

Attachment 2 - a copy of the relevant parts of the Decision

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan
Report 3
Report and Recommendations of Independent Commissioners Regarding
Chapter 3, Chapter 4 and Chapter 6

Commissioners

Denis Nugent (Chair)

Lyal Cocks

Cath Gilmour

Trevor Robinson

Mark St Clair

2.3. Section 3.2.1 – Objectives – Economic Development

119. As notified, Section 3.2.1 had five separate objectives. The first two (3.2.1.1 and 3.2.1.2) focus on the economic contribution of central business areas of Queenstown and Wanaka and the commercial and industrial areas outside those areas respectively. The other three objectives focus on broader aspects of the economy.

¹⁴⁸ Proposed RPS Objective 1.1

¹⁴⁹ For Queenstown Lakes Community Housing Trust.

120. A common feature of each of the objectives in Section 3.2.1 is that they commence with a verb: recognise, develop and sustain; enable; recognise; maintain and promote.
121. Nor is Section 3.2.1 alone in this. This appears to be the drafting style employed throughout Chapters 3, 4 and 6 (and beyond). Moreover, submitters have sought to fit in with that drafting style, with the result that almost without exception, the amendments sought by submitters to objectives would be framed in a similar way¹⁵⁰.
122. We identified at the outset an issue with objectives drafted in this way. Put simply, they are not objectives because they do not identify “*an end state of affairs to which the drafters of the document aspire*”¹⁵¹.
123. Rather, by commencing with a verb, they read more like a policy – a course of action¹⁵² (to achieve an objective).
124. We discussed the proper formulation of objectives initially with Mr Paetz and then with virtually every other planning witness who appeared in front of us. All agreed that a properly framed objective needed to state an environmental end point or outcome (consistent with the *Ngati Kahungunu* case just noted). At our request, Mr Paetz and his colleague Mr Barr (responsible for Chapter 6) produced revised objectives for Chapters 3, 4 and 6, reframing the notified objectives to state an environmental end point or outcome. Counsel for the Council filed a memorandum dated 18 March 2016 producing the objectives of Chapters 3, 4 and 6 reframed along the lines above. As previously noted, the Chair directed that the Council’s memorandum be circulated to all parties who had appeared before us (and those who were yet to do so) to provide an opportunity for comment.
125. We note that because the task undertaken by Mr Paetz and Mr Barr was merely to reframe the existing objectives in a manner that explicitly stated an environmental end point or outcome, rather than (as previously) just implying it, we do not regard this as a scope issue¹⁵³, or as necessitating (to the extent we accepted those amendments) extensive evaluation under section 32.
126. Similarly, to the extent that submitters sought changes to objectives, applying the drafting style of the notified plan, we do not regard it as a scope issue to reframe the relief sought so as to express objectives so that they identify an environmental end point or outcome. We have read all submissions seeking amendments to objectives on that basis.
127. As notified, Objective 3.2.1.1 read:
- “Recognise, develop and sustain the Queenstown and Wanaka central business areas as the hubs of New Zealand’s premier alpine resorts and the Districts economy.”*
128. The version of this objective ultimately recommended by Mr Paetz and attached to counsel’s 18 March 2016 Memorandum read:

¹⁵⁰ Submission 761 (Orfel Ltd) was a notable exception in this regard, noting that a number of Chapter 3 objectives are stated as policies, and seeking that they be reframed as aspirational outcomes to be achieved.

¹⁵¹ *Ngati Kahungunu Iwi Incorporated v Hawkes Bay Regional Council* [2015] NZEnvC50 at [42]

¹⁵² *Auckland Regional Council v North Shore City Council* CA29/95 at page 10

¹⁵³ Quite apart from the scope provided by Submission 761 for a number of the ‘*objectives*’ in issue.

“The Queenstown and Wanaka town centres are the hubs of New Zealand’s premier alpine resorts and the District’s economy.”

129. We think that substituting reference to Queenstown and Wanaka town centres is preferable to referring to their “*central business areas*” because of the lack of clarity as to the limits of what the latter might actually refer to. Although the evidence of Dr McDermott for the Council suggested that he had a broader focus, the advantage of referring to town centres is because the PDP maps identify the Town Centre zones in each case. Mr Paetz agreed that a footnote might usefully confirm that link, and we recommend insertion of a suitably worded footnote.
130. NZIA suggested that rather than referring to central business areas, the appropriate reference would be to the Queenstown and Wanaka waterfront. While that may arguably be an apt description for the central area of Queenstown, we do not think that it fits so well for Wanaka, whose town centre extends well up the hill along Ardmore Street and thus we do not recommend that change.
131. The focus of other submissions was not so much on the wording of this particular objective but rather on the fact that the focus on the Queenstown and Wanaka town centres failed to address the increasingly important role played by commercial and industrial development on the Frankton Flats¹⁵⁴, the role that the Three Parks commercial development is projected to have in Wanaka¹⁵⁵, and the role of the visitor industry in the District’s economy, facilities for which are not confined to the Queenstown and Wanaka town centres¹⁵⁶. In his Section 42A Report, Mr Paetz recognised that the first and third of these points were valid criticisms of the notified PDP and recommended amended objectives to address them.
132. Turning to the RPS to see what direction we get from its objectives, the focus is on a generally expressed promotion of sustainable management of the built environment¹⁵⁷ and of infrastructure¹⁵⁸. The policies relevant to these objectives are framed in terms of promoting and encouraging specified desirable outcomes¹⁵⁹, minimising adverse effects of urban development and settlement¹⁶⁰, and maintaining and enhancing quality of life¹⁶¹. As such, none of these provisions appear to bear upon the objectives in this part of the PDP, other than in a very general way.
133. The Proposed RPS gets closer to the point at issue with Objective 4.5 seeking effective integration of urban growth and development with adjoining urban environments (among other things). The policies supporting that objective do not provide any relevant guidance as to how this might be achieved. Policy 5.5.3, however, directs management of the distribution of commercial activities in larger urban areas “*to maintain the vibrancy of the central business district and support local commercial needs*” among other things by “*avoiding unplanned*

¹⁵⁴ E.g. Submission 238: Supported in FS1097 and FS1117; Opposed in FS1107, FS1157, FS1226, FS1239, FS1241, FS1242, FS1248, FS1249; Submission 806: Supported in FS1012; Submission 807

¹⁵⁵ Submission 249: Supported in FS1117

¹⁵⁶ E.g. Submission 615: Supported in FS1105, FS1137; Submission 621: Supported in FS1097, FS1117, FS1152, FS1333, FS1345; Submission 624; Submission 677; Supported in FS1097, FS1117; Opposed in FS1035, FS1074, FS1312, FS1364; Submission 716: Supported in FS1097, FS1117, FS1345

¹⁵⁷ RPS Objective 9.4.1

¹⁵⁸ RPS Objective 9.4.2

¹⁵⁹ RPS Policies 9.5.2 and 9.5.3

¹⁶⁰ RPS Policy 9.5.4

¹⁶¹ RPS Policy 9.5.5

extension of commercial activities that has significant adverse effects on the central business district and town centres.”

134. We read this policy as supporting the intent underlying this group of objectives, while leaving open how this might be planned.
135. Addressing each objective suggested by Mr Paetz in turn, the version of his recommended Frankton objective presented with his reply evidence reads:
- “The key mixed use function of the Frankton commercial area is enhanced, with better transport and urban design integration between Remarkables Park, Queenstown Airport, Five Mile and Frankton Corner”.*
136. This is an expansion from the version of the same objective recommended with Mr Paetz’s Section 42A Report reflecting a view (explained by Mr Paetz in this reply evidence¹⁶²) that the Frankton area should be viewed as one wider commercial locality, comprising a network of several nodes, with varying functions and scales.
137. Dr McDermott gave evidence for the Council, supporting separate identification of the Frankton area on the basis that its commercial facilities had quite a different role to the town centres of Wanaka and Queenstown and operated in a complimentary manner to those centres.
138. We also heard extensive evidence from QAC as to the importance of Queenstown Airport to the District’s economy¹⁶³.
139. We accept that Frankton plays too important a role in the economy of the District for its commercial areas to be classed in the ‘other’ category, as was effectively the case in the notified Chapter 3. We consider, however, that it is important to be clear on what that role is, and how it is different to that of the Queenstown and Wanaka town centres. That then determines whether a wider or narrower view of what parts of the Frankton area should be the focus of the objective.
140. The term Dr McDermott used to describe Frankton was “mixed use” and Mr Paetz recommended that that be how the Frankton area is described.
141. The problem we had with that recommendation was that it gives no sense of the extent of the ‘mix’ of uses. In particular, “mixed use” could easily be taken to overlap with the functions of the Queenstown town centre. Dr McDermott described the latter as being distinguished by the role it (and Wanaka town centre) plays in the visitor sector, both as destinations in their own right and then catering for visitors when they are there¹⁶⁴. By contrast, he described Frankton as largely catering for local needs although when he appeared at the hearing, he emphasised that local in this sense is relative, because of the role of the Frankton retail and industrial facilities in catering for a wider catchment than just the immediate Frankton area. While Dr McDermott took the view that that wider catchment might extend as far as Wanaka, his opinion in that regard did not appear to us to be based on any hard evidence. However, we accept that Frankton’s role is not limited to serving the immediate ‘local’ area.

¹⁶² At paragraph 5.7

¹⁶³ In particular, the evidence of Mr Mark Edghill

¹⁶⁴ Dr P McDermott, EIC at 2.1(c).

142. Mr Chris Ferguson suggested to us that because of the overlapping functions between commercial centres, referring to *“the wider Frankton commercial area”* confused the message¹⁶⁵.
143. Evidence we heard, in particular from the NZIA representatives, took the same point further, suggesting that Frankton’s importance to the community was not limited to its commercial and industrial facilities, and that it had an important role in the provision of educational, health and recreation facilities as well. We accept that point too. This evidence suggests a need to refer broadly to the wider Frankton area than just to specific nodes or elements, and to a broader range of community facilities.
144. The extent to which this objective should focus on integration was also a matter in contention. The representatives for QAC opposed reference to integration for reasons that were not entirely clear to us and when he reappeared on the final day of hearing, Mr Kyle giving evidence for QAC, said that he was ambivalent on the point.
145. For our part, we regard integration between the various commercial and industrial nodes of development on the Frankton Flats (including Queenstown Airport), and indeed its residential areas¹⁶⁶, as being important, but consider that this is better dealt with as a policy. We will come back to that.
146. In summary, we recommend that Mr Paetz’s suggested objective largely be accepted, but with the addition of specific reference to its focus on visitors, to provide a clearer distinction between the roles of Queenstown and Wanaka town centres and Frankton and Three Parks respectively.
147. Accordingly, we recommend that the wording of Objective 3.2.1.1 (renumbered 3.2.1.2 for reasons we will shortly explain) be amended so read:
- “The Queenstown and Wanaka town centres¹⁶⁷ are the hubs of New Zealand’s premier alpine visitor resorts and the District’s economy.”*
148. We further recommend that a new objective be added (numbered 3.2.1.3) as follows:
- “The Frankton urban area functions as a commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin.”*
149. The case for recognition of the Three Parks commercial area is less clear. While, when the development is further advanced, it will be a significant element of the economy of the Upper Clutha Basin, that is not the case at present.
150. Mr Dippie appeared before us and made representations on behalf of Orchard Road Holdings Limited¹⁶⁸ and Willowridge Developments Limited¹⁶⁹ advocating recognition of Three Parks in the same way that the Frankton commercial areas were proposed (by Council staff) to be

¹⁶⁵ C Ferguson, EiC at paragraph 103

¹⁶⁶ A key issue for QAC is how Queenstown airport’s operations might appropriately be integrated with further residential development in the wider Frankton area

¹⁶⁷ Defined by the extent of the Town Centre Zone in each case.

¹⁶⁸ Submission 91/Further Submission 1013

¹⁶⁹ Submission 249/Further Submission 1012

recognised, but was reasonably non-specific as to exactly how that recognition might be framed.

151. Dr McDermott's evidence in this regard suffered from an evident unfamiliarity with the Wanaka commercial areas and was therefore not particularly helpful. However, we were assisted by Mr Kyle who, although giving evidence for QAC, had previously had a professional role assisting in the Three Parks development. In response to our query, he described the primary function of the Three Parks commercial area as being to provide more locally based shopping, including provision for big box retailing. He thought there was a clear parallel between the relationship between Frankton and Queenstown town centre.

152. Mr Paetz recommended in his reply evidence that the Three Parks area be recognised in its own objective as follows:

"The key function of the commercial core of the Three Parks Special Zone is sustained and enhanced, with a focus on large format retail development".

153. We do not regard it is appropriate for the objective related to Three Parks to provide for *"sustaining and enhancing"* of the function of the commercial part of the Three Parks area; that is more a policy issue. Similarly, saying that the Three Parks Commercial Area should be focussed on large format retail development leaves too much room, in our view, for subsidiary focusses which will erode the role of the Wanaka town centre. Lastly, referring to the Three Parks *'Special Zone'* does not take account of the possibility that there may not be a *'Special Zone'* in future.

154. Ultimately, though, we recommend that the Three Parks Commercial Area be recognised because it is projected to be a significant element of the economy of the Upper Clutha Basin over the planning period covered by the PDP.

155. To address the wording issues noted above, we recommend that the objective (numbered 3.2.1.4) be framed as follows:

"The key function of the commercial core of Three Parks is focussed on large format retail development".

156. The only submission seeking amendment to the notified Objective 3.2.1.3, sought that it be reworded as an aspirational outcome to be achieved, rather than as a policy¹⁷⁰. In his reply evidence, the version of this objective suggested by Mr Paetz (addressing this point) read:

"Development of innovative and sustainable enterprises that contribute to diversification of the District's economic base and create employment opportunities."

157. Although only an issue of emphasis, we see the environmental outcome as being related to the District's economic base. Development of enterprises contributing to economic diversity and employment are a means to that end.

158. Accordingly, we recommend that the objective (renumbered 3.2.1.6) be reframed as follows:

¹⁷⁰ Submission 761

“Diversification of the District’s economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.”

159. As already noted, a number of submissions raised the need for specific recognition of the visitor industry outside the Queenstown and Wanaka town centres.

160. The objective recommended by Mr Paetz in his reply evidence to address the failure of the notified plan to recognise the significance of the visitor industry to the District economy in this context was framed as follows:

“The significant socioeconomic benefits of tourism activities across the District are provided for and enabled.”

161. While we accept the need for an objective focused on the contribution of the visitor industry outside the Queenstown and Wanaka town centres to the District’s economy, including but not limited to employment, the phraseology of Mr Paetz’s suggested objective needs further work. Talking about the benefits being provided for does not identify a clear outcome. The objective needs to recognise the importance of the visitor industry without conveying the impression that provision for the visitor industry prevails over all other considerations irrespective of the design or location of the visitor industry facilities in question. Policy 5.3.1(e) of the Proposed RPS supports some qualification of recognition for visitor industry facilities –it provides for tourism activities located in rural areas *“that are of a nature and scale compatible with rural activities”*. Similarly, one would normally talk about enabling activities (that generate benefits) rather than enabling benefits. Benefits are realised. Lastly, we prefer to refer to the visitor industry rather than to tourism activities. Reference to tourism might be interpreted to exclude domestic visitors to the District. It also excludes people who visit for reasons other than tourism.

162. In summary, we recommend that a new objective be inserted worded as follows:

“The significant socioeconomic benefits of well designed and appropriately located visitor industry facilities and services are realised across the District.”

163. Given the importance of the visitor industry to the District’s economy and the fact that the other objectives addressing the economy are more narrowly focused, we recommend that it be inserted as the first objective (fleshing out the revised goal/higher-level objective stated in Section 3.2.1) and numbered 3.2.1.1.

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807. Turning to use of rural land by the visitor industry, Policy 6.3.8.2 provides wording that in our view is a useful starting point. As notified, this policy read:

“Recognise that commercial recreation and tourism related activities locating within the rural zones may be appropriate where these activities enhance the appreciation of landscapes, and on the basis that they would protect, maintain or enhance landscape quality, character and visual amenity values.”

808. This wording would respond to the evidence of Mr Jeff Brown on behalf of Kawarau Jet Services Limited supporting specific reference to commercial recreational activities in recreational areas and on lakes and rivers in the district⁴⁷³. We do not think that specific reference needs to be made to lakes and rivers in this context, as, with the exception of Queenstown Bay, they are all within the Rural Zone. As discussed above, any unique issues arising in relation to waterways can more appropriately be addressed in Chapter 6.

809. Policy 6.3.8.2 was supported by Darby Planning LP⁴⁷⁴, but a number of other submissions with interests in the visitor industry sector sought amendments to it. Some submissions⁴⁷⁵ sought that the policy refer only to managing adverse effects of landscape quality, character and visual amenity values. Others sought that the policy be more positive towards such activities. Real Journeys Limited⁴⁷⁶ for instance sought that the policy be reframed to encourage commercial recreation and tourism related activities that enhanced the appreciation of landscapes. Submissions 677⁴⁷⁷ and 696⁴⁷⁸ suggested a *“recognise and provide for”* type approach, combined with reference only to appreciation of the District’s landscapes. Lastly, Submission 806 sought to remove any doubt that recreational and tourism related activities are appropriate where they enhance the appreciation of landscapes and have a positive influence on landscape quality, character and visual amenity values, as well as provision of access to the alpine environment.

810. Mr Barr did not recommend any change to this policy in the context of Chapter 6 and we were left unconvinced as to the merits of the other amendments sought in submissions. In particular, converting the policy merely to one which states the need to manage adverse effects does not take matters very far.

811. Similarly, appreciation of the District’s landscapes is a relevant consideration, but too limited a test, in our view, for the purposes of a policy providing favourably for the visitor industry.

812. We have already discussed the defects of a *“recognise and provide for”* type approach in the context of the District Plan policies.

⁴⁷³ J Brown, EIC at 4.11

⁴⁷⁴ Submission 608: Opposed in FS1034

⁴⁷⁵ Submissions 610, 613: Supported in FS1097.

⁴⁷⁶ Submission 621: Supported in FS1097

⁴⁷⁷ Supported in FS1097; Opposed in FS1312

⁴⁷⁸ Supported in FS1097

813. Lastly, incorporation of provision of access to the alpine environment as being a precondition for appropriateness would push the policy to far in the opposite direction, excluding visitor industry activities that enable passive enjoyment of the District's distinctive landscapes.
814. In summary, we recommend that Policy 6.3.8.2 be shifted into Chapter 3, renumbered 3.3.21 but otherwise not be amended.
- 815.

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 4A

Report and Recommendations of Independent Commissioners Regarding
Chapter 21, Chapter 22, Chapter 23, Chapter 33 and Chapter 34

Commissioners

Denis Nugent (Chair)

Brad Coombs

Mark St Clair

4.43 Policy 21.2.12.3

422. Policy 21.2.12.3 as notified read as follows;

Avoid or mitigate the adverse effects of frequent, large-scale or intrusive commercial activities such as those with high levels of noise, vibration, speed and wash, in particular motorised craft in areas of high passive recreational use, significant nature conservation values and wildlife habitat.

423. Two submissions sought that policy be retained⁴⁷⁸. Two submissions sought that the policy be variously amended to clarify that it did not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm as those areas could provide for water based public transport⁴⁷⁹. One submission sought the amendment to the policy to provide for frequent use, large scale and potentially intrusive commercial activities along the Kawarau River and Frankton Arm.⁴⁸⁰
424. In the Section 42A Report, Mr Barr considered the inclusion of provision for large scale intrusive commercial activities would mean the policy would not meet section 5 of the Act. Rather, Mr Barr considered that the wider benefits of such proposals should be considered in the context of a specific proposal. Mr Barr noted that Queenstown Wharves GP Ltd⁴⁸¹ had sought similar amendments excluding the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm from other policies (Policies 21.2.12.4 – 21.2.12.7 (and we note policies 21.2.12.9 and 21.2.12.10)). Mr Barr considered that the policies were appropriately balanced and as worded, could be applied across the entire district. Again, Mr Barr considered that the specific transport link proposals should be considered on the merits of the specific proposal.⁴⁸²
425. Mr Brown, in evidence for QPL and Queenstown Wharves GP Limited, did not recommend any changes to this policy⁴⁸³, but he did recommend a specific new policy to be placed following 21.2.12.10 to recognise and provide for a water based public transport system on the Kawarau River and Frankton Arm⁴⁸⁴. Mr Farrell, in evidence for RJL *et al*⁴⁸⁵, opined that it was not appropriate for the plan to always avoid or mitigate the adverse effects of frequent, large scale or intrusive commercial activities. Mr Farrell considered that the policy should be amended to recognise existing commercial activities.
426. We agree that the policy needs to be considered in the context of its district-wide application and find that provision for frequent use, large scale or intrusive commercial activities at particular locations would not align with the objective to the extent that provision would allow for materially more mechanised boat traffic than at present.
427. Consideration of activities affecting the natural character of the Kawarau River below the Control Gates Bridge also needs to take account of the Water Conservation (Kawarau) Order 1997 (WCO) given that the PDP cannot be inconsistent with it⁴⁸⁶. The WCO states that identified characteristics (including wild and scenic, and natural characteristics) are protected. While the

478 Submissions 243, 649

479 Submissions 766, 806

480 Submission 621

481 Submission 766

482 C Barr, Section 42A Report, Page 82, Para s17.13 – 17.15

483 J Brown, Evidence, Page 14, Para 2.24

484 J Brown, Evidence, Page 15, Para 2.24

485 B Farrell, Evidence, Page 22, Paras 92-96

486 Section 74(4) of the Act

WCO also recognises recreational jet-boating as an outstanding characteristic of the river, we find the breadth of the policy amendment sought would be inconsistent with the WCO.

428. It also needs to be recognised that the policy as notified focuses on areas of high passive recreational use, significant nature conservation values and wildlife habitat. It does not purport to apply to all waterways.
429. We agree generally with Mr Barr that the other policies under this objective are likewise appropriately balanced. We also find that the new policy suggested by Mr Brown would not align with the objective and to the extent that it would allow for significant new non-recreational mechanised use of the Kawarau River below the Control Gates, potentially inconsistent with the WCO.
430. We therefore recommend that the submissions that sought the exclusion of the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm from the policies and the specific recommendation (of Mr Brown) to provide for water based transport be rejected. We do not consider those submissions further, apart from recording the policies where they apply below. That said, we return to the issue of water based public transport later, as part of our consideration of Policy 21.2.12.8.
431. We do think that the policy would be improved with some minor punctuation changes.
432. Accordingly, we recommend that policy 21.2.12.3 be renumbered and worded as follows:

Avoid or mitigate the adverse effects of frequent, large-scale or intrusive commercial activities such as those with high levels of noise, vibration, speed and wash, in particular motorised craft, in areas of high passive recreational use, significant nature conservation values and wildlife habitat.

487 Submissions 766, 806
488 Submissions 339, 706
489 C Barr, Section 42A Report, Page 82 – 83, Para 17.16

4.47 Policy 21.2.12.7

461. Policy 21.2.12.7 as notified read as follows;

Ensure that the location, design and use of structures and facilities are such that any adverse effects on visual qualities, safety and conflicts with recreational and other activities on the lakes and rivers are avoided or mitigated.

462. Two submissions sought that the policy be amended to recognise the importance of the Frankton Arm and the Kawarau River as a public transport link⁵⁰⁵. Three submissions sought the policy be amended to insert the word “remedied” after the word “avoid”⁵⁰⁶.

463. We address the submissions seeking that the policy recognise the Frankton Arm and the Kawarau River as important transport link, under Policy 21.2.12.8 below. We could not find these submissions directly addressed in the Section 42A Report. However, Appendix 1 of that report has a comment recommending that the word “remedied” be inserted as sought by TML.

464. Mr Vivian’s evidence for TML⁵⁰⁷ and Mr Brown’s evidence for QPL and Queenstown Wharves Ltd⁵⁰⁸ agreed with the Section 42A Report.

465. We agree. Although opportunities to remedy adverse effects may in practice be limited, the addition of the word “remedied” is appropriate within the context of the policy in being a legitimate method to address potential effects. We addressed the amendment suggested by Mr Brown, of the insertion of reference to natural character into this policy above.

466. Accordingly, we recommend that Policy 21.2.12.7 be reworded as follows:

Ensure that the location, design and use of structures and facilities are such that any adverse effects on visual qualities, safety and conflicts with recreational and other activities on the lakes and rivers are avoided, remedied or mitigated.

4.48 Policy 21.2.12.8

467. Policy 21.2.12.8 as notified read as follows;

Encourage the development and use of marinas in a way that avoids or, where necessary, remedies and mitigates adverse effects on the environment.

468. One submission sought that the words “jetty and other structures” be inserted following the word “marinas”⁵⁰⁹. Two submissions sought that the policy be amended to replace the words “marinas in a way that ” with “a water based public transport system including necessary infrastructure, in a way that as far as possible”⁵¹⁰. One submission sought to amend the policy by replacing the word “Encourage” with “Provide for” and to delete the words “where necessary”.⁵¹¹

⁵⁰⁵ Submissions 766, 806

⁵⁰⁶ Submission 519, 766, 806

⁵⁰⁷ C Vivian, Evidence, Page 19, Para 4.84

⁵⁰⁸ J Brown, Evidence, Page 4, Para 2.24 (by adopting the Section 42 A Report recommendation on the policy)

⁵⁰⁹ Submission 194

⁵¹⁰ Submissions 766, 806

⁵¹¹ Submission 621

469. In the Section 42A Report, Mr Barr agreed that clarification of the policy would be improved by also referring to jetties and moorings. Mr Barr also considered that the term “*Encourage*” was more in line with the Strategic Direction of the Plan which was not to provide for such facilities, but rather when they are being considered, to encourage their appropriate location, design and scale. Mr Barr also agreed that the words “*where necessary*” did not add value to the policy and recommended they be deleted.⁵¹² Mr Barr addressed the provision of public transport within the Frankton Arm and Kawarau River in a separate part of the Section 42A Report. However, this discussion was on the rules rather than the policy⁵¹³. That said, in discussing the rules, Mr Barr acknowledged the potential positive contribution to transport a public ferry system could provide. Mr Barr considered “*ferry*” a more appropriate term than “*commercial boating*” which in his view may include cruises and adventure tourism⁵¹⁴. Mr Barr did not, however, recommend the term “*ferry*” be included in the policy in his Section 42A Report.
470. In evidence for RJL, Mr Farrell supported the recommendation in the Section 42A Report⁵¹⁵.
471. Mr Brown, in evidence for QPL and Queenstown Wharves Ltd, supported the reference to lake and river public transport as an example of relieving road congestion and also facilitating access and enjoyment of rivers and their margins⁵¹⁶. Mr Brown’s recommended wording of the policy did not include the relief sought by QPL and Queenstown Wharves Ltd, to qualify the policy by adding the words, “*in a way that as far as possible*”.
472. In reply, Mr Barr incorporated part of Mr Brown’s recommended wording into the Appendix 1 of the Section 42A Report.⁵¹⁷ Mr Barr included the word “*ferry*” at this point to address the difference between water based public transport and other commercial boating we identified above.
473. The starting point for consideration of these issues is renumbered Policy 6.3.31 (Notified Policy 6.3.6.1) which seeks to control the location, intensity, and scale of buildings, jetties, moorings and infrastructure on the surface and margins of water bodies by ensuring these structures maintain or enhance landscape quality and character, and amenity values. We therefore have difficulty with Mr Barr’s suggested addition of reference to jetties and moorings in this context without a requirement that landscape quality and character, and amenity values all be protected. Certainly we do not agree that that would be consistent with the Strategic Chapters. We do, however agree that provision for water-based public transport “*ferry systems*” and related infrastructure, is appropriate within the context of this policy and that it needs to be distinguished from other types of commercial boating.
474. We agree with Mr Barr’s suggestion that the words “*where necessary*” are unnecessary but we consider that greater emphasis is required to note the need to avoid, remedy or mitigate adverse effects as much as possible and, therefore, we accept the submissions of QPL and Queenstown Wharves Ltd in this regard.
475. Accordingly, we recommend that Policy 21.2.12.8 be reworded as follows:

⁵¹² C Barr, Section 42A Report, Page 83, Paras 17.18 – 17.19

⁵¹³ C Barr, Section 42A Report, Page 85 - 88, Paras 17.29 – 17.42

⁵¹⁴ C Barr, , Section 42A Report, Page 87 - 88, Paras 17.41 – 17.42

⁵¹⁵ B Farrell, Evidence, Page 23, Para 101

⁵¹⁶ J Brown, Evidence, Page 15, Para 2.26(b)

⁵¹⁷ C Barr, Reply, Page 21-6, Appendix 1

Encourage development and use of water based public ferry systems including necessary infrastructure and marinas, in a way that avoids adverse effects on the environment as far as possible, or where avoidance is not practicable, remedies and mitigates such adverse effects.

4.49 Policy 21.2.12.9

476. Policy 21.2.12.9 as notified read as follows;

Take into account the potential adverse effects on nature conservation values from the boat wake of commercial boating activities, having specific regard to the intensity and nature of commercial jet boat activities and the potential for turbidity and erosion.

477. One submission sought that the policy be amended to apply only to jet boats and the removal of the words “*intensity and nature of commercial jet boat activities*”⁵¹⁸ and similarly, another submission sought that the policy be amended to enable the continued use of commercial jet boats while recognising that management techniques could be used to manage effects⁵¹⁹. One other submission sought the amendment of the policy to recognise the importance of the Kawarau River as a water based public transport link.⁵²⁰
478. Mr Barr, in his Section 42A Report, considered that jet boats were already specified in the policy and that there was a need to address the potential impacts from any propeller driven craft in relation to turbidity and wash⁵²¹. Mr Barr recommended that policy remain as notified.
479. Mr Farrell, in evidence for RJL *et al*, agreed with Mr Barr’s recommendation⁵²² and Mr Brown, for QPL, did not recommend any amendments to the policy⁵²³.
480. There being no evidence in support of the changes sought by the submitters, we adopt the reasoning of the witnesses and find that the amendments sought would not be the most appropriate way of achieving the objective.
481. Accordingly, we recommend that the submissions be rejected and that policy 21.2.12.9 remain as notified.

4.50 Policy 21.2.12.10

482. Policy 21.2.12.10 as notified read as follows:

Ensure that the nature, scale and number of commercial boating operators and/or commercial boats on waterbodies do not exceed levels where the safety of passengers and other users of the water body cannot be assured.

483. One submission sought that the policy be amended as follows;

*Protect historical and well established commercial boating operations from incompatible activities and manage new commercial operations to ensure that the nature, scale and number of new commercial boating operators and/or commercial boats on waterbodies do not exceed levels where the safety of passengers and other users of the water body cannot be assured.*⁵²⁴

⁵¹⁸ Submission 621

⁵¹⁹ Submissions 806

⁵²⁰ Submission 806

⁵²¹ C Barr, Section 42A Report, Page 84, Para 17.21

⁵²² B Farrell, Evidence, Page 23, Para 103

⁵²³ J Brown, Evidence, Page 15, Para 2.24

⁵²⁴ Submission 621

484. One other submission sought that the policy be amended to enable the continued use of commercial jet boats while recognising that management techniques could be used to manage effect and that the policy be amended to recognise the importance of the Kawarau River as a water based public transport link.⁵²⁵
485. In the Section 42A Report, Mr Barr considered the relief sought by RJL to be neither necessary nor appropriate, because consideration of the effects of new activities on established activities was inherently required by the wording of the policy as notified. Mr Barr noted that all established activities would have consent anyway, so 'well established' did not add anything to the policy. In addition, Mr Barr considered that the qualifiers in the policy were a guide as to incompatibility, so the introduction of the word "incompatible" was not appropriate in this context⁵²⁶. Mr Barr recommended that the policy remain as notified.
486. Mr Brown, for QPL, did not recommend any amendments to the policy⁵²⁷. Mr Farrell, in evidence for RJL, considered the policy did not satisfactorily recognise the benefits of historical and well established commercial boating operations which were important to the district's special qualities and overall sense of place⁵²⁸. Mr Farrell recommended we adopt the relief sought by RJL.
487. We disagree with Mr Farrell. This policy would come into play when resource consent applications were being considered. At that point, safety considerations need to be addressed both for entirely new proposals and for expansion of existing operations. It would not affect operations that were already consented (and established) unless the conditions on that consent were being reviewed. In those circumstances, it could well be appropriate to consider safety issues.
488. In summary, in relation to the amendments sought by RJL, we agree with and adopt the reasoning the reasoning of Mr Barr. We recommend that the submission by RLJ be rejected.
489. In reviewing this policy we have identified that it contains a double negative that could create ambiguities in interpreting it: the policy requires that *the nature, scale and number* (of activities) *do not exceed levels where ... safety ... cannot be assured*. We consider a minor, non-substantive amendment under Clause 16(2) of the First Schedule to replace "where" with "such that" will address this problem.
490. Accordingly, we recommend that Policy 21.2.12.10 be reworded as follows:
- Ensure that the nature, scale and number of commercial boating operators and/or commercial boats on waterbodies do not exceed levels such that the safety of passengers and other users of the water body cannot be assured.*

⁵²⁵ Submission 806

⁵²⁶ C Barr, Section 42A Report, Page 84, Para 17.23

⁵²⁷ J Brown, Evidence, Page 15, Para 2.24

⁵²⁸ B Farrell, Evidence, Page 23, Para 106