offered by this company in relation to the Site:

Through the implementation of these company visions and values, Wayfare strives to continue to offer high quality and high value tourism products in the District. In particular, this has always been achieved through reinvesting in our company to secure the company's future. Yet without a planning framework that provides for certainty, it is difficult for us to plan for the necessary ongoing company investment, and without this, the business objectives will be compromised. Which could potentially lead to stagnation, loss of market position, loss of employment and economic opportunities for the District, which (despite calls for further diversification) at this time still relies heavily on tourism.<sup>16</sup>

### **Council's rezoning criteria and decision making framework**

- 38 The key legal elements for the Panel's decision making framework in the context of a rezoning submission have been traversed by Counsel (although before differently constituted hearing panels) numerous times and are not repeated here.

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<sup>16</sup> Evidence in Chief of Mr Norris, at [14].

- 39 Those key legal principles have been copied to **Appendix 1** in these submissions for the Panel's reference. Of critical importance to this hearing, the key elements of the legal decision making framework are that:
- (a) The ODP provisions and previous planning provisions for the Site are a relevant contextual matter, and provide a relevant alternative for consideration in a section 32 analysis;
  - (b) The realities of the Site, including present and planned development are relevant, and practically speaking, the Panel should consider the effectiveness and efficiency of a new regime which will render previously lawfully established and anticipated activities suddenly entirely contradictory and inconsistent with the planning framework within which they sit. This is problematic for existing activities and activities which can be appropriately expanded and enhanced to continue to provide for sustainable use and development of land resources.
  - (c) There must be a very strong and clear policy need to remove existing established opportunities under the current planning regime, and the Panel should be guided by the principle of the least restrictive framework which can be employed and which gives effect to objectives and policies of the PDP (and in this instance, because of the unconfirmed nature of those provisions, the RPS, and Part 2 of the Act).
- 40 In addition to these principles from rezoning case law, Counsel has also included the Council's rezoning principles, as amended through Independent Hearing Panel reports, as **Appendix 3**. Mr Mathee's s42A report states that beyond those rezoning principles, he has residual core issues with the rezoning request. Given there appears to be no outstanding issues with the remaining rezoning principles, the following section of these submissions instead focuses on those core issues.

### **Council outstanding issues and Wayfare responses**

#### ***Natural Hazards***

- 41 Council's proposed Hazard Management Area as per Mr Bond's rebuttal evidence, follows the location of Area B per the Golder Report appended to Mr Meldrum's evidence for the Submitter. This area contains a significant amount of built infrastructure, including which is used for residential and living purposes (e.g. staff accommodation). The submitter therefore has accepted proposed policy 46.2.2.9 from Mr Mathee's rebuttal to recognise

the need for ongoing management and mitigation of natural hazards in this location, and this is coupled with a new controlled activity rule for buildings.

- 42 As per Mr Meldrum's evidential finding that risks from natural hazards in that location are low, the Submitter considers such new provisions adequately resolve or address any resource management 'issue'. Furthermore, as discussed in Ms Black's evidence<sup>17</sup> there are extensive company protocols and considerations, coupled with matters of control proposed<sup>18</sup> which can adequately and safely address any residual risks. Wayfare is a company that has significant experience managing risk in much more extreme and dynamic environments than Walter Peak. It is highly attuned to its responsibility and liability as an employer and host to visitors and has protocols in accordance with its health and safety obligations that address in a much more meaningful way than a resource consent could, any residual risk arising from natural hazards.
- 43 The Submitters acknowledge a greater risk posed in the Natural Hazard BRA areas, and recognise a need for greater control of potential adverse effects in these locations, particularly of residential activities. A new avoidance policy for new living activities has been included, coupled with a non-complying activity status. Other (non-living buildings) have been included in a restricted discretionary rule, so as to recognise the potential for new and evolving built activities which might be appropriate, or allow for more detailed site specific measures and practices to be proposed in the future, which could adequately address natural hazards risks to an acceptable level.
- 44 The new non-complying rule is proposed and suggested avoidance policy for living activities provides an achievable (albeit rigorous) consenting pathway to address natural hazards risks.
- 45 Therefore the Submitter proposes:

X.2.1.14 Ensure the ongoing management and maintenance of existing hazard mitigation measures, including management systems and evacuation plans, where new or relocated buildings within the Hazard Management Area rely on those measures.

X.2.1.15 Avoid development for new living purposes (including visitor accommodation) in the Natural Hazard Building Restriction Areas.

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<sup>17</sup> Evidence in Chief of Ms Black, at [88]-[98].

<sup>18</sup> See amended zone provisions appended to these Submissions.

### ***Controlled activity regime and protection of the ONL values***

- 46 A remaining concern from Council's planning and landscape experts in this hearing is the opposition to a (generally) controlled activity regime for the site. The following section of these submissions addresses how much control Council actually has over development in a controlled activity framework, as well as the respective costs and benefits of such a regime as compared to other activity statuses.
- 47 A general theme of the PDP that Counsel has observed is the move away from controlled activities towards discretionary and restricted discretionary activities. Counsel was involved in debate in the context of the Subdivision hearing topic 04 (before a differently constituted hearings panel)<sup>19</sup> which included significant evidence from planners, landscape architects, infrastructure experts, developers, and valuers, which all discussed the 'costs' of a regime change from controlled to restricted discretionary. The costs of such a regime change in activity status could be summarised as:
- (a) Significantly increasing uncertainty for developers and investors;
  - (b) Actual (rather than perceived) loss of value of land previously subdivisible as controlled activity, particularly in this case with a contemporaneous additional landscape overlay, therefore development not being facilitated through zone provisions themselves;
  - (c) Loss of direction or guidance of resource consent processing;
- 48 Significant evidence was also presented in that hearing by Submitters to rebut the position from Council that the ODP controlled activity regime had led to substandard subdivision and design outcomes. That allegation was rebutted both substantively and on process grounds, and it is submitted the analogy to be drawn here between these two hearing streams is that once again Council's section 32 assessment proposes a significant derogation from existing rights on the basis of only a perceived or hypothetical issue (being public perception / appreciation) and this has not been adequately made out.
- 49 The objective of retaining the ability to prevent substandard design is supported. It is submitted this can be addressed in a controlled activity framework, rather than requiring the ability to refuse consent. The Council would still have broad powers to apply conditions of consent and have good

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<sup>19</sup> That Panel was chaired by Cr Nugent, with Crs Robinson and Stevens

subdivision design outcomes in a controlled activity framework with suitable matters of control. Controlled activities are assessed in accordance with section 104A. Council must grant consent, unless it has insufficient information or if section 106 applies, and may impose conditions under s108 (or s220 for a subdivision) in respect of matters to which it has reserved itself control in the plan. A Council's ability to apply conditions on a controlled activity consent is limited by section 87A (conditions may only be applied in respect of matters to which Council has reserved control in its plan); and through common law principles developed on section 108.

- 50 Counsel presented significant submissions in the topic 04 hearing which discussed case law on the extent of controlled activity 'control' (attached as **Appendix 2** to these submissions). The associated case books relied on can also be found at: [Case book 1](#) and [Supplementary casebook](#).
- 51 In summary, the wealth of case law on the subject establishes that conditions imposed in a controlled activity context can be significant, broad, and control adverse effects of a proposal. Failing meeting the *Newbury* tests (of reasonableness and connection to the proposal), and the principle of conditions not having the effect of nullifying a consent, discretion is largely unfettered.
- 52 Such case law traversed in those earlier submissions specifically included examples of where changes to layouts and reconfiguration of subdivision proposals was not tantamount to refusal of consent. Short of reducing or removing proposed allotments, the Council could control (in the Walter Peak context);
- (a) Proposed locations of buildings such as to reduce landscape effects;
  - (b) Greater controls on building form and outcomes to reduce effects
  - (c) Control over bulk and location
- 53 This is the case not just for the provisions as proffered by the Submitter, but also was the case under the Operative provisions and matters of control in rule 12.4.3.2.iii.
- 54 As submitted in Topic 04, and supported by the *Forest and Bird* case cited in the Appendix 1 extracts, a **less restrictive regime** of a controlled activity subdivision in the special zones can achieve the objectives of those zones. My earlier submissions (extracts attached as Appendix 2) particularly discussed this detail with respect to the Council's ability to control potentially adverse effects with a wide range of controls, including over matters such as control on bulk and locations.

- 55 The Hearing Panel for Topic 04 ultimately considered a restricted discretionary 'default' subdivision framework to be more appropriate (than controlled) and in response to the submissions as to the extent of control Council has, noted:

125. While there is an issue (as counsel argued) whether previous mediocre urban design is the product of subdivision activity status, we have considerable difficulty with the argument put to us by both Mr Goldsmith and Ms Baker-Galloway that good design might be enforced within a controlled activity framework. Ms Baker-Galloway cited case law to us suggesting that conditions on subdivisions might produce different lot sizes and subdivisions that look different from what is proposed. However, when we discussed the point with Ms Baker- Galloway, she agreed that the ambit of valid conditions is ultimately an issue of degree, which will determine whether particular issues are able to be controlled by a condition.

126. Accordingly, while counsel are correct, and the case law gives the consent authority considerable latitude to impose conditions on a resource consent application, so long as the conditions do not effectively prevent the activity taking place, in our view, the efficacy of those powers depends on the quality of what it is that one starts with. If the starting product is a reasonable quality design, then there will probably be scope to improve that design through discussion between the applicant and Council staff, and imposition of conditions as required to 'tweak' the design. By contrast, if the starting point is a poor quality subdivision design from a consent applicant who refuses to proffer a significantly changed (and improved) design, then in our view, it is neither practically nor legally possible for the Council to redesign a subdivision application by condition.

(citations omitted)

- 56 Counsel respectfully submits there are important distinctions to be made in this rezoning hearing, as compared to Topic 04:
- (a) As evidenced in the Submitter's company evidence and economics evidence, there is a disincentive for the developer to produce a poor quality outcome / design. The previous decades of the Submitter's tenure and development of the Site further evidences the high quality outcomes which are likely to be sought;
  - (b) Granted, it cannot be relied on that Wayfare Group will continue to be the owners of Walter Peak in the future, however it can be reasonably assumed that such a high quality and valuable site would be unlikely to be the subject of poor quality planning applications in the future;



- (c) Control is significant in the proposed tourism zone framework to achieve high quality built and subdivision outcomes. These are also guided by objectives which acknowledge and protect landscape values of the wider site. This is a much narrower and focused framework than general default subdivision in Chapter 27, the subject of the hearing Panel's comments above.
- (d) With respect, the case law traversed in Counsel's earlier submissions does not infer that conditions imposed can only result in a 'tweak' of poor subdivision design, but rather it is envisaged by the Courts that re-design could occur. In practical terms, there is more an element of back and forth between Applicant and Council through the consent process to understand, address, and amend issues relevant to Council's concerns.<sup>20</sup>

### **Protection of the ONL and Von Hill**

57 The Panel has before it, the expert evidence of two landscape architects, plus additional contextual historical evidence relevant to landscape, from Ms Cain. Starting with the latter more general context, it is important to note the summary comments from Ms Cain as to the Site:

[8] Walter Peak has many heritage layers and has undergone continued development and modification since the native bush was burnt for pasture and the sheep run established. Early in its development, Walter Peak became a place to visit and undertake leisure activities. This practice evolved over the decades into what we now refer to as 'rural tourism'.

[9] Heritage is dynamic and ever evolving with each generation. In considering the heritage of a place, intangible and tangible features need to be identified and assessed. Primacy is not given to features visible on the landscape purely by virtue of them still being there. Conflicting values, perceived or otherwise, need to be managed in a sustainable way for present and future generations.

[10] Heritage is not a block to development nor a reason for stagnation. It is much more effective to manage heritage if it is kept 'warm' and has an income stream to enable it to thrive. The cultural heritage of Walter Peak includes pastoralism and tourism.

58 It is evident from this cultural and historical context that, unlike other ONLs in the District, this particular Site and its location within the wider ONL has

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<sup>20</sup> Ms Black Evidence in Chief, at [79] although critical of the Council processing, this evidence does exemplify the rigour of Council's processing of even controlled activities.

a rich development history and is not an unmodified or pristine landscape devoid of human development.<sup>21</sup>

- 59 Despite this long standing layering of heritage and ongoing change discussed by Ms Cain, Ms Mellsop continues to focus on built heritage as a dominant feature deserving protection from future development. This built heritage is not a recognised protected feature in the PDP, or required by the RPS<sup>22</sup>.
- 60 The Site appears to have 'defaulted' to becoming an ONL through the ODP process (Counsel has been unable to find any specific Environment court determination on the extent of the ONL from the original WESI decisions). But on closer analysis and inspection, the site has deep cultural and development layers, which are proposed to be given effect to into the future through the Submitter's WPTZ proposal.

### ***Appropriate matters of control versus use of standards***

- 61 A key issue in Council's rebuttal planning evidence is that Mr Mathee's interpretation of Mr Skelton's landscape evidence is that only 'pockets or parts' across the Site are suitable for development, and that additional controls are required (matters such as location and development, earthworks, building coverage, biodiversity, landscaping, building design and appearance)<sup>23</sup>.
- 62 With respect, this is either a misunderstanding or a misrepresentation of Mr Skelton's evidence, whose conclusions are:
- (a) There are appropriate locations for development on the Von Hill landform, and which can be adequately controlled through the Submitter's proposed provisions, resulting in low adverse effects on the wider ONL;
  - (b) Some development can occur in the Eastern Paddocks with limited to no change in amenity or character, and as above, the Submitter's proposed provisions provide appropriate control for future development;

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<sup>21</sup> It is noted that Ms Mellsop's statements from [3.2] of her evidence, copied below in these Submissions, that landscape character may be appropriately changed over time is also consistent with Ms Cain's evidence as to appropriate cultural layering.

<sup>22</sup> The buildings referred to in the Homestead area are re-built and have special character but are not section 6 heritage matters.

<sup>23</sup> Rebuttal evidence of Mr Mathee, at [3.6]

- (c) While built development would be visible in the context of the wider ONL, the outstanding qualities of the wider lake and mountains ONL would still be widely appreciated... urban form development could be appropriately absorbed into the landscape while maintaining the ONL landscape values within which it is set.

63 Mr Skelton's statement at [43] that:

'...each character area has pockets where sensitive design could occur. More robust assessment of these areas at a micro scale using detailed contour information would be required to determine where development could occur and what form it should take'

Is not referenced to requiring this work be done at the rezoning stage, but rather that the proposed provisions by the Submitter have the ability to control this at the development stage.

64 Matters of control proposed in respect of buildings are set within the rule and have been amended as follows:

12. Control is reserved to:

- a) The compatibility of the building design, density, scale and location with landscape, cultural and heritage and visual amenity values;
- b) Nature conservation values and biodiversity enhancement;
- c) Landform modification, landscaping and planting;
- d) Lighting;
- e) Servicing including water supply, fire-fighting, stormwater and wastewater;
- f) Natural Hazards; and
- g) Design and layout of site access, on-site parking, manoeuvring and traffic generation.

65 Matters of control proposed in the above rule now address all matters raised in Mr Skelton's evidence and summarised by Mr Mathee. The Submitter notes that specifically landscaping and planting is an identified matter of control and therefore the ability to ensure specific biodiversity enhancements are achieved, or provide appropriate mitigation, can adequately be imposed through conditions of controlled activity consent.

66 It is noted that the effect of these broad matters of control is essentially the same as requiring minimum performance standards. As noted above, the Council has the ability to influence, modify, or restrict environmental effects through controlled activity conditions. Repeating these controls or replacing them as standards would have the same environmental effect, but would create a more uncertain and less efficient consenting regime (as discussed above in the section 32 context).

67 The difference in planning opinion as discussed in Mr Mathee's rebuttal at 3.8 is based upon a premise that the Council's interpretation of Chapter 3 requires protection of an ONL (unqualified) as discussed above, the assessment against Chapter 3 is more nuanced than in that it protective policies requiring 'protection of ONL **values**' is contemporaneously assessed against, in this case, more specific and topical provisions about appropriately locating rural visitor industry activities.

68 Ms Mellsop further states in her rebuttal evidence, at 3.4 that:

In the context of an ONL, and with reference to the Chapter 3 strategic objectives and policies for ONLs, **I consider it may be appropriate for landscape character to change over time as long as the values of that ONL are protected overall.** For example, indigenous revegetation and pest removal on Von Hill would enhance the ecological and naturalness values of the ONL, but could in turn detract from the legibility and expressiveness values associated with the open ice-eroded *rôche moutonnée*

(emphasis added)

69 Mr Skelton's conclusions support this proposition in that he considers the Submitter's proposal does ensure that values of the ONL are maintained and that potential effects on landscape character would be no more than low.<sup>24</sup>

70 The consequences of worst case scenario development have been addressed by Mr Skelton, although those are unlikely, as addressed in the 'Wayfare vision' above, a sensitive and high quality design is paramount to business objectives, reputation and success. The past decades of a controlled activity regime under the ODP have not resulted in adverse effects, so it is unreasonable to consider those will suddenly occur now and into the future.

71 And finally, the reality due to the remote and self sufficient nature of the site is that the possible scale of development will be self limiting.

### **The case for residential development**

72 While Mr Mathee's evidence remains concerned about residential development, it is noted that such development is fully discretionary. As such the justification for standalone development would need to be made out by any applicant in a considered way and which would be subject to a

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<sup>24</sup> Evidence in Chief of Mr Skelton At [47]

full assessment against policies and objectives in chapter 3 (applying to Exception Zones) so as to control landscape effects.

- 73 This represents the same consenting framework as any other Rural Zone and therefore is appropriate.

### **PDP and RPS planning assessment**

- 74 There is an obvious tension among the strategic objectives and policies of the PDP Chapters 3 and 6 which must be resolved. Namely, there is specific acknowledgement and support for appropriately placed visitor industry activities, including rural tourism, but there is also protection of landscape values (against subdivision and development).

- 75 In this case, where the Site is a long standing rural tourism destination, but is within a broader ONL, such tension is readily evident.

- 76 A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.<sup>25</sup> These comments were in the context of a plan change implementing the policies in the NZCPS. It is submitted that the logical extension of this reasoning from the Court is that where strategic policies or objectives cover specific subject matter, rather than more general, those must be given careful consideration and may be given more weight.

- 77 In the Chapter 3 context, as amended by recent Topic 2 Environment Court decisions:

- (a) The general framework to identify landscape **values** and landscape **capacity**;<sup>26</sup>
- (b) A requirement to protect landscape **values** of ONLs<sup>27</sup>;
- (c) A requirement to avoid adverse effects on the landscape values of the District's Outstanding Natural Features and Outstanding Natural Landscapes from residential subdivision use and development **where there is little capacity to absorb change**<sup>28</sup>

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<sup>25</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38, at [80].

<sup>26</sup> SP XXX; XB1 (for non priority areas)

<sup>27</sup> SP 3.3.30

<sup>28</sup> 3.3.30x

- 78 Those general protective policies for ONLs are not directive or unqualified in the sense they set a framework and methodology to assess which are the values that are of importance / contribute to an ONL being outstanding, and what is the capacity for change. This is in distinction to the council's s42A report, rebuttal evidence and landscape evidence, which infers that the relevant threshold or test is simply 'protection' of the ONL. That is a drastic over-simplification.
- 79 This general framework also needs to be considered alongside the more specific and pointed policies relating to visitor industry, namely:

### **Visitor Industry**

3.3.1 Make provision for the visitor industry to maintain and enhance attractions, facilities and services within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone. (relevant to S.O. 3.2.1.1 and 3.2.1.2).

3.3.1A In Rural areas, provide for commercial recreation and tourism related activities that enable people to access and appreciate the district's landscapes provided that those activities are located and designed and are of a nature that:

a. Protects the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes; and

b. Maintains the landscape character and maintains or enhances the visual amenity values of Rural Character Landscapes.

3.3.1B Provide for resorts in appropriate locations with particular consideration of adverse cumulative effects.

- 80 Furthermore, this is supported by the significant change to SO 3.2.1.1, which provides:

The significant socioeconomic benefits of well-designed and appropriately located visitor industry **places**, facilities and services are realised across the District.

(emphasis added)

- 81 This policy framework together supports the notion of appropriately located visitor industry places which, by design and history, are located in parts of the District's 97% ONL or ONF classification.

82 In terms of the RPS:

83 **Chapter 1** – resource management in Otago is integrated (i). This is an entirely new chapter of the RPS seeking to specifically recognise the enabling aspects of Part 2 without qualification of protective provisions. The chapter recognises that Otago's resources are used sustainably to promote economic social, and cultural wellbeing for its people and communities. And seeks to provide for the economic wellbeing of Otago's people and communities by enabling the resilient and sustainable use and development of natural and physical resources.

**Objective 1.1** Otago's resources are used sustainably to promote economic, social, and cultural wellbeing for its people and communities.

**Policy 1.1.1** Economic wellbeing Provide for the economic wellbeing of Otago's people and communities by enabling the resilient and sustainable use and development of natural and physical resources.

84 The inclusion of this new chapter provides support for recognition of the positive aspects of subdivision use and development of resources, and as a counterbalance to 'protective' policies pertaining to resource use.

85 Chapter 3 provides for those 'counter' protective policies specific to resource use and development. Relevant to section 6 landscapes are those provisions copied below:

**Objective 3.2** Otago's significant and highly-valued natural resources are identified and protected, or enhanced where degraded

**Issue:** Otago has significant and highly-valued natural resources. These include outstanding natural features, landscapes, seascapes, indigenous biological diversity, water bodies and soil, which all have intrinsic value and help to create the region's identity and support the region's wellbeing. These highly valued resources can become degraded if they are not adequately protected from inappropriate subdivision, use and development, and so deserve a greater degree of recognition. Resource degradation can adversely affect the social, cultural and economic wellbeing of people and communities.

**Policy 3.2.4** Managing outstanding natural features, landscapes and seascapes Protect, enhance or restore outstanding natural features, landscapes and seascapes, by all of the following:

...

b) Beyond the coastal environment, **maintaining the values (even if those values are not themselves outstanding) that contribute to the natural feature, landscape or seascape being outstanding;**

c) Avoiding, remedying or mitigating other adverse effects;

d) Encouraging enhancement of those areas and values that contribute to the significance of the natural feature, landscape or seascape.

86 Mr Skelton and Mr Farrell's evidence have followed this framework of identifying those values which are important to the ONL's significance, ensuring those are maintained through the proposed provisions, and mitigating any other effects.

87 Proposed rules and matters of control relating to glare, height, built form and its response to landscape will all address concerns as to effects viewed from beyond the Site.

#### **Economic effects and alternative uses of land**

88 Section 32(2)(a)(i) and (ii) requires that the opportunities for economic growth and employment that are anticipated to be provided or reduced are assessed. This recognises that Part 2 of the Act includes economic wellbeing of individuals as well as the wider community, and the use and development of natural and physical resources invariably involves economic activity. The reference to "economic growth" in subsection (i) must include the economic growth resulting from the increase in realisable land value which benefits a subdividing landowner, and the reference to "employment" in subsection (ii) must include specific employment opportunities which arise from rural living, both short term in terms of house construction and long term in terms of ongoing property maintenance.

89 The Council has declined to present economic evidence, despite the PDP representing a significant departure from the ODP approach for the Site.

90 Another relevant consideration on the subject of 'alternative' uses of land, is the benefits of the tourism zoning which are ancillary to tourism development. Such benefits are traversed in the Submitter's company evidence from Mr Norris and Ms Black, as well as Mr Bridgman's economic



evidence. Such existing and anticipated future investment is summarised in Mr Bridgman's evidence as:

[155] replacement and additional infrastructure and services, much of which is necessitated by the absence of any external services due to the Property's physical isolation;

introduction of more environmentally friendly infrastructure, such as wastewater treatment, or electricity generation using solar or wind sources;

enhancement of the Property's natural physical environment, such as the maintenance of the removal of exotic vegetation (e.g. ensuring wilding pines do not re-establish), planting of native shrubs and trees consistent with the alpine terrain, clearing and protecting existing waterways, and flood control;

maintaining and improving safe, convenient, and comfortable access for visitors and staff alike. This includes wharf maintenance and potentially upgrade, and similarly maintenance and potentially upgrade of the road access;

enhancement and extension of existing visitor experience facilities, such as the food and beverage operations, the farm show amphitheatre, walking and mountain bike tracks, picnic areas, retail, and souvenir shop;

new attractions or activities for visitors. This could include additional facilities for conferencing and functions and possibly a wedding chapel. To enhance the mountain biking experience there may be a need to invest in some form of vertical transportation for customers and their bikes, such as a specially designed chairlift;

replacement or extension of ancillary buildings such as maintenance facilities and other aspects of the Property's infrastructure and services;

staff accommodation and facilities;

tourist/visitor accommodation options, which could range from dedicated tent sites and basic cabins to fully self-contained and self-catered units, as well as fully serviced accommodation options such as a hotel or luxury lodge;

development of residential dwellings (which could take different forms and styles) situated in designated areas of the Property.

[166] If the Property was acquired for an alternative use, whether as a private residence or simply for farming purposes, then there is no guarantee that the same sorts of enhanced economic or environmental outcomes will be realised, as can be the case through a diverse tourism-orientated focus. Wayfare Group has amply demonstrated through its ownership of Walter Peak to date its commitment to enhancing the natural environment at Walter Peak and enabling widespread public use and enjoyment. A good example in this regard is the public camping ground where the Group [upgraded] the access track, shelter and public toilets.

[167] Much of the investment undertaken at Walter Peak does not deliver any direct or immediate financial return. For example, more than \$500,000 was spent on the removal of pine trees on the peninsula, which is an environmental improvement in that it removed a wilding pest but adds nothing to the financial returns for Wayfare Group. Similarly, conversion of electricity generation from diesel-fired to solar or wind sources will be costly with no immediate net financial return. Wayfare Group has a demonstrable history of undertaking such investments at Walter Peak to enhance the natural features and attractiveness of the property in a manner that is sympathetic to the Property's rural alpine setting.

- 91 In considering these positive benefits, it is important to remember that the relevant part of the purpose of the Act in s5 is not just about avoiding or mitigating adverse effects of activities on the environment; it includes reference to remedying them. Bring access to the high country and this ONL in close proximity to Queenstown, by allowing people onto a private property landholding they could not otherwise access is a sense of remedying adverse effects on the environment<sup>29</sup>. So too are environmental and conservation initiatives which the Applicant has in the past undertaken on the Site, and would intend to do so in the future, as traversed above in evidence.

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<sup>29</sup> *Per OB Holdings Ltd v Whangarei District Council* [2010] NZEnvC 391, at [77].

92 It is submitted that as per the *Golf* case and the Courts' interpretations of s32 as traversed in Counsel's submissions at **Appendix 1**, these economic benefits are relevant as to:

- (a) What is the most 'appropriate' zoning of the land, taking into account efficiency and effectiveness;
- (b) What are the alternatives of zoning outcomes.

### **Amended Zoning provisions**

93 Throughout these submissions, amendments to provisions to respond to Council evidence concerns have been addressed. For completeness a short summary of those changes is further set out below, and this is complemented by a mark-up of the zone provisions at **Appendix 4**:

#### 94 ***Objectives and policies***

- (a) Minor amendments have been made to objectives and policies as set out in Mr Farrell's evidence to ensure consistency of wording and efficient use of language
- (b) The Submitter considered whether further amendments were required to these objectives and policies to address 'protective' elements relating to landscape effects. Upon comparison with other similar exception zones, such as SASZs and Jacks Point, it is considered that the proposed WPTZ are consistent with those 'development' zones in order to enable the purpose of the Zone. Chapters 3 and 6 provide remaining policies and objectives (that apply to exception zones) which can further regulate effects on ONLs and it would otherwise be unnecessary duplication to repeat those in a lower order chapter.
- (c) Two new policies have been included to address natural hazards risks- one which addresses avoidance of new residential activities in the Natural Hazard Building Restriction Areas and one which addresses management and mitigation (including maintenance of structures) within the Hazard Management Area<sup>30</sup>.

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<sup>30</sup> These two new overlays are also intended to be included on the proposed Zone Map.

- 95 Amended rules
- (a) Visitor accommodation, recreational, and commercial recreation activities are proposed to remain as permitted rules, to match the Decision Version of the RVZ.
  - (b) Any activities which are not truly ancillary will not be permitted but will fall to either controlled or discretionary depending on their nature, so this is a natural limitation on outcomes rather than requiring prescription through site or zone standards.
- 96 New matters of control
- (a) Nature conservation values and biodiversity enhancement have been included in the controlled activity building rule such as to address the full range of effects noted in Mr Skelton and Ms Mellsop's evidential concerns.
- 97 Natural Hazards
- (a) As discussed above in these submissions, two new hazard overlays will be included in the Zone Map which reflects a tiered approach to risks. The lower risk area is the Hazard Management Overlay, within which buildings are controlled and complimented by a specific policy including consideration as to maintenance of mitigation measures.
  - (b) The higher risk areas are addressed through an avoidance policy for new living activities and an associated non-complying rule, whereas other buildings are restricted discretionary.
- 98 Height standards
- (a) Although not considered necessary, a more nuanced height regime could be appropriate to control built-form effects such that buildings between 8m and 15m are RDA (except for wind turbines) and buildings beyond 15m become non-complying.
  - (b) The landscape evidence has not made specific findings on such a recommendation, however should the Panel be minded to consider this as appropriate, the Submitters may consider this on the basis it represents a reversion to the ODP position.

## Conclusion

- 99 The Panel must make a finding, upon the evidence before it, as to the most appropriate zoning for the Site. That finding is assisted by the matters assessed under section 32.
- 100 It is submitted the benefits<sup>31</sup> of providing for continued tourism zoning of the Site which accords with established ODP standards is significant.
- 101 The zoning proposed is not over high class or productive soils, and it is within an already modified cultural, historical, and landscape context.
- 102 In the end, questions of efficiency, benefits and costs do not, relate only to matters of monetary efficiency but to a range of factors including intangible cultural and social benefits and costs. The Submitter's case presented traverses these wider benefits, and how this accords with higher order and strategic provisions (as well as structure) of the PDP.
- 103 Overall it is submitted that both benefits and costs and efficiency and effectiveness are best advanced by the Submitter's proposed Walter Peak Tourism Zone.

*Maree Barr-Galloway*

Counsel for the Submitter  
18 June 2021

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<sup>31</sup> Benefits as traversed in Submitter evidence include consequent economic advantages, employment, conservation enhancement,

## Appendix 1 – Extracts on legal framework for rezoning and plan making decisions

- (a) When preparing or changing a district plan the Council must have regard to the matters listed in section 74 which include any proposed regional policy statement, a proposed regional plan and management plans and strategies prepared under other Acts;
- (b) Given the unsettled nature of higher order provisions of the PDP and RPS in this instance, the Commission must still look beyond those documents and apply Part 2 of the Act in order to determine whether a proposed zoning or specific provision is most appropriate in accordance with section 32;
- (c) There is no presumption as to the most appropriate zone, rule, policy or objective for decision makers when embarking on a section 32 analysis.<sup>32</sup>
- (d) A section 32 analysis seeks to provide for the optimum planning solution ultimately within the scope of submissions.<sup>33</sup> Such an analysis should be an effects-based decision, rather than based upon a desired outcome or directive planning purpose<sup>34</sup> and should take into account the existing consented and developed environment on the ground rather than providing a zone which makes that existing environment and development incongruous within the proposed DPR zone.<sup>35</sup>
- (e) In considering what rule may be the most appropriate in the context of the *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*<sup>36</sup> namely where the purpose of the Act and the objectives of the Plan can be met by a less restrictive regime then that regime should be adopted. Such an approach reflects the requirement in s32(1)(b)(ii) to examine the efficiency of the provision

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<sup>32</sup> *Eldamos Investments Limited v Gisborne District Council* W47/05, affirmed by the High Court in *Gisborne District Council v Eldamos Investments Ltd*, CIV-2005-548-1241, Harrison J, High Court, Gisborne, 26/10/2005. See also *Sloan and Ors v Christchurch City Council* C3/2008; *Briggs v Christchurch City Council* C45/08, and *Land Equity Group v Napier City Council* W25/08.

<sup>33</sup> *Eldamos* paragraph [129]

<sup>34</sup> *Cerebos Greggs Ltd v Dunedin City Council*, Environment Court, Judge Smith, C169/2001, at [21].

<sup>35</sup> *Millford Centre v Auckland Council* [2014] NZEnvC 23 at para 120; *Shotover Park Limited v Queenstown Lakes District Council* [2013] NZHC 1712; *Cerebos*.

<sup>36</sup> *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* Decision C153/2004 at [56].

by identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation. It also promotes the purpose of the Act by enabling so that people can provide for their well-being while addressing the effects of their activities.<sup>37</sup>

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<sup>37</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council*, [2017] NZEnvC 051, at [59].

## **Appendix 2 – Extracts on controlled activity framework submissions (Topic 04 Subdivision)**

- 1.1 Matters reserved for control and conditions of consent
- 1.2 Mr Ferguson concludes that a controlled activity status for all subdivision activities within the District (excluding Rural Zone) is appropriate, in circumstances where:
  - (a) In respect of any new zone or any zone under challenge, the Panel is satisfied in the first instance that the spatial planning outcomes and the zoning provided on the planning maps are appropriate to those areas;
  - (b) A framework of location specific provisions are established in support of zones where the default controlled activity status is inadequate or needs further support;
  - (c) The Code of Practice for Subdivision continues to be applied through relevant matters of control; and
  - (d) The matters of control incorporate the Council's Subdivision Design Guidelines.
- 1.3 The opening legal submissions for Council dated 22 July 2016 states that the amended RDA activity status provides an 'appropriate level of certainty for developers through defining the matters of discretion' and goes on to confirm the intent of Mr Bryce is to remove the contested matter of 'lot sizes' as a matter of Council's reserved discretion in rule 27.5.6. Council's statement that the RDA status provides refined matters of discretion only makes sense if this matter is removed, however it is still considered that the RDA status and framework is not justified.
- 1.4 Council's recurring theme justifying a shift away from controlled activity status in the ODP is the need to maintain the ability to say 'no' to substandard subdivision design proposals. The objective of retaining the ability to prevent substandard design is supported. It is submitted this can be addressed in a controlled activity framework.
- 1.5 Putting aside the common example of roading widths and access issues (as this is a clear cut matter which can form the basis of a decline decision, under s106 RMA), the Council would still have broad powers to apply conditions of consent and have good subdivision design outcomes in a controlled activity framework with suitable matters of control.



1.6 Controlled activities are assessed in accordance with section 104A. Council must grant consent, unless it has insufficient information or if section 106 applies, and may impose conditions under s108 (or s220 for a subdivision) in respect of matters to which it has reserved itself control in the plan. A Council's ability to apply conditions on a controlled activity consent is limited by section 87A (conditions may only be applied in respect of matters to which Council has reserved control in its plan); and through common law principles developed on section 108.

1.7 The Environment Court in *Lakes District Rural Landowners Society v Queenstown Lakes District Council* considered where there are land use controls on the exterior appearance of buildings, it is lawful for the district plan to contain subdivision rules that allow the council to consider, and if necessary to impose, similar conditions as conditions of subdivision consent (i.e. the council is able to have some regard to sensitive landscape areas).

"There is jurisdiction to impose such conditions but that they may (sometimes) fail the Newbury tests. Just when conditions may fail is a question that would have to be decided by the consent authority on the specific facts of any case. Given that sections 220 and 106 of the RMA expressly deal with land use matters, the boundaries for imposing conditions on subdivision consents with respect to other land use issues may be quite wide. The outcome in any given case may depend more on the provisions of the relevant plan, than on the powers conferred by the RMA."<sup>38</sup>

1.8 The above principles were confirmed by the High Court in *Waitakere City Council v Kitewaho Bush Reserve Co Ltd*:

There are other physical effects of subdivision which are routinely the subject of consent conditions imposed under ss 108 and 220 RMA. These ordinarily include provisions for roading and other infrastructure...<sup>39</sup>

1.9 The *Newbury* tests is summarised as; being for an RMA purpose, having a logical connection to the proposal, and reasonableness. In addition to the *Newbury* tests, it is a fundamental principle of resource management law that neither a consent authority nor the Court may impose conditions on a resource consent which could effectively nullify that consent.<sup>40</sup> However the imposition of a condition which, if it is not satisfied, will mean that the activities authorised by a consent cannot

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<sup>38</sup> *Lakes District Rural Landowners Society v Queenstown Lakes District Council* Environment Court, Judge Jackson, 21 June 2001, C100/2001 at [43]

<sup>39</sup> *Waitakere City Council v Kitewaho Bush Reserve Co Ltd* [2005] 1 NZLR 208 at [99]

<sup>40</sup> *Lyttelton Port Company Ltd v Canterbury Regional Council* Environment Court 26 January 2001, Judge Smith C8/2001

commence is not uncommon (*Director General v Marlborough District Council* [2004] 3 NZLR 127 (HC), at [23]):

I do not consider that a condition which has two possible outcomes, one of which will enable the activities authorised by the consent to proceed, and one of which will not, is for that reason a condition which would frustrate the consent, or which is otherwise unreasonable under the Newbury test.

- 1.10 The *Director General* case considered the validity of conditions of consent which required a survey to be undertaken and then approved before consent could be carried out. The High Court also considered whether such a condition would be an unlawful delegation of judicial duties. In distinguishing the foundation case of *Turner v Allison*<sup>41</sup>, the Court noted the following:

However, in my opinion the condition in this case is substantially different from those in *Turner v Allison*. The conditions in that case related to matters of appearance of the buildings and landscaping and planting. Those were matters which necessarily followed the making of the decision to allow the development. The judicial function in that case was the making of that decision. In making that decision, the consent authority wished to impose standards as to certain matters, and required a means of ensuring that those standards were met. Conferring a decision-making power on a third party, as was done in that case, did not involve a delegation of the judicial function of deciding whether the development should be allowed, but rather a delegation of the administrative function of ensuring that appropriate standards were met in relation to the development after it had been allowed<sup>42</sup>

- 1.11 To draw an analogy with the QLDC PDP, a condition of a controlled activity subdivision consent for example could be that any road layout for subdivision must comply with the QLDC Subdivision Code of Practice prior to section 223 approval of a survey plan. Such a condition would be of the type envisaged in *Turner v Allison* and confirmed by the High Court as above in *Director General* as means of ensuring appropriate standards are met and continue to be met once a decision on the appropriateness of development has been made.

- 1.12 Indeed this example is common in other local authority jurisdictions. For example, the Central Otago District Plan, general standards for subdivision, provision 16.7.1 states that:

'the physical design and construction of works to be carried out as part of a subdivision or as required by a condition of consent will generally be in accordance with Council's Code for Practice for Subdivision..'

- 1.13 The Courts do not distinguish between different categories of activity status of controlled versus RDA when applying the common law principles under s108. A current listed matter of control under rule 27.5.6 is 'property access and roading';

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<sup>41</sup> *Turner v Allison* [1971] NZLR 833

<sup>42</sup> *Director General v Marlborough District Council* [2004] 3 NZLR 127 (HC), at [28]

that is a wide matter of over which control is retained, and imposition of conditions to achieve a particular outcome for road design would be valid. The example of a recent resource consent decision tabled by Mr Bryce in this hearing indeed envisages this type of control.<sup>43</sup> The front page of that decision states that the approved consent *'only applies if the conditions outlined are met.'* The requirement to ensure continual compliance does not negate the consent.

- 1.14 Counsel for Council's authority for the proposition that controlled activity conditions cannot negate consent is helpful, although in a different context to the PDP subdivision chapter. *Aqua King Ltd v Marlborough District Council* discussed the legality of conditions of consent restricting above surface structures on a controlled marine farm application. The Court considered that the definition of subsurface and above surface types methods of marine farming were provided for as controlled and therefore plan users were entitled to certainty that either of those activities could be validly carried out. His Honour therefore held that a condition requiring only subsurface structures was ultra vires and inconsistent with the premise of controlled activities, that these must be granted:

*"to grant consent only for subsurface structures is in essence to decline the consent applied for"*<sup>44</sup>

- 1.15 That situation is different however from the hypothetical 'issues' Council is concerned about in this district. A subdivision development remains a subdivision development regardless of its road design and lot configuration, and in some instances lot numbers and sizes. The fact that a consent condition might change the appearance, layout, and even number of allotments does not mean the consent applied for is declined. Indeed earlier on in *Aqua King Ltd* the decision of *McLaren v Marlborough District Council* was referred to in the Appellant's submissions:

[the case of McLaren was referred to] *which states that a resource consent cannot go beyond the scope of the application (in that example, the location of the farm could not be altered from that notified in the application). However, the proposal may be limited or reduced. In this case, the issue remains whether altering the structures used is merely a limitation on the consent or a fundamental change to what was originally proposed.*<sup>45</sup>

[Emphasis added]

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<sup>43</sup> Referring to decision RM150804 granted to Orchard Road Holdings Limited

<sup>44</sup> *Aqua King Ltd v Marlborough District Council (1998) 4 ELRNZ 385 At [35]*

<sup>45</sup> *Ibid* At [25] referring to *McLaren v Marlborough District Council* Decision No. W 022/97

- 1.16 Again, the contention that a consent application is fundamentally changed by complete moving of a development site is different to requiring different design and layouts in accordance with best practice guides, within the same site.
- 1.17 *Dudin v Whangarei District Council* considered a similar factual scenario and distinguished Aqua King to provide a controlled activity consent condition to reconfigure a proposed subdivision layout. Judge Newhook in *Dudin* expressly considered that reconfiguration of the subdivision proposal at hand was not *'tantamount to a refusal of consent for that which had been applied for'*.<sup>46</sup> Although that case reconfigured the subdivision through consent conditions, it ultimately retained the three lots which were applied for.
- 1.18 The case referred to by Counsel for Council in which Judge Smith assessed the bounds of controlled activity conditions takes the proposition from *Dudin* a step further to address reconfiguration as well as overall numbers of allotments. In *Mygind v Thames Coromandel District Council* his Honour considered relevant provisions of the plan which were associated with a controlled activity rule and could be used where applicable to impose a condition but could not be read as providing a discretion to refuse consent.
- Equally, almost all of these provisions can be read as allowing a consent authority to impose consent conditions for a controlled activity to properly control the particular effect identified. For example, in respect of the hazard issue, although the activity is controlled, there may be certain sites proposed by an applicant which could not be included because they represented significant hazard. In this regard, the two areas of subsidence, for example, between Lots 66 & 67 are in that category and have properly been excluded from development as a result*<sup>47</sup>.
- 1.19 The ability in that case for the Court to consider conditions of a controlled activity to restrict development in certain areas was not considered to frustrate or negate the consent.
- 1.20 In this respect it is most helpful to consider what the 'activity' is which is being applied for. For example whether a developer is applying for a 40 lot subdivision which complies with the controlled activity rules in a plan, or whether that developer applies for a subdivision which contains 40 lots. A change to road layout configuration and number and size of allotments for the latter activity through conditions of consent in accordance with matters over which council has clearly maintained control would not fundamentally change, alter, or frustrate the activity applied for. It would still be a subdivision activity.

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<sup>46</sup> *Dudin v Whangarei District Council* Environment Court Auckland, 30/03/2007, A022/07 at [60]

<sup>47</sup> *Mygind v Thames-Coromandel District Council* [2010] NZEnvC 34 at [32] - [33]

### **Appendix 3 – Council's re-zoning principles:**

Rezoning recommendation report 17.1 principles are:

- (a) whether the change implements the purpose of the PDP Strategic Direction, Urban Development and Landscape Chapters;
- (b) the overall impact of the rezoning gives effect to the ORPS and the PRPS;
- (c) whether the objectives and policies of the proposed zone can be implemented on land;
- (d) economic costs and benefits are considered;
- (e) changes to the zone boundaries are consistent with the maps in the PDP that indicate additional overlays or constraints (e.g. Airport Obstacle Limitation Surfaces, SNAs, Building Restriction Areas, ONL/ONF);
- (f) changes should take into account the location and environmental features of the site (e.g. the existing and consented environment, existing buildings, significant features and infrastructure);
- (g) zone changes are not consistent with the long term planning for provision of infrastructure and its capacity;
- (h) zone changes take into account the effects on the environment or providing infrastructure onsite;
- (i) there is adequate separation between incompatible land uses;
- (j) rezoning in lieu of resource consent approvals, where a portion of a site has capacity to absorb development does not necessarily mean another zone is more appropriate (i.e. rezoning of land when a resource consent is the right way to go); and
- (k) zoning is not determined by existing use rights, but these will be taken into account.

## **Appendix 4 – Submitter's amended zoning proposal**

# Appendix A

## Xx Walter Peak Tourism Zone

### X.1 Purpose

The purpose of the Walter Peak Tourism Zone is to complement the existing range of Visitor Industry opportunities in the District and provide for increased opportunities for people to experience the rural character, heritage and amenity of the rural area. The Zone provides for a range of accommodation, entertainment, cultural and recreational activities.

The Walter Peak Tourist Zone applies to an area of land which is recognised as having visitor interest, is isolated from town centres and can make a significant contribution to the range of accommodation and activities available within the District.

The principal activities in the Zone support mixed tourism activities, including visitor accommodation, commercial activities, commercial recreation, recreation activities and associated infrastructure and indigenous vegetation restoration and enhancement. Onsite staff accommodation ancillary to visitor industry activities is anticipated to support employment opportunities.

### X.2 Objective and Policies

#### X.2.1 Objective

**The growth, development and consolidation of visitor industry activities and associated buildings, while adverse effects on the environment are avoided, remedied or mitigated including promoting restoration and enhancement of and nature conservation values **are restored and enhanced.****

#### Policies

X.2.1.1 Protect the existing transport and tourism facilities to and at Walter Peak and enable their diversification and expansion.

X.2.1.2 Enable visitor accommodation and commercial recreational activities within the zone, including ancillary onsite staff accommodation, where the landscape values of the Outstanding Natural Landscape surrounding the zone are protected.

X.2.1.3 Ensure the location, nature, scale and intensity of visitor accommodation, commercial recreation activities, and associated aspects such as traffic generation, access and parking, and informal airport, noise, and lighting, maintain amenity values beyond the Zone and do not compromise the operation of existing activities or those enabled by the surrounding Rural Zone.

X.2.1.4 Enable the ongoing development and use of trails throughout the Zone

X.2.1.5 Enhance nature conservation values as part of the use and development of the Zone and enable development which is associated with restoration and enhancement of indigenous vegetation.

X.2.1.6 Recognise the remote location of the Walter Peak Tourism Zone and the need for visitor industry activities to be self-reliant by providing for infrastructure, services or facilities that are directly associated with, and ancillary to, visitor industry activities, including onsite staff accommodation.

X.2.1.7 Enable visitors to access and appreciate the Zone's nature conservation values and the surrounding Outstanding Natural Landscape values, and enabling visitors to access and appreciate the Zone's values.

X.2.1.8 Ensure that any land use or development not otherwise anticipated in the Zone, protects or enhances landscape values and nature conservation values.

X.2.1.9 Control the visual impact of roads, buildings and infrastructure development associated with visitor industry activities.

X.2.2.10 Manage the effects of buildings and development on landscape values, landscape character and visual amenity values by:

- a) controlling the colour, scale, design and height of buildings and associated infrastructure, vegetation and landscape elements; and
- b) in the immediate vicinity of the Homestead Area, provide for a range of external building colours that are not recessive as required generally for rural environments, but are sympathetic to existing development; and
- c) providing for building and landscape controls which recognise the existing developed facilities and are reflective of the Zone's farming and visitor heritage.
- d) Away from the vicinity of the Homestead Area (where exotic heritage gardens predominate), encourage indigenous vegetation restoration and enhancement in conjunction with new building and development.

X.2.1.11 Manage the location and direction of lights to ensure they do not cause glare or reduce the quality of views of the night sky beyond the boundaries of the Zone.

X.2.1.12 Ensure development can be adequately serviced through:

- a) the method, capacity and design of wastewater treatment and disposal;
- b) adequate and potable provision of water;
- c) adequate firefighting water and regard taken in the design of development to -fire risk from vegetation, both existing and proposed vegetation; and
- ~~d) provision of safe vehicle access, water-based transport, and associated infrastructure.~~

X.2.1.13 Within the Walter Peak Water Transport Infrastructure overlay, provide for a jetty, wharf, pier or marina, mooring, weather protection features, ancillary infrastructure, signage, storage, water transport and water recreation activities at Beach Bay while:

- a. maintaining as far as practicable natural character and landscape values of Beach Bay while recognising the functional need for water transport infrastructure and water based recreation to locate on the margin of and on Lake Wakatipu;
- b. minimising the loss of public access to the lake margin; and
- c. encouraging enhancement of nature conservation and natural character values.

X.2.1.14 Ensure the ongoing management and maintenance of existing hazard mitigation measures, including management systems and evacuation plans, where new or relocated buildings within the Hazard Management Area rely on those measures.

X.2.1.15 Avoid development for new living purposes (including visitor accommodation) in the Natural Hazard Building Restriction Areas.



## X.3 Other Provisions and Rules

### X.3.1 District Wide

Attention is drawn to the following District Wide chapters.

1 Introduction	2 Definitions	3 Strategic Direction
4 Urban Development	5 Tangata Whenua	6 Landscapes
25 Earthworks	26 Historic Heritage	27 Subdivision
28 Natural Hazards	30 Energy and Utilities	31 Signs
32 Protected Trees	33 Indigenous Vegetation and Biodiversity	34 Wilding Exotic Trees
35 Temporary Activities and Relocated Buildings	36 Noise	37 Designations
39 Wāhi Tūpuna	Planning Maps	

### X.3.2 Interpreting and Applying the Rules

X.3.2.1 A permitted activity must comply with all the rules (in this case Chapter X) and any relevant district wide rules).

X.3.2.2 Where an activity does not comply with a standard listed in the standards tables, the activity status identified by the 'Non-Compliance Status' column shall apply. Where an activity breaches more than one Standard, the most restrictive status shall apply to the Activity.

X.3.3.3 For controlled and restricted discretionary activities, the Council shall restrict the exercise of its discretion to the matters listed in the rule.

X.3.3.4 These abbreviations are used in the following tables. Any activity which is not permitted (P) or prohibited (PR) requires resource consent.

X.3.3.5 The surface of lakes and rivers are zoned Rural, except for the area identified on the District Plan maps as Walter Peak Water Transport Infrastructure Overlay for the purpose of Rule XXX

### X.3.3 Advice Notes - General

X.3.3.1 On-site wastewater treatment water takes, and works in beds of waterbodies for flood protection are is also subject to the Otago Regional Plan: Water. In particular, Rule 12.A.1.4 of the Otago Regional Plan: Water.

## **X.4 Rules – Activities**

	<b>TableX.4 – Activities</b>	<b>Activity Status</b>
1.	Farming	P
2.	Visitor Accommodation	P
3.	Construction and use of trails	P
4.	Recreational Activity (including commercial recreation)	P
5.	Commercial activity ancillary to Visitor Accommodation, Commercial Recreation, and Recreational Activities	P
6.	Residential activity ancillary to Visitor Accommodation, Commercial Recreation, Recreation and Recreational Activities	P
7.	Informal Airports	P
8.	Industrial Activity ancillary to, or that supports farming, visitor accommodation, construction of trails, recreation, commercial recreation and informal airports.	P
9.	Structures, facilities, plant, equipment and associated works including earthworks for the protection of people, buildings and infrastructure from natural hazards.	P
10.	Restoration and enhancement of indigenous vegetation	P
11.	Planting and maintenance of exotic trees and plants excluding wilding exotic trees covered by rules 34.4.1 and 34.4.2.	P
12.	<p>Construction, relocation, addition or alteration of Buildings (other than identified in Rules X and X)</p> <p>Control is reserved to:</p> <ul style="list-style-type: none"> <li>a) The compatibility of the building design, density, scale and location with landscape, cultural and heritage and visual amenity values;</li> <li>e)b) <u>Nature conservation values and biodiversity enhancement</u></li> <li>f)c) Landform modification, landscaping and planting;</li> <li>g)d) Lighting;</li> <li>h)e) Servicing including water supply, fire-fighting, stormwater and wastewater;</li> <li>i)f) Natural Hazards; and</li> <li>j)g) Design and layout of site access, on-site parking, manoeuvring and traffic generation.</li> </ul>	C

13.	<u>Construction of buildings</u> <u>Construction or relocation of buildings or structures used for living purposes (including visitor accommodation) within the Hazard Management Area.</u>  <u>Matters of control are those listed above for Rule 12</u>	<u>C</u>
14.	Within the Water Transport Infrastructure Overlay as identified on the District Plan maps, a jetty, wharf, quay or pier, marina, mooring, weather protection features, signage and ancillary infrastructure:  Discretion is restricted to: a. Effects on natural character b. Effects on landscape values and amenity values c. Lighting d. Effects on public access to and along the lake margin; and e. External appearance, colour and materials f. Functional need for location g. Benefits/positive effects h. Navigational safety	RD
15.	Buildings within the Building Restriction Area that follows the Lake shore	D
16.	Buildings within any other Building Restriction Area	NC
<u>17.</u>	<u>Construction or relocation of buildings or structures used for living purposes (including visitor accommodation) within a Natural Hazard Building Restriction Area</u>  <u>Construction or relocation of other buildings or structures in the Natural Hazard Building Restriction Area</u>  <u>Matters of restricted discretion are restricted to:</u> <u>a. Natural hazards</u>	<u>NC</u>  <u>RD</u>
<u>17-18.</u>	Farm Building The construction, replacement or extension of a farm building is a permitted activity subject to the standards provided for in 21.8 of Chapter 21 (Rural Zone)	P
<u>18-19.</u>	Industrial Activity	NC
<u>19-20.</u>	Residential Activity Residential activities not permitted by rule X above, or which do not comply with the standards listed in Table 1 of Chapter 21 (Rural Zone)	D
<u>20-21.</u>	Mining	NC

<a href="#"><u>21-22.</u></a>	Any other activity not listed in Table X.4	D
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## X.5 Rules - Standards

	Table X.5 - Standards	Non-compliance status
1.	<p>Building Height</p> <p>The maximum height of buildings shall be 8m, with the exception of wind turbines which shall be 15m.</p>	RD
2.	<p>Glare</p> <p>X: All exterior lighting <del>shall</del> be directed downward and away from adjacent sites and public places including roads and Lake Wakatipu.</p> <p>X: No activity shall result in greater than a 3.0 lux spill (horizontal and vertical) of light onto any other site measured at any point inside the boundary of the other site, except this rule shall not apply to exterior lighting within the Walter Peak Water Transport Infrastructure Overlay.</p>	NC
3.	<p>Setback of buildings from waterbodies</p> <p>The minimum setback of any building from the bed of a river, lake or wetland shall be 20m, except this rule shall not apply to structures or buildings identified in rule X located within the Walter Peak Water Transport Infrastructure Overlay.</p>	<p style="text-align: center;">RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>a) Indigenous biodiversity values;</li> <li>b) Visual amenity values;</li> <li>c) landscape;</li> <li>d) open space</li> <li>e) environmental protection measures (including landscaping and stormwater management);</li> </ul>

	Table X.5 - Standards	Non-compliance status
		f) natural hazards; and g) Effects on cultural values of manawhenua.

## X.6 Non-Notification of Applications

Any application for resource consent for controlled, restricted discretionary or discretionary activities shall not require the written consent of other persons and shall not be notified or limited-notified, with the exception of the following:

- a) Rule X.5.3 setback of buildings from waterbodies, where Council may determine Ngā Rūnanga to be an affected party.

## Variation to Strategic Direction Chapter 3:

(Using Environment Court Interim Decision version as base)

In 3.18.6 and SO 3.2.5.1A, 'Exception Zone' means any of the following to the extent that the Zone (or Sub-Zone) is depicted on the planning maps:

- a. The Ski Area Sub-zone;
- b. The Rural Residential Zone and Rural Lifestyle Zone (Chapter 22);
- c. The Gibbston Character Zone (Chapter 23);
- d. Jacks Point Special Zone (Chapter 41 ).
- e. Walter Peak Tourism Zone

## Variation to Landscape and Rural Character Chapter 6

New Policy:

Provide a separate regulatory regime for the Walter Peak Tourism Zone and exclude the Walter Peak Tourism Zone from the Outstanding Natural Landscape classification and from the policies of this chapter related to that classification. (3.2.1.1, 3.2.1.7, 3.2.1.8, ~~3.2.5.2~~ , 3.2.5.1A, 3.2.5.2B, 3.3.20-24, 3.3.32)

## Variation to Earthworks Chapter 25:

Underlined text for additions and ~~strike through~~ text for deletions.

Amend Chapter 25 by inserting the following into Rule 25.5.5 (Table 25.2 – Maximum Volume)

<b>25.5.5</b>	Queenstown Town Centre Zone	500m <sup>3</sup>
	Wanaka Town Centre Zone	
	Local Shopping Centre Zone	
	Business Mixed Use Zone	
	Airport Zone (Queenstown)	
	Millbrook Resort Zone	
	<u>Walter Peak Tourism Zone</u>	

25.6 Non-Notification of Applications

...

25.6.2 All application for resource consent for earthworks in the Walter Peak Tourism Zone shall not be publicly notified but notice will be served on those persons considered to be adversely affected if those persons have not given their written approval.

## Variation to Subdivision and Development Chapter 27:

Underlined text for additions and ~~strike through~~ text for deletions.

Amend Chapter 27 by amending Rule 27.5.5 as follows:

<b>27.5.5</b>	Where land use consent is approved for a multi unit commercial or residential development, <u>or visitor accommodation development, or development in the Walter Peak Tourism Zone</u> and a unit title or leasehold (including cross lease) subdivision is subsequently	⊕ C
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	<p>undertaken in accordance with the approved land use consent, provided:</p> <ul style="list-style-type: none"> <li>a. all buildings must be in accordance with an approved land use resource consent;</li> <li>b. all areas to be set aside for the exclusive use of each building or unit must be shown on the survey plan, in addition to any areas to be used for common access or parking or other such purpose;</li> <li>c. all service connections and on-site infrastructure must be located within the boundary of the site they serve or have access provided by an appropriate legal mechanism.</li> </ul> <p>Control is reserved to:</p> <ul style="list-style-type: none"> <li>a. the effect of the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces;</li> <li>b. the effects of and on infrastructure provision.</li> </ul> <p>This rule does not apply a subdivision of land creating a separate fee simple title. The intent is that it applies to subdivision of a lot containing an approved land use consent, in order to create titles in accordance with that consent</p>	
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**27.6.1 No lots to be created by subdivision, including balance lots, shall have a net site area or where specified, average, less than the minimum specified.**

Zone	Minimum Lot Area
<u>Walter Peak Tourism Zone</u>	<u>No Minimum</u>

**Variation to Energy and Utilities Chapter 30**



<b>30.4.1.2</b>	<p>Small and Community-Scale Distributed Wind Electricity Generation within the Rural Zone, Gibbston Character Zone, <u>Walter Peak Tourism Zone</u> and Rural Lifestyle Zone that complies with Rule 30.4.2.3</p> <p>Control is reserved to the following:</p> <ul style="list-style-type: none"> <li>a. noise;</li> <li>b. visual effects;</li> <li>c. colour;</li> <li>d. vibration.</li> </ul>	C

## Variation to Signs Chapter 31:

Underlined text for additions and ~~strike through~~ text for deletions.

### 31.14 Rules – Activity Status of Signs in Special Zones

The rules relating to signs in this table are additional to those in Table 31.4 and are subject to the standards in Table 31.15. If there is a conflict between the rules in Table 31.4 and the rules in this table, the rules in this table apply.

<b>Table 31.14 – Activity Status of signs in Special Zones</b>		<b>Jacks Point Zone outside of Village Activity Areas and Residential Activity Areas</b>	<b>Waterfall Park Zone</b>	<b>Walter Peak Tourism Zone</b>	<b>Millbrook Resort Zone Rural Visitor Zone</b>
<b>31.14.1</b>	<b>Signs for commercial activities and community activities</b>  Control is reserved to the matters set out in Rule 31.17.	C	C	C	C
<b>31.14.2</b>	<b>Identification of a signage platform for a commercial activity or community activity</b>  Control is reserved to the matters set out in Rule 31.17.	C	C	C	C
<b>31.14.3</b>	<b>Signs for visitor accommodation</b>  Control is reserved to the matters set out in Rule 31.17.	D	D	C	C
<b>31.14.4</b>	<b>Signs not associated with commercial activities, community activities or visitor accommodation</b>	P	P	P	P
<b>31.14.5</b>	<b><u>Interpretive signs and signs for health and safety purposes</u></b>			P	
<b>31.14.6</b>	<b>Any sign activity which is not listed in Table 31.4 or Rules 31.14.1 to 31.14.4 inclusive</b>	D	D	?	D

## Variation to Chapter 36 Noise:

Underlined text for additions and ~~strike through~~ text for deletions.

### 36.5 Rules – Standards

Table 2: General Standards

	Standard				Non-Compliance Status
	Zones sound is received in	Assessment location	Time	Noise limits	
36.5.X	<u>Walter Peak Tourism Zone</u> <u>Zone</u>	At the notional boundary of any residential unit in the Rural Zone	<u>0800h</u> to <u>2000h</u>	<u>50 dB L<sub>dn</sub></u> <u>L<sub>Aeq(15</sub></u> <u>min)</u>	<u>NC</u>
			<u>2000h</u> to <u>0800h</u>	<u>40 dB L<sub>dn</sub></u> <u>L<sub>Aeq(15</sub></u> <u>min)</u>	<u>NC</u>