Appendix C - A copy of the relevant parts of the decision

Maps created by QLDC GIS Department

Parcel boundaries derived from New Zealand Core Records System Vector Data (Corax) obtained from LINZ under the LINZ Licence Agreement

Polnoon Burn
Carmichaels Creek
Shotover River
Arrow River
Stony Creek
Skippers Heritage Overlay Area
Macetown Heritage Overlay Area
Coronet Peak Ski Area Sub-Zone
Seffertown Heritage Overlay Area
Moonlight Creek
Moke Lake Heritage Overlay Area
Cardrona Ski Area Sub-Zone
Spotts Creek
Spot Burn
Back Creek
Cardrona River
Roaring Meg
Waiorau/Pisa Ski Area Sub-Zone
Central Otago District
SH 6
ONL

16A 140 217 17A 219 228 16A 144 55 35A 218 19 145 130 139 45 67 35A 35A 35A G33C G33B G33A A8C_3 A8C_5 A8C_4 A8C_6 A8C_9 A8C_7 385 6 375 G28A_7 G26A_6 304 387 545 331 610 510 F21C_2 F21A F21C_1 F21B_3 F21B_1 F2A F22A_2 F22A_1 F2D F2B_2 F2B_1 F2C F26C_3 F26C_2 F26C_1 F26A F26B

24a 28 27 26

Legend

- Historic Heritage Features
- Protected Tree
- Aurora Distribution Lines – For Information Only
- State Highway
- Parcel/Road Boundary
- Landscape Classification (ONF,ONL,RCL)
- Urban Growth Boundary
- Territorial Authority Boundary
- Heritage Overlay Area
- Significant Natural Area
- Unformed Roads
- Designated Areas
- Ski Area Sub-Zone
- Waterfall Park
- Medium Density Residential
- Lower Density Suburban Residential
- Town Centres
- Arrowtown Residential Historic Management Zone
- Local Shopping Centre
- Rural
- Rural Residential
- Rural Lifestyle
- Water (zoned Rural unless otherwise shown)

10

QUEENSTOWN LAKES DISTRICT COUNCIL

PDP Decisions Version Map 10 - Skippers, Macetown, Cardrona

0 2.5 5 Km

N

Date Published: 20-Apr-18

24a

24b

ONL

ONF

RCL

ONL

RCL

Paddys Ridge

Tuohys Gully Rd

Cardrona Valley Rd

Curtis Rd

Pringles Creek Rd

Soho St

Riverbold Way

Gunn Rd

Alison Ave

Bernard Rd

Wairau Rd

Hardie Place

Matheson Cr

Grierson Lane

Rockhaven

Aubrey Rd

Hunt Place

Lagoon Ave

Dale St

Ivy Lane

Riffleman St

Hebe Court

Poppy Lane

Quail St

Quinnat St

Snowberry St

Warbler Lane

Sherwin Ave

Mallard St

Marbleleaf Lane

Heron Green

Wren St

Frye Cr

Finch St

Ash Ave

Hebbard Court

Carlow St

Wexford St

Kingston St

Arklow St

Kirkwall St

Waterford Terrace

Tipperary St

Dublin St

Carnmore St

Templeton St

Jack Young Place

Kingfisher Cr

Albert Town-Lake Hawea Rd

Lake Hawea-Albert Town Rd

SH 6

Old Racecourse Rd

Monteith Rd

Clan Mac Rd

Halliday Rd

E38A

328

500

585

569

586

552

494

495

543

361

362

450

352

70

186

520

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578

298

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621

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622

584

570

522

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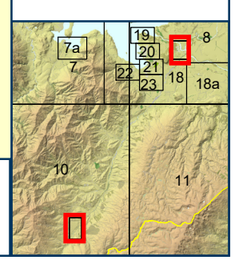

QUEENSTOWN LAKES DISTRICT COUNCIL

PDP Decisions Version Map 24 - Cardrona, Albert Town

0 0.5 1 Km

N

Date Published: 18-Apr-18

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on the Proposed District Plan

Report 15

Report and Recommendations of Independent Commissioners Regarding
Ski Area Sub-Zones

Commissioners
Denis Nugent(Chair)
Greg Hill
Scott Stevens

TABLE OF CONTENT

PART A: INTRODUCTORY MATTERS

1. PRELIMINARY MATTERS

1.1. Terminology in this Report

1. Throughout this report, we use the following abbreviations:

CARL	Cardrona Alpine Resort Limited
Council	Queenstown Lakes District Council
MCSL	Mt Cardrona Station Ltd
ODP	the Operative District Plan for the Queenstown Lakes District as at the date of this report
ONF	Outstanding Natural Feature(s)
ONL	Outstanding Natural Landscape(s)
PDP	Stage 1 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015
PLS	Passenger Lift Systems
Proposed RPS	the Proposed Regional Policy Statement for the Otago Region Decisions Version dated 1 October 2016
RCL	Rural Character Landscape
RPS	the Operative Regional Policy Statement for the Otago Region dated October 1998
Rural Chapter	Chapters 21, of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015
SAA	Ski Area Activities
SASZ	Ski Zone Sub Areas
Soho	Soho Ski Area and Blackmans Creek No 1LP
TCI	Treble Cone Investments Ltd

1.2. Topics Considered

2. The subject matter of this hearing was the submissions and further submissions made on the Ski Area Sub Zone (SASZ) as applied on the Planning Maps (Hearing Stream 11). The SASZ are a sub zone of the Rural Zone, and, as often happens when considering the application of zones (or subzones), some fine-tuning of the text provisions were also at issue.

3. This SASZ report addresses the Panel's recommendation on those submissions seeking changes to the spatial extent of the SASZ as well as some of the SASZ provisions. The SASZ provisions were addressed at the Rural hearing, however as part of the SASZ hearings some submitters sought amendments to the SASZ provisions as alternative options to address their concerns. These included:
   a. not extending the Sub-Zone but to the changing the activity status of PLS's outside of a SASZ;
   b. extending the Sub-Zone, but imposing other more restrictive controls such as no build or earthworks areas; and
   c. seeking greater clarity about what activities were permitted (e.g. avalanche control and snow grooming outside of SASZs).

4. Where we have found it appropriate to recommend amendments to the SASZ provisions in Chapter 21, our recommendations have been incorporated into Chapter 21 as recommended in Report 4A.

1.3. Hearing Arrangements

5. Stream 11 - SASZ hearings were heard on 8-10 May 2017 inclusive in Queenstown.

6. The parties we heard from were:

Council
- Sarah Scott (Counsel)
- Marion Read
- Glenn Davis
- Kelvin Lloyd
- Kim Banks
- Ulrich Glasner

NZ Ski Limited[1]
- Jane Macdonald (Counsel)
- Sean Dent
- Stephen Skelton

Soho Ski Area and Blackmans Creek No 1LP (Soho)[2]**, and Treble Cone Investments Ltd (TCI)**[3]
- Maree Baker- Galloway (Counsel)
- John Darby
- Hamish McCrostie
- Yvonne Pflüger
- Chris Ferguson

Cardrona Alpine Resort Limited (CARL)[4]
- Erik Barnes
- John Edmonds

1 Submission 572 and FS1229
2 Submission 610 and FS1329
3 Submission 613 and FS1330
4 Submission 615

Mt Cardrona Station Ltd (MCSL)[5]

- Warwick Goldsmith (Counsel)
- Ben Espie
- Jeff Brown

1.4. Procedural Issues

7. The hearings proceeded on the basis of the pre-hearing directions made via minutes issued by the Chair in November 2016[6] and January 2017[7].

8. On 2 February 2017 CARL was granted a hearing time after a late request was received. QPL was granted leave to present its submission concerning the Remarkables SASZ as part of the Queenstown Mapping hearings (Stream 13).

9. While MCSL appeared and presented legal submissions and evidence, this case was withdrawn in January 2018 and is therefore discussed no further[8].

10. No other procedural issues arose during this hearing stream.

1.5. Other Relevant Reports

11. This report needs to be read in conjunction with a number of other reports, in particular:
    a. Report 1 which sets out the Panel's general approach on statutory matters;
    b. Report 4A relating to Chapter 21, Chapter 22, Chapter 23, Chapter 33 and Chapter 34. The relevant portions of that report are those relating to Chapter 21 - Rural. That report sets out the recommendations in relation to the Rural Zone provisions (Chapter 21) which include the objectives, policies and rules relating to the SASZs.
    c. Report 3 relating to Chapter 3, Chapter 4 and Chapter 6. The relevant portions of that report are those relating to Chapter 3 - Strategic Directions and Chapter 6 - Landscape.

12. The references made to those reports in the following sections of this report are either to highlight matters of particular relevance or to avoid unnecessary duplication.

13. The reports listed above along with the recommended revised provisions address some of the overarching provisions of the PDP, and include those relating to economic development, recreational values, and protecting Queenstown's outstanding landscapes and features from the adverse effects of subdivision, use and development. They either apply across the entire District or are directly relevant to the SASZ provisions

14. As already mentioned the SASZs are a sub zone of the Rural Zone in the PDP. The relevant SASZ objectives, policies and rules 'reside' in the Rural section of the PDP, and hence the relevance of Report 4A.

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5 Submission 407 and FS1153

6 Minute Requesting Indication of Hearing Time Requirements issued 7 November 2016

7 Sixth Procedural Minute issued 23 January 2017

8 Memorandum of Counsel in Response to Minute Concerning Status of PLS Corridor, Mt Cardrona Station Ltd, dated 19 January 2018

1.6. Sections 32 and 32AA

15. Report 1 - Introduction - has set out the Panel's approach to section 32 and 32AA of the RMA. It states[9]:

> *46 It is also noted that in discussing the section(s) as a whole and in considering each objective, policy and rule, the Hearing Panel's has in each case considered the provisions of the PDP in terms of section 32 of the Act. Where amendments are recommended, these have been specifically considered in terms of the obligation arising under s32AA of the Act to undertake a further evaluation of the recommended changes.*
>
> *47 The approach taken in all of the reports in relation to sections 32 and 32AA is as follows:*
>
> *a. There is no separate s.32 evaluation document;*
>
> *b. There is no tabulated s.32 (or s.32AA) evaluation within the recommendation reports;*
>
> *c. Section 32 and s.32AA evaluation is contained within the discussion leading to our recommendations.*

16. We have taken the same approach in this report. Accordingly, we record that in our substantive consideration of the SASZ submissions, where we have recommended changes to the notified version of the rural provisions as they affect SASZs, our recommendations reflect an evaluation of our recommended changes in terms of section 32(1) – (4) and section 32AA. We also record that the detail in which the recommended changes have been considered reflects the scale and significance of the recommended change.

1.7. Overview of the SASZs

17. Particular zones in the PDP provide for specific issues or activities important to the social, cultural or economic wellbeing of the District. A number of zones have overlays or sub zones within them that either provide an alternative regulatory framework to enable specific activities or identify additional constraints. The SASZ in the Rural Zone is an example of the sub zone approach.

18. The SASZ provides an alternative regulatory framework to enable Ski Area Activities (SAA) to occur in defined locations. It also provides for some other activities via a consenting approach that, while providing for the economic benefits of tourism/recreational activities, also addresses environmental considerations. In summary, this approach enables SAA's to occur in the defined SASZ via a permitted or less restrictive consenting (generally controlled) framework than that applying to the underlying Rural Zone.

19. Report 4A has set out specific recommended changes to the SASZ's including their purpose, objectives, policies, rules and some definitions. The reports (and in some cases the recommended changes) on the Strategic Directions Chapter (3) and the Landscape Chapter (6) are also highly relevant to the context of how we have addressed the submissions on the specific SASZ's; their spatial extent as well as amended provisions to enable or provide for the SASZ's to function more efficiently. We address the 'higher order' strategic issues briefly below as part of the context for our recommendations on the specific submissions

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[9] Para 46 and 47

20. The Strategic Direction Chapter (Chapter 3) sets the overarching direction for the management of growth, land use and development in a manner that ensures sustainable and integrated management of the District's environment (including its landscapes), while providing for social, economic and cultural wellbeing. The Chapter 3 recommendation report set out that tourism plays a key economic role in the District's economy (highly relevant to the SASZ), but that this had not been sufficiently recognised. A new objective and policy have been recommended to more explicitly recognise the benefits of tourism activity to the District's economy. They are:

Objective -3.2.1.1
The significant socioeconomic benefits of well designed and appropriately located visitor industry facilities and services are realised across the District.

Policy 3.3.21
Recognise that commercial recreation and tourism related activities seeking to locate within the Rural Zone may be appropriate where these activities enhance the appreciation of landscapes, and on the basis they would protect, maintain or enhance landscape quality, character and visual amenity values.

21. While the provisions more explicitly recognise the role of tourism, the recommended Policy is that commercial recreation and tourism related activities should only occur where they would "*protect, maintain or enhance landscape quality, character and visual amenity values*". This is clearly important as much of the District's tourism is outdoors and recreational based, with a significant proportion of this being skiing/snowboarding related within outstanding natural landscapes. Protecting these landscapes while enabling SAA activities is critical to the 'tourism experience'.

22. Furthermore section 3.2.5 of the recommended version of Chapter 3 addresses the retention of the District's distinctive landscapes. It sets out the following policy at 3.2.5.1:

The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration.

23. The policies which address this objective are located in Chapter 6 - Landscapes. Chapter 6 identifies the regulatory framework for the management of the District's natural features and landscapes, and implements Part 2 and in particular s6(b) of the RMA. The chapter sets out the relevant policies recognising that landscapes are a significant resource to the District and Region.

24. Recommended Policy 6.3.11 in Chapter 6 under the heading "Managing Activities in Outstanding Natural Landscapes and on Outstanding Natural Features" states:

Recognise that subdivision and development is inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site the subject of application.

25. However, also important with reference to SASZs, a policy (6.3.1) has been included which excludes the identified SASZs from being identified as an Outstanding Natural Feature(ONF), an area of Outstanding Natural Landscape (ONL) or Rural Character Landscape (RCL).It states: *Exclude identified Ski Area Sub Zones and the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps from the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories applied to the balance of the Rural Zone and from the policies of this chapter related to those categories.* [10]

26. It is within the 'policy context' set out above that we have addressed submissions seeking either an extension to the SASZ or some be-spoke provisions sought to support the functioning of an SASZ and SAA's within in or outside of SASZs.

27. All of the spatial changes sought to the SASZ's by submitters (or their modified relief) were in areas identified as ONLs with one exception. NZSki's proposed Area B on the lower slopes at the Remarkables was covered by both ONL and RCL.

28. Given the significance of the landscape values and that their protection from inappropriate subdivision, use and development is a section 6 matter, and the landscape protection provisions in the PDP, we have carefully considered the changes sought by submitters in relation to the ONL and RCL's and what impact the submissions requests may have.

29. The purpose and regulatory framework applicable to SASZs are contained in Chapter 21 (Rural Zone). At a broad level, the activities anticipated within the SASZ are indicated within the zone purpose, in addition to the uses encompassed within the definition of "Ski Area Activities" (SAA). Also, Table 9 (Activities within the Ski Area Sub-Zone) of Chapter 21 contains the primary rule framework for activities that are anticipated and enabled within the Sub-Zone and within the definition of "SAA".

30. The purpose of the SASZ in the notified version of the PDP was to enable continued development of skiing, and activities ancillary to skiing, recognising the importance of these activities to the District's economy. The section 32 report for the Rural Zone (at page 20) identified that the notified provisions were intended to reinforce and encourage SAAs within the identified sub zones. The notified PDP made no substantial changes to the provisions in the ODP; and no zone extensions were made.

31. Activities falling within the scope of the definition of SAA were generally permitted within the SASZs. This was to recognise that these activities were anticipated within the sub-zone, and should be enabled without consent.

32. In the hearing on the text of Chapter 21 relating to the SASZs, a key matter discussed was broadening the purpose statement to reflect the diversifying of SASZs into 'year-round' commercial recreation facilities. This was to recognise the wider range of recreational activities other than snow skiing and boarding that currently occur in these locations (such as mountain biking, hiking, and paragliding).

---

[10] We note that this incorporates notified Policy 6.3.8.3 which read: *Exclude identified Ski Area Sub Zones from the landscape categories and full assessment of the landscape provisions while controlling the impact of ski field structures and activities on the wider environment*.

33. The Hearing Stream 2 Panel has recommended in Report 4A to amend the zone purpose to include reference to year round tourism and recreational activities as set out below:

> *21.1 Zone Purpose*
>
> ...
>
> *Ski Area sub zones are located within the Rural Zone. These sub zones recognise the contribution tourism infrastructure makes to the economic and recreational values of the* District*. The purpose of the Ski Area sub zones is to enable the continued development of Ski Area as year round destinations for ski area, tourism and recreational activities within the identified sub zones where the effects of the development are cumulatively minor.*

34. This broadening of the zone purpose is important as it changes the focus of the SASZ's and SAA's from only 'traditional' winter ski activities to year round tourism and recreational activities. This is also important from our point of view, in section 32 and 32AA terms, in relation to the appropriateness of some of the re-zoning requests given submitters seeking significant changes to the activities enabled with the SASZ's. The two most significant are explicitly providing for "Ski Area Sub Zone accommodation" (for workers and tourist) and for "Passenger Lift Systems". The Stream 2 Panel addressed these matters, but they were also raised in the SASZ hearings.

35. In relation to "SASZ Accommodation" the Stream 2 Panel recommendation is to provide for this within the SASZ as a Restricted Discretionary Activity (RDA) with a new policy to support its provision as well as a definition. This matter is not addressed further in this report

36. With respect to of Passenger Lift Systems (PLS), there is extensive coverage of this matter in the Report 4A. In summary the changes recommended are:
    a. a new policy to provide for provision of alternative (non-road) transport to and within SASZ (recommended Policy 21.2.6.4);
    b. Specifying PLSs located inside SASZ as controlled activities (recommended Rule 21.12.3).

37. Based on the evidence heard in Stream 2 and the additional evidence we heard, has led the Panel to recommend that such activities be a restricted discretionary activity.

38. Given most of the SASZ submissions were concerned about the provisions of PLS, we have addressed this matter in some detail later in this report when addressing each submitter's requests.

39. We have considered the submitters' requests to expand the zones, provide for access provisions, or other provisions in the zone through the SASZ hearings in light of the significant change to the purpose of the Sub-Zone as well as the other changes to the activities and their activity status within the SASZs.

1.8. Variation 2

40. As notified, the SASZ provisions were generally exempt from the earthworks provisions. Table 7 - Standards for Ski Area Activities within the Ski Area Sub Zones specified at Rule 21.5.27 that construction, relocation, addition or alteration of a building was a controlled activity, with control reserved to include (amongst other matters) "*Associated earthworks, access and landscaping*". No other rules (relating to PLS) had earthworks as a matter of control or discretion.

41. Ms Banks, in her first Section 42A Report, set out at Section 5 that Plan Change 49 (Earthworks) was made operative on 29 April 2016 and replaced Chapter 22 of the ODP. Chapter 22 of the ODP only applies to Volume B of the District Plan, and not to Volume A land, which includes the SASZs.

42. Ms Banks set out that Rule 22.3.2.1(c) of the ODP exempted SASZs from the provisions of Chapter 22, and that any scale and location of earthworks could therefore be undertaken within the SASZ as a permitted activity, with no related performance standards. It is understood that this rule was carried over into PC49 from a previous rule contained within the

43. Rural General Zone, which also provided a blanket exemption for earthworks in the SASZ.

44. Ms Banks also set out in her report[11] that

"*Whilst there are currently no equivalent earthworks rules in the PDP, the possible scenario that earthworks may be exempt in the SASZs of the PDP has been* considered *within my analysis of submissions and recommendations made in my second statement of evidence*" and "*I note that while this status under the ODP can be considered as a comparison, I acknowledge that the future rule framework applicable to earthworks in the SASZ is at the time of writing this evidence, uncertain. However, I also consider that this has been an entitlement provided under the SASZ for some time under the ODP (prior to PC49) and it is reasonable to assume it may be carried over to the notified PDP SASZs in Stage 2*".

45. The QLDC has now notified Variation 2 and this includes "District Wide Chapter 25 - Earthworks", which, to a limited extent applies to the SASZ provisions. In this variation, Rule 25.3.4.2 Earthworks for Ski Area Activities within the Ski Area Sub Zones and vehicle testing facilities within the Wairau Ski Area Sub Zone are exempt from the earthworks rules, with the exception of the following rules that apply:
    a. Rules 25.5.12 to 25.5.14 that control erosion and sediment, deposition of material on Roads and dust;
    b. Rule 25.5.20 setbacks from waterbodies; and
    c. Rule 21.5.21 exposing groundwater

46. As it is proposed that the PDP control some aspects of earthworks in SASZs, we consider it appropriate when considering applications for PLSs to enable consideration of the proposed Chapter 25 provisions. We note that the earthworks variation is at an early stage (and that these rules may be the subject of submissions and may not be retained in their notified form depending on the decisions made by the Council). In our view, any reference to earthworks, as a matter of control or discretion (for controlled or restricted discretionary activities) in the SASZ, needs to be referenced to the provisions of Chapter 25.

47. For these reasons, we recommend that recommended Rule 21.12.3 contain, as a matter of control:

"The extent of any earthworks required to construct the passenger lift system, in terms of the limitations set out in Chapter 25 Earthworks."

48. This amendment has been included in Appendix 1 of Report 4A.

---

[11] At paragraphs 5.4 and 5.5

49. We come to a similar conclusion in recommending provisions for PLSs as a restricted discretionary activity as discussed below in relation to the TCI submission.

1.9. Existing Environment

50. All of the legal counsel who presented submissions at the hearing raised the issue of the "existing environment". This was extensively canvassed during the hearing and a number of case law decisions were tabled and discussed. The main cases included:
    a. Queenstown *Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424
    b. Shotover *Park Limited and Remarkables Park Limited v Queenstown Lakes District Council* [2013] NZHC 1712
    c. *A & A King Family Trust v Hamilton City Council* [2016] NZEnvC 229

51. The issue of the existing environment was particularly relevant as the Council's experts, in their evidence (notably Dr Read - landscape and Ms Banks- planning),questioned whether unimplemented resource consents, particularly their effects on the ONLs, could or should be taken into account when determining the appropriateness of expanding the SASZs or enabling further development.

52. The submitters considered that this was a highly relevant and a significant issue. Much of their evidence was based on the existing actual modified environment and that which could be modified by consented, but unimplemented, resource consents. We address our findings in relation to matter below.

53. The Council is required, in making a district plan rule under section 76(3) of the RMA, to have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect. When reviewing legal submissions and the evidence it became apparent that what constituted the "environment', especially given all the extensions sought to the SASZ's were all within or partly within areas identified in the PDP as ONLs, was what existed as well as that consented and likely to be implemented.

54. Having heard from legal counsel, the only difference between the Council's counsel and submitters' counsel was that the Council's position was it was discretionary and not mandatory to consider those unimplemented resource consents; whereas the submitters' counsel considered it mandatory. All agreed that in considering unimplemented resource consents as part of the environment, it was relevant to determine if those consents were "likely" to be implemented.

55. We find that it is not necessary to determine if consideration of those consents was mandatory or not. This is because we have considered, irrespective of this, that it is appropriate to consider those unimplemented resource consents as part of environment (or the environment that would exist if they were implemented).

56. As a result, the issues we have focused on are: the likelihood of those consents being implemented, something Mr Goldsmith for MCSL and Ms Baker- Galloway for Soho and TCI, strongly emphasised; and what those consents enabled in terms of the impact on the environment. We record that this has been an important issue for us in determining to essentially recommend the relief sought by TCI and to a degree NZSki's extension above Lake Alta. This is addressed in more detail below.

PART B: SPECIFIC SUBMISSIONS

57. We now turn to the specific submissions seeking extensions to, or changes to, the SASZ or their provisions. We address them in the following order:
    a. NZSki Limited (Coronet Peak)
    b. *Cardrona* Alpine Resort Limited,
    c. *Andersons* Branch Creek Limited,
    d. *NZSki* Limited (Remarkables),
    e. *Soho* Ski Area Limited and Blackmans Creek No. 1 LP,
    f. *Treble* Cone Investments Limited.

2. NZSKI - CORONET PEAK – SUBMISSION 572

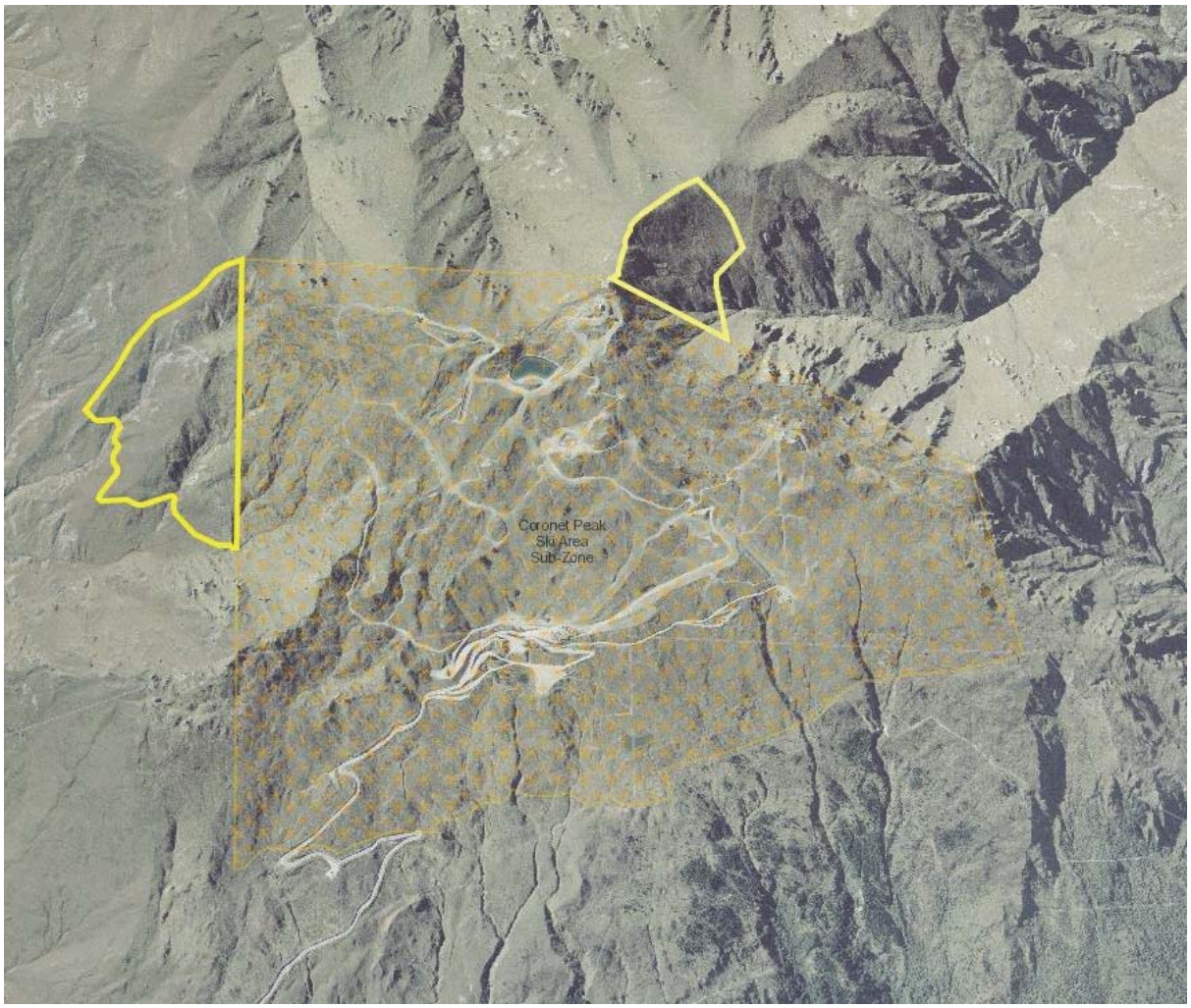

Figure 1: Coronet Peak notified SASZ showing the two areas sought to be included outlined in yellow.

2.1. Overview

58. NZSki Limited[12]sought an extension to the SASZ to incorporate the areas known as 'Dirty Four Creek' (adjacent to the western border of the SASZ) and 'Back Bowls' (adjacent to the north-eastern corner of the SASZ). This is shown above. The submission identified that minor expansions were also sought to accommodate areas presently used for ski area activities and to provide for future development opportunities.

59. NZSki noted that although these locations are outside of the current SASZ extent, skiers currently access these areas on their own accord. As a result of this NZSki undertakes avalanche control within these areas. One of the reasons sought by NZSki for the rezoning was to formalise this safety management activity and to potentially enable a ski patrol facility. The

[12] Submission 572

submission also identifies planning for a future lift within the proposed 'Dirty Four Creek' extension.

60. The Council's experts (Ms Banks, Dr Lloyd and Dr Read) opposed the rezoning. In summary the reasons for this were:

2.2. Ecology

61. From an ecological perspective Dr Lloyd did not oppose the proposed extension into 'Dirty Four Creek' on the basis that this catchment had already been modified by ski field activities, and the landforms were less steep and less vulnerable to potential adverse effects.

62. However Dr Lloyd did oppose the extension into the 'Back Bowls' on the basis that this area was relatively intact and vulnerable to the adverse effects of ski field activities. As the Back Bowls is located on steep slopes, it was Dr Lloyd's opinion that the existing indigenous vegetation was likely to be vulnerable to the effects of intensifying ski field activities. He further noted that he did not think the discretionary status for vegetation clearance (notified Rule 33.5.10) would be sufficient to manage the relatively intact biodiversity values of this location.

2.3. Landscape

63. Dr Read's evidence set out the landscape attributes of these particular locations, being an ONL. She also addressed the possible effects of expansion of the SASZ and anticipated activities into these areas.

64. Dr Read, in relation to the Back Bowls, stated that this area was relatively unmodified and had high natural character. She considered that further physical ski field development works in this new catchment could significantly impact the unmodified topography of the upper catchment.

65. In relation to 'Dirty Four Creek', Dr Read described the wider natural value of Skippers Road and the Long Gully landscape as wild and rugged. Her evidence was that physical works (including earthworks) in this location, if it were an SASZ, would diminish the natural character and aesthetic coherence of the wider landscape and its heritage significance.

66. Dr Read did note that to some extent of the existing ski field development was visible from within this landscape, but that further development could potentially have cumulative adverse effects on this landscape.

2.4. Planning

67. It was Ms Bank's opinion, having regard to the expert evidence of Dr Read and Dr Lloyd, that the potential effects of a wider scope of activities enabled by the SASZ were better managed by the underlying rural and landscape provisions of the notified zone. She also set out that if changes she recommended to make it clear that skiing and ancillary activities including snow grooming and avalanche control were permitted irrespective of the underlying zoning, then the SASZ did not need to be extended. On this basis Ms Banks recommended
    a. Reject the proposed rezoning of 'Dirty Four Creek' to SASZ; and
    b. *Reject* the proposed rezoning of the 'Back Bowls' to SASZ.

2.5. NZSki's position

68. Ms McDonald, legal counsel for NZ Ski set out her legal submissions[13] that

"NZ Ski is not presenting evidence and abides the decision of the Council regarding its submission seeking an extended SASZ over the Coronet Peak Ski area"

69. Mr Dent, planner for NZSki set out in his evidence[14]the following:

"With respect to the proposed expansion and/or addition of land into the Ski Area Sub-Zone ("SASZ") outlined in that submission four key areas of expansion were identified as follows:

a. Coronet *Peak – Extension into Dirty Four Creek;*¬

b. Coronet Peak – Extension in the 'Back Bowls';¬

c. Remarkables – Extension to ridgeline above Curvy Basin and Lake Alta; and¬

d. Remarkables – Creation of a new SASZ over the site containing the lower access road.¬

Since the lodgement of the submission and receipt of the Council's Section 42A reports both myself and Mr Skelton have been instructed by the submitter to limit the extent of our assessment to the areas of expansion directly associated with the Remarkables Ski Area and to accept the commissioners findings in respect of the re-zoning for Coronet Peak based upon the evidence presented to them by the Council officer and experts.

Accordingly, my evidence will not address the Coronet Peak SASZ areas in any capacity. "

2.6. Recommendation

70. Given the submitters position; that they decided not to call expert evidence and accepted the Council's expert evidence, we recommend:
    a. Rejecting the proposed rezoning of 'Dirty Four Creek' to SASZ; and
    b. Rejecting the proposed rezoning of the 'Back Bowls' to SASZ.

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13 Ms McDonald's legal submissions - para 2.

14 Mr Dent, EiC paragraphs 10, 11 and 12.

3. CARDRONA ALPINE RESORT LTD - SUBMISSION 615

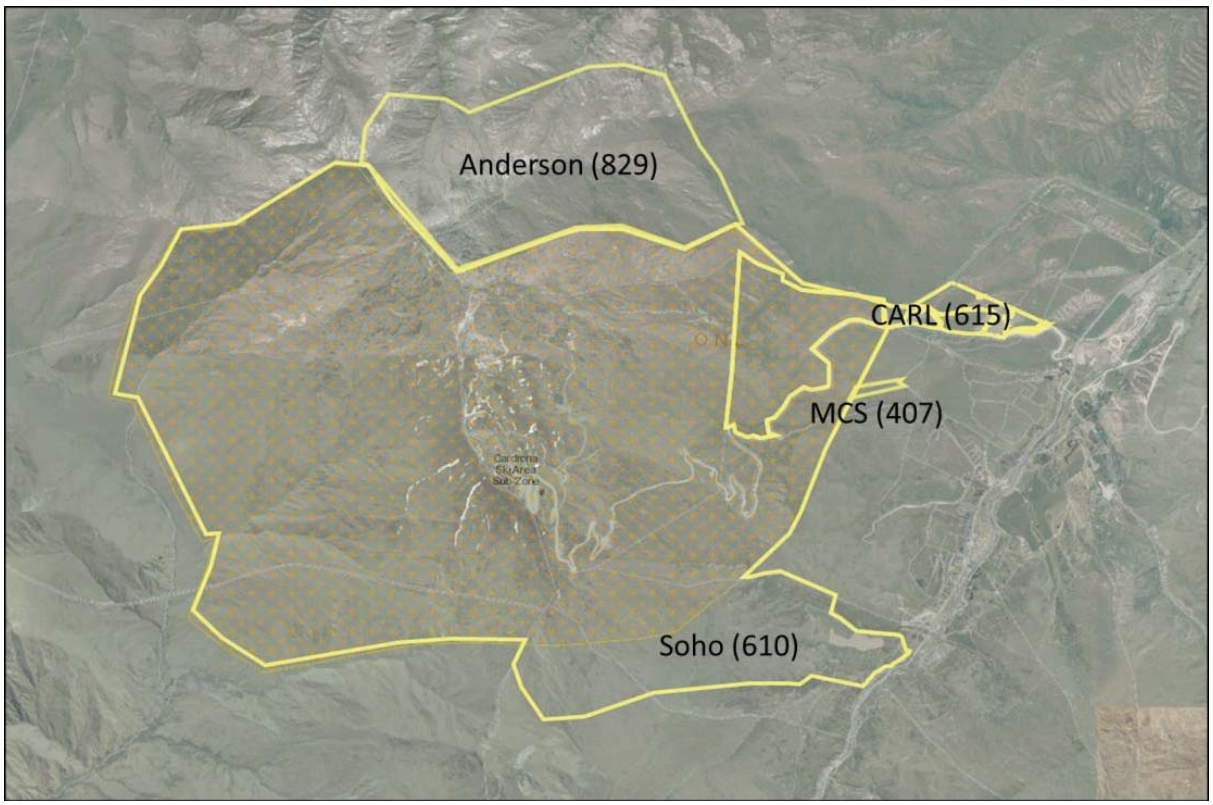

Figure 2: Notified Cardrona SASZ showing the areas sought to be modified by Anderson (Submission 829), CARL (Submission 615), MCSL (Submission 407) and Soho (Submission 610), outlined in yellow

3.1. Overview

71. Cardrona Alpine Resort Limited (CARL)[15] sought an extension of the SASZ north-east of the notified zone, and that this area (inclusive of a portion of the notified SASZ) be renamed either the 'Cardrona Ski Area Sub Zone' or the 'Cardrona Alpine Resort Area' (effectively creating a new special zone). This area is shown above.

72. CARL's reasons given in the submission for the rezoning, and as addressed by Mr Barnes (Manager of CARL)at the hearing, was to enable the continued development and expansion of tourism activities and visitor accommodation within the SASZ. Mr Barnes, as set out in the submission, considered that the adverse effects of the development would be cumulatively minor.

73. The submission indicated that the rezoning would support the provision of "four season" tourism activities, and the development of new buildings and supporting infrastructure. Mountain biking and visitor accommodation were potential activities to be provided in the expanded zone.

[15] Submission 615, supported by FS1137, FS1105, opposed by FS1153

74. The further submission in support from the Valley Residents and Ratepayers Society Inc[16]was on the basis that the rezoning would enable the resort to develop, operate, maintain and upgrade its facilities and infrastructure, and invest in and grow new four season visitor attractions activities.

75. The Council's planning and landscape experts (Ms Banks and Dr Read) opposed the rezoning, while the Council's ecologist (Mr Davis) did not. In summary the reasons for this were:

3.2. Landscape

76. Dr Read described the Cardrona Valley as a historic gold mining landscape with remnant water races evident within the rezoning extent. It was her opinion that the possible nature of the development proposed under the SASZ framework (including earthworks) had the potential to significantly diminish the legibility of the landform and detract from its historical value.

3.3. Ecology

77. Mr Davis, the Council's expert, did not oppose the rezoning from an ecological perspective. He identified the area to be rezoned as being intensively developed for agricultural activity, resulting in a disturbed environment with a lack of indigenous vegetation cover. A wetland area was identified in the south-eastern corner of the rezoning extent.

78. Mr Davis confirmed that the area was devoid of indigenous vegetation cover with the exception of Carex coriacea, which would not be affected by the proposed activities. On this basis Mr Davis did not oppose the extension of the SASZ over the wetland area or the rest of the area sought to be SASZ.

3.4. Planning

79. Ms Banks set out that CARL sought the zone extension to enable the development of a ''four seasons" tourism facility. She acknowledged the significant economic benefits provided to the District by such commercial recreation facilities, and in particular the objective of the PDP Strategic Direction which seeks to enable the socio-economic benefits of tourism.

80. She also noted that summer based activities were currently operating within the notified extent of the zone including mountain biking, carting and paragliding. Ms Banks also noted the supporting further submissions from Kay Curtis and the Cardrona Valley Residents and Ratepayers Society Inc which had recognised the benefits of these activities to the area and supported the zone extension on this basis.

81. However, Ms Banks was of the view that the range of activities that CARL sought to be enabled in the extended zone, and the possible effects of these, could not be adequately managed under the SASZ framework. Moreover no alternative or specific plan provisions were provided by CARL.

3.5. Submitter's Evidence

82. Mr Barnes, supported by Mr John Edmonds (Planner), appeared at the hearing. Mr Barnes gave a brief verbal presentation. Mr Edmonds did not produce any evidence, nor did he speak. Mr Barnes reiterated what was in the written submissions and focussed on the "four seasons" aspect of the submission, particularly the summer time activities including mountain biking.

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16 FS1105

3.6. Discussion

83. We accept that the purpose statement of the SASZ has been recommended to be amended to include reference to "year round destinations for ski area, tourism and recreational activities". However the notified SASZ's are confined spatially, predominantly at elevations where skiing and ancillary activities will be the dominant use and landscape effects may be better mitigated.

84. CARL's submission, if allowed would extend this zone down to elevations lower than 600masl, near to the valley floor at Cardrona Valley Road, where activities such as visitor accommodation, car parking and a range of buildings, would be enabled under a SASZ. These could have significant adverse landscape and visual effects. The further submission of MCSL[17]opposed the extension of the zone down to this elevation for those reasons.

85. While the rezoning may appear to be partially integrated with the operative Mount Cardrona Station Special Zone, the operative structure plan for that zone has specifically accounted for landscape values in nominating appropriate activity areas. Conversely, the SASZ provides no mechanism for this and could enable the construction of buildings throughout as a controlled activity with limited consideration to landscape effects, as set out in the evidence of Dr Read.

86. Furthermore, given that the operative Mount Cardrona Station Special Zone provides for the establishment of residential and commercial uses, including visitor accommodation, it is likely to be more efficient to enable such activities in this zone. However, we note that we received no expert evidence on this matter, nor any landscape or planning evidence.

87. Overall, there is insufficient information from the submitter to 'justify' in section 32 terms that the SASZ, or an alternative set of planning provisions, are the appropriate planning framework for the area sought to be rezoned. The rezoning of this land as SASZ could give rise to an inappropriately broad range of activities and their associated effects. Furthermore in the absence of expert landscape evidence from CARL we rely on the expert evidence of Dr Read, who's opinion we have set out above.

88. Based on the above discussion, we agree with Ms Banks' recommendations that no extension to the SASZ be made.

3.7. Recommendation

89. Our recommendations are:

a. Reject the proposed rezoning sought by CARL;
b. Reject the further submissions of Kay Curtis (FS1137) and the Cardrona Valley Residents and Ratepayers Society Inc (FS1105); and
c. Accept the further submission of MCSL (FS1153).

[17] FS1153

4. ANDERSON BRANCH CREEK LIMITED – SUBMISSION 829

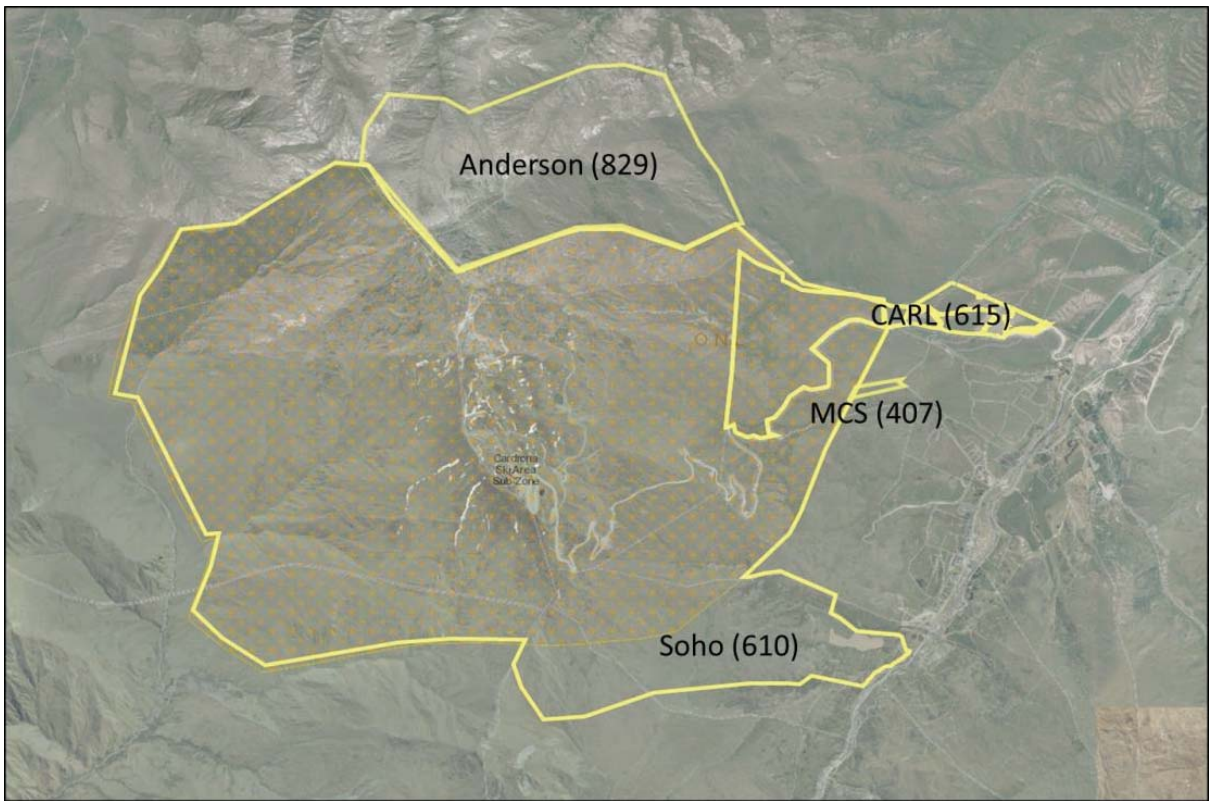

Figure 3:Notified Cardrona SASZ showing the areas sought to be modified by Anderson (Submission 829), CARL (Submission 615), MCSL (Submission 407) and Soho (Submission 610), outlined in yellow

4.1. Overview

90. The submitter[18] sought that the SASZ be expanded to the north to include the whole of the upper area of boundary creek as shown above. The submitter did not attend the hearing or present any evidence. The only evidence we received was that from the Council.

91. The Council's experts (Ms Banks, Dr Read and Mr Davis) opposed the rezoning. In summary the reasons for this were:

4.2. Landscape

92. Dr Read's evidence was that further development on this high alpine ridgeline had the potential to diminish the integrity of the landform.

4.3. Ecology

93. Mr Davis' ecology evidence identified that this location was a relatively intact and fragile alpine environment which was likely to support a range of indigenous invertebrates, lizards and birds.

4.4. Planning

94. It was Ms Banks' opinion that from a planning perspective it was not possible to recommend the extension to the zone. The reasons for this were:

[18] Submission 829

a. the submission of Anderson Branch Creek Limited provided limited explanation of the reasoning for the rezoning (other than the suggestion that the zone was understood to be previously larger);
b. the submission was not supported by any ski operators (she was unsure if ski development was planned in this location);
c. there was insufficient evidence to justify the need to enable the SASZ or SAA framework in this location; and
d. the evidence of Dr Read and Mr Davis regarding the possible sensitivity of this environment to the effects of SAAs.

95. We agree with Ms Banks for the reasons set out above.

4.5. Recommendation

96. Reject the submission of Anderson Branch Creek Limited.

5. NZSKI – REMARKABLES SASZ – SUBMISSION 572

97. NZSki sought two separate areas to be SASZs. These were:-Remarkables – Extension to ridgeline above Curvy Basin and Lake Alta (referred to as Area A); and Remarkables –a new SASZ over the site containing the lower access road (referred to as Area B). We address each separately below.

Remarkables – Extension to ridgeline above Curvy Basin and Lake Alta - Area A

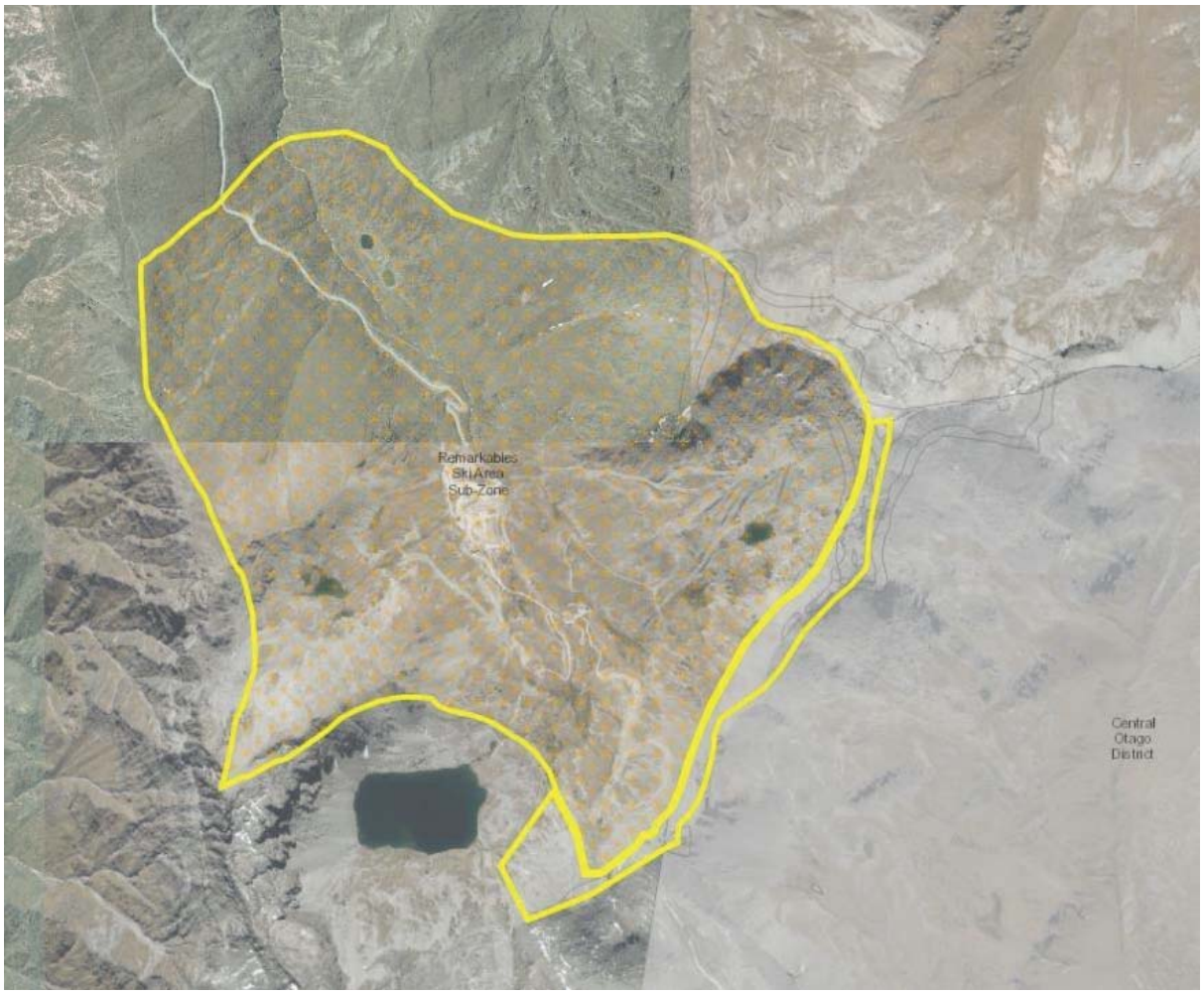

Figure 4: Notified Remarkables SASZ showing the area along the eastern margin sought to be included within the Sub-Zone – Area A.

5.1. Overview

98. NZSki sought an extension to the SASZ at the upper eastern margin of the SASZ. This area of land was located between the existing and notified SASZ and the territorial boundary of Central Otago District, bordering the Department of Conservation Rastus Burn Recreation Reserve and within the Remarkables Conservation Area.

99. NZSki's submission identified that the expansion was sought to accommodate areas presently used for ski area activities and to provide for future development opportunities. In particular, NZSki identified a desire to expand into 'the Doolan's' catchment located within Central Otago District.

100. The submission, and evidence of NZSki, stated that although these locations were outside of the current SASZ, skiers already access these areas on their own accord, and NZSki undertook avalanche control within these areas. Another reason provided by NZSki for the rezoning was to formalise these safety management activities as permitted activities, and to undertake grooming of these slopes.

101. The rezoning sought by NZSki was supported by QPL (FS1097), and Grant Hensman and others (FS1337), and opposed by Ian Dee (FS1081). The further submission of Grant Hensman and others (FS1337) was primarily associated with the creation of 'Sub-Zone B' discussed below as 'Area B'. Ian Dee (FS1081) opposed the rezoning on the basis that it was a valued recreational landscape and physical works in this area could lead to the erosion of its pristine beauty.

102. NZSki divided the area they sought to be extended in to two sub areas - these being the area above Curvy Basin and the area above Lake Alta. This was shown in Attachment A of Mr Dent's evidence (the submitter's expert planner). The distinction was that NZSki proposed additional restrictions (prohibited activity) for earthworks and building in the area above Lake Alta. This was in response to the submitter's landscape architect's (Mr Skelton) assessment that this area was too vulnerable to landscape degradation and hence the proposed prohibited activity rule. We address this matter below.

5.2. Curvy Basin

103. It transpired during the hearing, and was confirmed by a supplementary statement from Mr Dent and the Council's Reply Statement, that the area above Curvy Basin sought to be re zoned was in fact in Central Otago District.

104. Ms Banks had highlighted this issue in her Summary of Evidence and addressed it in her Reply Statement. She stated that the error has occurred because the submitter's proposed rezoned area and evidence was prepared using Council's GIS District Plan Maps which contained the incorrect location of the Statistics NZ territorial authority boundary. Mr Dent confirmed this in his additional statement - Response to the Panel regarding CODC and QLDC territorial boundary dated 17 May 2017.

105. Given the above, we accept that there is no jurisdiction to consider this area and give it no further attention.

5.3. Lake Alta

106. The Council's experts (Ms Banks and Dr Read) opposed the rezoning. NZSki's experts (Mr Dent and Mr Skelton) supported the rezoning. The reasons for this are set out below.

5.4. Landscape

107. The evidence of Dr Read described the location of the rezoning as being within proximity of two distinct alpine cirques; the southern extent of which contained Lake Alta. She considered that the landscape had been compromised to a degree in the lower reaches of the area sought to be rezoned, however the walls of the two cirques and their joining wall were pristine in the higher reaches. She also noted that the Lake Alta Cirque had significant scenic and recreational value and this area was highly accessible to the public. Mr Skelton, NZSki's landscape architect agreed with Dr Read on these matters.

108. However Read considered that SAA and physical works within the proposed extension could result in adverse landscape effects. Overall, Dr Read considered that the extension of the SASZ in the location identified had the potential to result in significant adverse and cumulative

effects on the memorability and quality of the landscape[19]. For these reasons she opposed the zone extension in this area.

109. While Mr Skelton agreed with Dr Read's description of the landscape values, it was his opinion that the rezoning, with the rule overlay offered by NZSki prohibiting the erection of any structures or the undertaking of any earthworks, could be supported on landscape grounds. Under these circumstances he considered that the only effects of extending the SASZ over the Lake Alta Basin would be the temporary effects of avalanche control and the commercial use of the area for skiing[20].

110. At paragraph 6.17 of his evidence-in-chief, Mr Skelton considered that the potential adverse effects of the SASZ extension would be appropriately controlled through the no build and earthworks rule which will "protect the amenity and character values of the Lake Alta basin and Wye Creek catchment". Mr Dent, from a planning perspective supported this outcome.

111. In Dr Read's rebuttal evidence she stated[21]:

> *Mr Skelton states at his paragraph 6.3 that in response to the sensitivity of the Lake Alta Basin, restrictions on earthworks and building in this area are volunteered. Mr Dent proposes a new rule at paragraph 98 of his evidence that would prohibit the construction of buildings or infrastructure or the undertaking of earthworks in this area. This is a greater level of protection than is offered by the underlying Rural zoning.*
>
> *In response to the preliminary reason for the rezoning, being to legalise avalanche control (a SAA), I understand that it was never Council's intention to restrict previously permitted activities such as avalanche control, skiing and boarding, ski patrols and related permitted activities to the SASZ. Ms Banks discusses this at paragraphs 12.30 to 12.38 of her Strategic S42A report and I adopt her position that amendment to Rule 21.4.19 (which she proposes) is appropriate. I also note that in paragraph 4.20 of her Specific 42A report she identified that these types of activities do not require consent.*
>
> *Consequently, the justification provided by the submitter for the extension of the SASZ into the Lake Alta cirque is negated. At the same time, the extension plus the proposed prohibition on structures, buildings and earthworks with the proposed SASZ extension would provide a greater degree of protection to this part of the feature than its Rural zoning and ONL status. While this would clearly be positive from a landscape perspective, it would create something of an anomaly, providing a higher level of protection but only over a small part of the overall feature of the Lake Alta cirque. I remain of the opinion that the SASZ should not be extended into this area.*

112. It appears to us that Dr Read actually supported the rezoning on landscape grounds, particularly given her statement in the third paragraph above (second and third sentences). Her ultimate opinion that the SASZ should not be extended into this area appeared to be based on planning reasons and not landscape reasons. It was Ms Banks, not Dr Read, who was able to give an opinion on the appropriate planning response.

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19 Dr Read, EiC, Paragraphs 7.6 - 7.8 - pg 26.

20 Mr Skelton EiC, Paragraph 6.11 - pg 9.

21 Dr Read, Rebuttal Evidence, Paragraphs 3.2 - 3.4.

113. Ms Banks, in her second statement stated[22]:

> *I accept that there are possible economic benefits of expanding the SASZ and that promoting economic development and tourism is one of the objectives within Chapter 3 (Strategic Direction). Of the four SASZs subject to rezoning requests, I consider that the submission and rezonings proposed by NZSki are potentially the most consistent with the intended purpose of the zone, being primarily to accommodate skiing and ancillary activities. Further the proposed zone extensions are situated at an elevation where skiing can feasibly occur. There is however the potential under the SASZ for additional physical works to be undertaken (eg. earthworks, with associated erosion and sedimentation; passenger lift systems; road access), with a limited scope of matters which can be considered through the assessment.*

114. In her rebuttal evidence at paragraph 4.3 and at paragraph 9 of her summary statement Ms Banks continued to oppose the re-zoning of the area above Lake Alta. This was based on Dr Read's evidence and due to the amendments she had recommended in relation to avalanche control and ski patrol activities.

5.5. Ecology

115. We note that that Dr Lloyd, for the Council, provided expert ecological evidence in relation to the rezoning request. He described the location being generally eroding rock tors, boulderfield and scree habitats. He set out that the species he identified were typical of high alpine habitats but none were classified as Threatened or At Risk. Dr Lloyd's evidence was that sparse vegetation was identified in 'stable' slopes within the area. He stated that he did not oppose the proposed extension on ecological grounds[23].

5.6. Findings

116. We find that the SASZ should be extended to the area above Lake Alta as requested by NZSki in the area that is within the Queenstown Lakes District boundary. The reasons for this are:

a. the natural topography of this area, and the surrounding areas, is already used for commercial and non-commercial recreation (skiing and boarding);
b. it is adjacent to an existing SASZ;
c. while the issue of avalanche control and ski patrol has been addressed elsewhere (to make it clear it is permitted), the expansion will provide greater certainty that SAAs can occur,
d. the submitter offered a rule prohibiting building and earthworks in the expanded area to ensure any adverse effects (landscape and ecological) were minimal;
e. despite Dr Read's landscape concerns, she appeared to support the extension on landscape grounds, subject to the rule prohibiting building and earthworks as offered by the submitter,
f. The Council's ecologist had no concerns with the extension,
g. Ms Banks concerns were mainly on landscape grounds, as opined by Dr Read, and due to other plan amendments she proposed; and
h. the extension would enable the efficient and more flexible use of the area for SAA's thereby supporting the strategic economic and recreational objectives of the plan, while having little if any adverse effects.

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[22] Ms Banks, Sub-Zone Specific Section 42A Report, paragraph 4.23, page 47

[23] Dr Lloyd,EiC, paragraph 5.13, page 16.

5.7. Recommendation

117. We recommend that the SASZ be extended above Lake Alta as sought by NZSki (within the boundary of Queenstown Lake District), subject to the inclusion of the following rule in Chapter 21 Table 9 as follows:

21.12.8	Earthworks, buildings and infrastructure within the No Building & Earthworks Line in the Remarkables Ski Area Sub-Zone.	PR

a. Accept the submission by NZSki;
b. Accept the supporting further submissions from QPL (FS1097)and Grant Hensman and others (FS1337)- noting the further submission of Grant Hensman and others (FS1337) is primarily associated with the creation of 'Sub-Zone B' discussed below as 'Area 2'.
c. Reject the opposing further submission by Ian Dee (FS1081).

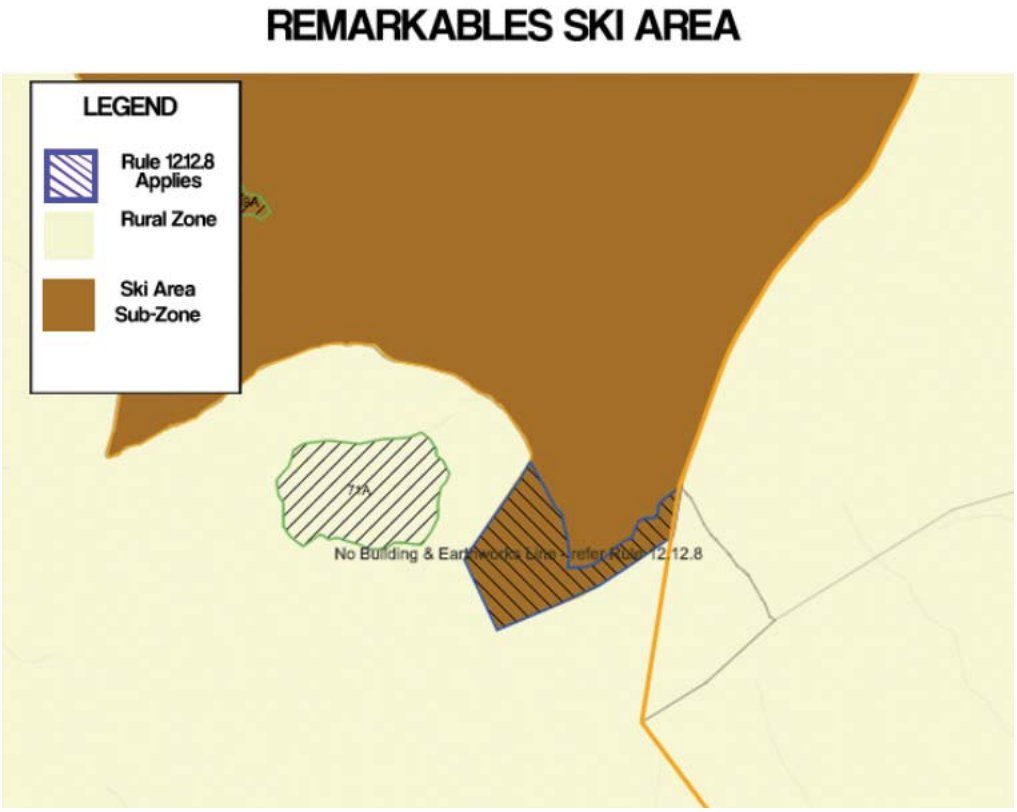

Figure 5: Area to be added to Remarkables SASZ and to be subject to Rule 12.12.8.

6. NZSKI - REMARKABLES – CREATION OF A NEW SASZ OVER THE SITE CONTAINING THE LOWER ACCESS ROAD - AREA B

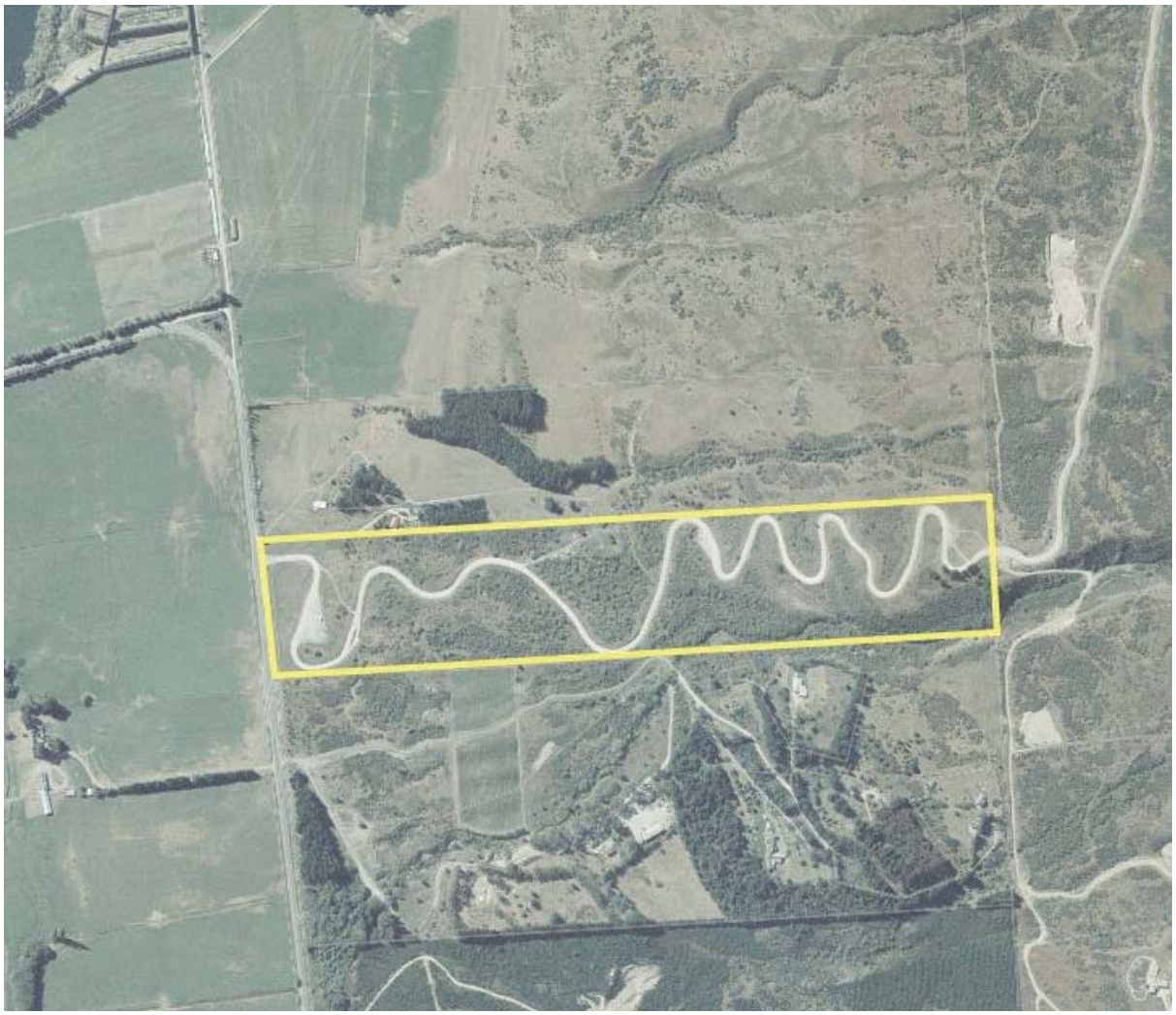

Figure 6: New SASZ sought along lower access road to Remarkables SASZ – Area B

6.1. Overview

118. NZSki sought the establishment of SASZ over an area of approximately 21.6 hectares located at the base of the Remarkables Ski Field access road on the eastern side of State Highway 6 (as shown above). This area is referred to in the submission as 'Ski Area Sub-zone B', and is situated at elevations of 500masl and below at the base of the Remarkables.

119. The submission identifies that the subzone would "provide for the establishment of buildings, parking, storage, entranceway signage, commercial activities and accommodation ancillary to the continued operation of the Remarkables Ski Area". A set of provisions to apply to this new sub zone area was included in Attachment C to NZSki's submission.

120. This was further elaborated on in Mr Dent's evidence in chief, and succinctly set out in his Executive Summary of Evidence (9 May 2017) presented at the hearing. At paragraph 1.5 of the Executive Summary of Evidence he stated:

"In regards to the proposed SASZ B the proposed zoning and applicable provisions I have recommended will not enable SAA to occur within this area of land and neither would SAA be physically possible given the low altitude of the proposed Sub-Zone. The zoning and provisions are directed only at providing for buildings and activities that directly support the continued operation of the Remarkables Ski Area."

121. Mr Dent has made it clear that while a new SASZ is sought, it is in fact to be a new 'spot' zone to enable activities such as buildings, parking, storage, entranceway signage, commercial activities and accommodation ancillary to the continued operation of the Remarkables Ski Area (including workers accommodation).

6.2. Background to the Site

122. The subject site, owned by the submitter, contains the Remarkables Ski Area access road which commences from State Highway 6 approximately 375m south of the intersection of Boyd Road and Kingston Road (SH6).An existing car park area was developed in 2016 following the grant of resource consent[24]which authorised earthworks and landscaping to create a larger car park adjacent to the State Highway.

123. A further resource consent[25]has been granted for the establishment of a port-a-com building and signage within the car park area and to undertake a commercial activity being the hiring of snow chains and the selling of tickets for and operation of a bus shuttle service between the car park and the Remarkables Ski Area. In addition to the existing car park, signage, building, commercial activity and the access road the subject site also contains an existing outdoor storage area for ski equipment located almost centrally within the subject site near the northern boundary. This outdoor storage area was approved in1997[26].

124. NZSki's original submission identified that a proposed Ski Area Sub-Zone B be overlain on the subject site to provide for the establishment of buildings, parking, storage, signage, commercial activities and accommodation that are ancillary to the operation of the Remarkables Ski Area. With the exception of accommodation these activities are already present on the subject site as described above. The submission sought to apply this zoning to the entire site which extended to a height of approximately 520masl. The PDP maps demarcate the boundary between the RCL and ONL landscape categories dissecting the subject site and including much of it within the ONL (including the existing outdoor storage area described above).

125. The Council's experts (Ms Banks and Dr Read) opposed the rezoning. NZSki's experts (Mr Dent and Mr Skelton) supported the rezoning. The reasons for this are set out below.

6.3. NZ Ski's rationale for the re-zoning

126. Mr Dent set out the rationale for the rezoning request in this evidence[27]. He considered that there was a need for NZSki to be able to develop the ski field itself efficiently, but there were space and logistic limitations to being able to do this in the SASZ at the ski field. Accordingly NZ Ski were seeking to provide related activities on land it owned on the lower slopes of the mountain.

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24 RM151081
25 RM170207
26 RM960686
27 S Dent, EiC,paragraphs 126 to 174, pages 32 to 38.

127. As set out by Mr Dent [28], the site was too small to be utilised for any productive agricultural/pastoral purpose of the type envisaged by the Rural Zone. Given that, it was his opinion that this site was a logical location to consider re-zoning to enable future proposals of a similar nature to those already existing on the land.

128. Mr Dent set out the PDP's Landscape Classification (ONL and RCL) and opined that the provisions related to these classification within Chapter 21 – Rural would make the utilisation of the site for the proposed purposes very difficult; being Discretionary Activities for any building and for Visitor Accommodation and Non-Complying for commercial and retail activities.

129. Mr Dent also addressed infrastructure and servicing of the site. He understood and accepted the Council's evidence[29]that if the site were to be developed, the developer would need to provide on-site services. In this regard Mr Dent stated:[30]

"Accordingly, any future development of the site will put the onus on the submitter to demonstrate and pay for any extension and increased capacity of Council reticulated services or the provision of on-site facilities (water bores and waste water disposal)."

130. We discuss the ecological and landscape issues below under those headings. However in summary Mr Dent disagreed with Dr Read's position of opposing the re zoning on landscape grounds, and preferred Mr Skelton's evidence, who can support the proposal provided development is outside of the area he considered to be an ONL. Mr Dent agrees with the council's ecologist that ecological matters were not grounds to reject the re-zoning proposal.

131. Overall, relying on his planning expertise, and the landscape evidence of Mr Skelton, Mr Dent recommends that the site be re-zoned as requested.

6.4. Landscape

132. Dr Read discussed in her evidence that this location at the base of the ski-field forms a part of the wider foreground of the western face of the Remarkables Range, and is important to the visual coherence of those views. She does however acknowledge the site itself has areas of lower landscape value when viewed in isolation, but overall considers that this area has an important relationship to the visual coherence of the wider ONL landscape of the Remarkables Range.

133. In her rebuttal evidence Dr Read considered that Mr Skelton failed to appropriately consider the types of activity that could be anticipated on the site should the SASZ be extended. Buildings up to 8m in height and ancillary retail activities would be controlled activities. She stated[31]

It is possible that NZSki, were it to exploit the proposed zoning fully, could create something of a node of ski related activities within this site which would be incongruous within the

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28 ibid, paragraph 130

29 Provided by Mr Glasner- Chief Engineer at the Council

30 S Dent, EiC, paragraph 159, page 37

31 Dr M Read, Rebuttal evidence, paragraph 3.17, page 7.

surrounding landscape. Such a node would have an adverse effect on the character and quality of the surrounding landscape and on the visual amenity of members of the public, in particular.

134. Dr Read opposed the proposed 'sub-zone B' rezoning.

135. Mr Skelton had a different view to Dr Read. He set this out in his evidence-in-chief and summary statement, but essentially considered that the site could absorb the anticipated development subject to being outside of the area he considered to be ONL and with the planning provisions provided by Mr Dent. We address this briefly below.

136. Mr Skelton considered that with regards to the proposed SASZ on the lower parts of the Remarkables Road, that this land was mostly within the RCL[32] landscape category and less open and more modified than the adjoining slopes of the Remarkables. He also considered that that there was potential for appropriate development to be located within pockets of the subject site which would not adversely affect the existing landscape values.

137. He acknowledged that while no actual development was proposed as part of the rezoning proposal, he considered that future proposals within Area B would be subject to the zone provisions. He considered that those provisions would adequately ensure any development would be appropriate and would not adversely affect the landscape and visual amenity values.

6.5. Ecology

138. The Council's expert, Dr Lloyd, provided a description of the indigenous vegetation and biodiversity values of the proposed rezoning area. He identified that the area comprises a former sparse shrubland that has been extensively invaded by exotic trees and shrubs, including seedlings of wilding conifer species and numerous exotic grass and herb species.

139. Dr Lloyd stated that the ecological values of terrestrial indigenous vegetation and habitat that remained within the subject site were low, and did not pose any issues or constraints for SAAs (permitted), Passenger Lift Systems (controlled), or provision of visitor accommodation (as a restricted discretionary activity under the Council's provisions).

140. Overall, Dr Lloyd's evidence was that the ecological value of the site were low. On this basis he did not oppose the rezoning of 'sub-zone B'.

141. In response to this, Mr Dent concluded that re-zoning the subject site to SASZ would not have a significant adverse effect on indigenous vegetation and biodiversity values, and was consistent with the relevant Strategic and Indigenous Biodiversity provisions of the PDP. We agree.

6.6. Findings

142. We acknowledge that the landscape evidence of Dr Read and Mr Skelton find that there would likely be some ability of this site to accommodate some development in terms of its effect on the landscape. We also acknowledge that the rezoning was not opposed by Dr Lloyd from an ecology perspective. We agree with Ms Banks that the consideration of this proposal turns on what is the most appropriate planning mechanism in section 32 terms; is it to create a SASZ, a new zone, or rely on the resource consent process?

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[32] Mr Skelton disputed where the ONL line should be, considering it in the wrong location. He acknowledged that no submissions had been made to change the ONL line.

143. Mr Dent acknowledged that the SASZ is not the appropriate zone. In this evidence-in-chief he stated[33]

The proposed addition of the SASZ B is unique. The purpose of the SASZ is not the provision of Ski Area Activities - by virtue of the sites maximum altitude of 520masl this would be impossible.

Rather, the proposed SASZ B is sought to provide for land in close proximity to the Remarkables Ski Area which can be utilised for buildings and activities ancillary to the operation of the Remarkables Ski Area.

144. It is clear to us that the established SASZ framework is not what the submitter is seeking. What NZSki is seeking is essentially a different zone to 'support' the operation of the Remarkables Ski Area, and have attempted to retro-fit a set of proposed provisions into the established framework. We find that what is proposed would essentially create a 'spot' zone. Furthermore, to consider this now would require a much greater analysis to determine how this fits into the overall PDP, and whether it was an appropriate plan response given the other policy and rule changes recommended to the PDP as have been indicated at the beginning of this report.

145. It would also be necessary, given the landscape evidence, to determine if this site/location is well integrated with current developments occurring on the western side of the state highway within Jacks Point and Hanley Downs. It is our view, that while we accept the site is owned by NZSki and has good access to the Remarkables Road and Ski Area, it is somewhat 'isolated', and hence the spot zone issue identified above, and may result in further deterioration of the landscape values and amenity of the base of the Remarkables.

146. Mr Dent provided, at Appendix C of his this evidence, a marked up version of the changes he sought to the Rural Zone provisions. These include a new objective relating to the Remarkables Ski Area, as well as changes to, and the addition of, new policies and rules (including a specific set of rules applying to Ski Area Sub Zone B).

147. A number of the matters in the revised objectives, policies and rules have been addressed in the Rural hearings, including the provision of visitor accommodation. It is our view that these changes to the PDP will address some of the concerns of NZSki in being able to provide for a wider range of activities, for example visitor/worker accommodation; something NZSki is seeking to enable.

148. We were also concerned that the Ski Area "Sub-Zone B" activity status framework proposed by NZSki, utilising controlled or restricted discretionary status for the majority of listed activities, could potentially render the landscape assessment matters of Chapter 6 not applicable in this location. We accept that the provisions provided by NZSki did recognise the need to maintain landscape character and visual amenity and that Mr Dent accepted at the hearing that additional matters of control or discretion could be added to the rules. We find that if we were to accept the zoning proposal of NZSki it would require more work to ensure appropriate plan provisions.

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[33] S Dent, EiC, paragraph 126 and 127, pages 32 and 33.

149. We also note that the site has a number of resource consents as set out above. These enable a portion of the activities that NZSki are seeking to be undertaken. As set out by Mr Dent, NZSki are seeking to provide visitor/workers accommodation and we acknowledge this is an issue identified by a number of parties. It was also an issue canvassed at the Rural hearings, and a number of recommendations have been made to provide for this activity (see the Report on Chapter 21 - Rural).

150. It is the Panel's view that in section 32 terms, given the reasons set out above, the recommended changes to the rural and other plan provisions in combination with the resource consents this for site, it is more efficient to rely on the resource consent process (to say establish visitor/workers accommodation), rather than re-zone the site.

151. Furthermore we find that accommodating the rezoning of 'Sub-Zone B' would likely result in the need for detailed, site specific and bespoke provisions for which the PDP's SASZ framework does not provide. Also the provisions provided for 'Sub-Zone B', while recognising landscape as a matter of control, do not contain sufficient detail to enable adequate assessment of applications or clarity around built form outcomes; particularly given the range of land uses which could occur from 'storage' to 'accommodation' and 'commercial activities'.

152. In summary, we agree with Ms Banks' reasons for not re-zoning the site, being:

> *"I consider that the Rural Zone is more appropriate in this instance, to manage the range of possible and uncertain effects that may arise from the type of zoning and framework promoted by NZSki"*[34]

> *"At this time the Rural zone framework, in combination with the provisions of Chapter 6 (Landscape) provides the appropriate framework to address s6(b), s7(b), (c) and (f) of the RMA, in addition to Goal 3.2.5 to protect the ONL from inappropriate subdivision, use and development, better provides for the appropriate analysis of non-skiing activities in these areas, including landscape effects."*[35]

153. While we support in principle the concept of the activities that support the operation of the ski field to be located in proximity to it, we do not find for the reasons above that the zoning proposed is the most efficient in section 32 terms. This is not to say the concept is not one worth exploring further. The Council will need to determine if it is an appropriate approach and then undertake the required section 32 analysis, and proceed by a variation or plan change process later if it determined this was appropriate.

6.7. Recommendation

154. Our recommendation is:
   a. Reject the proposed rezoning of 'Sub Zone B' by NZSki (572);
   b. Reject the further submission of Grant Hensman and others FS1337;
   c. Reject the further submission of QPL (FS1097); and
   d. Accept the further submission of Ian Dee (FS1081).

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34 K Banks - Reply Statement, Paragraph 8.1

35 ibid, Paragraph 8.2

7. SOHO – SUBMISSION 610

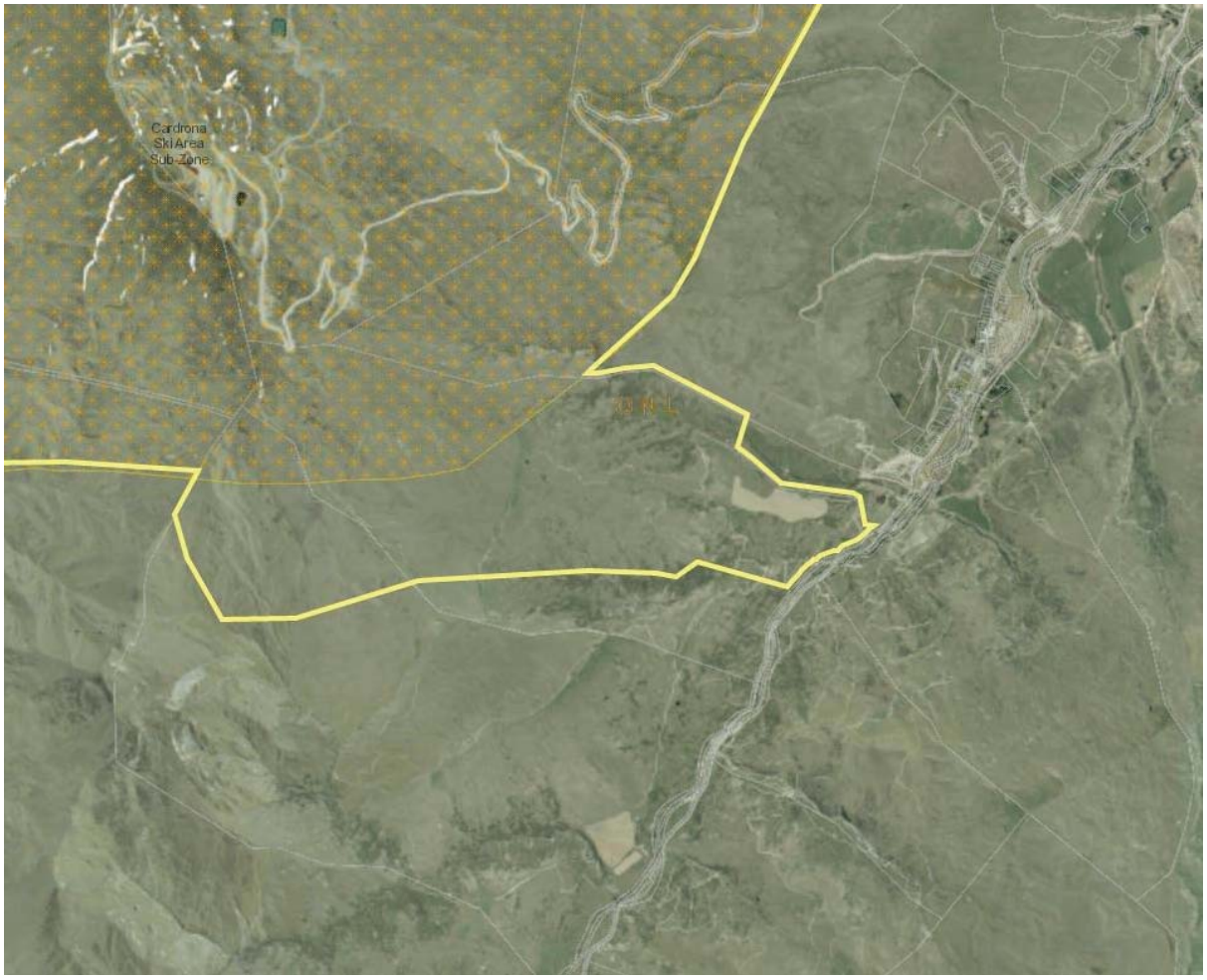

Figure 7: Extension to Cardrona SASZ sought by Soho

7.1. Overview

155. Soho's submission sought that the SASZ be expanded to the south-west, extending down to Cardrona Valley Road (identified in the image above). The submission identified that the reason for the rezoning was to "address a key issue relating to the connection between the SASZ's and the surrounding transportation network".

156. The submission also identified that Soho wished to expand offerings within the SASZ to include commercial activities and on-mountain visitor and residential accommodation.

157. The rezoning was supported by QPL[36] and opposed by MCSL[37]. MCSL opposed the zone extending down to the valley floor and below the normal "winter snowline". MCSL stated that it was logical for a zone extension to be enabled for transportation connections to the SASZ (as sought by MCSL[38]), but not to enable "off-mountain" visitor and residential development. MCSL further stated this would enable urban scale development in areas not anticipated for urban development.

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36 FS1097
37 FS1153
38 Submission 407

158. At the hearing Soho, via legal submissions of Ms Baker- Galloway and evidence of Mr Ferguson, reduced the extent of rezoning to the upper reaches of the Callaghans Creek and Blackmans Creek Basin (mostly above the snow line at 1100masl). The reason given for this was to provide opportunity for skiing. The reduced area is as shown below in Figure 8. This report only addresses the reduced area sought by Soho.

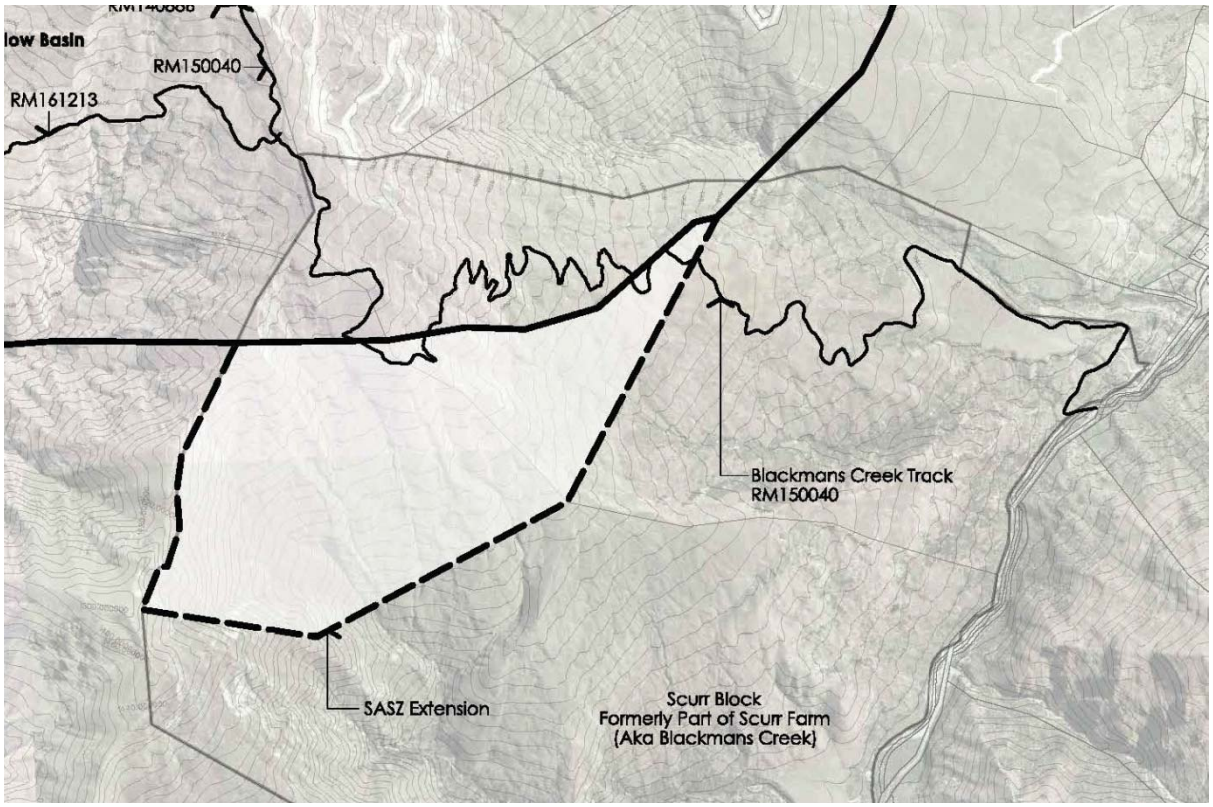

Figure 8: Amended extension presented by Mr Ferguson for Soho

7.2. Scope

159. We address the issue of scope first, as our findings on this have determined the extent of the area that we are able to consider and recommend to be extended.

160. As shown Figure 8, the area sought to be extended has been significantly reduced, and now seeks an extension to the SASZ at the higher elevations. A part of the 'reduced area' shown above is beyond that which was requested in the original submission. This was acknowledged by Ms Baker- Galloway in her legal submissions[39]where she stated.

"In terms of jurisdiction, the extension appended to Mr Ferguson's evidence does extend beyond the boundary of the original extension proposed, but is significantly smaller(in order of 102ha less). It is all contained on private land, and is restricted to higher elevations associated with skiable terrain . The nature and scale of effects associated with the proposed extension are materially less than that originally sought".

161. We accept that the total area now sought is smaller than that originally requested. Notwithstanding this, we have determined that we have no scope to recommend an extension

[39] Ms Baker-Galloway, legal submissions, para 18, pages 4 and 5.

to that portion of the SASZ that was not part of the original submission, irrespective that the nature and scale of effects associated with the proposed extension overall may be materially less than that originally sought.

162. We now address the 'in-scope' extension as requested. We note that with some caveats the Council's position is to support the extension sought (that which is in-scope) as set out in Ms Banks Reply Statement.

7.3. Landscape

163. The landscape evidence of Dr Read described the area of the proposed rezoning (the full area originally sought) as being located within the visual catchments of the Cardrona Valley and, in its upper reaches, the Arrow River Valley and parts of the Wakatipu Basin. She considered that although there were some parts of this area that may have the ability to absorb development, the range of earthworks and activities that could be undertaken in the zone (if supported) could be visible to a new visual catchment, and have a significant adverse effect on the landscape. Dr Read was not asked to comment on Soho's amended proposal.

164. Ms Pflüger, landscape architect for the submitters, presented evidence-in-chief and a supplementary statement. The supplementary statement addressed the revised and reduced SASZ now sought.

165. She stated the following:[40]

> *5 Subsequent to finishing my evidence in chief the submitters developed an alternative approach which is summarised in Mr Ferguson's Supplementary Evidence. This includes a much smaller extension to the Cardrona SASZ than originally proposed..."*
>
> *10 ... for Soho an overlay was proposed under the full extension of the SASZ to the Cardrona valley floor to ensure that the landscape effects, as they would be experienced from the Cardrona highway and other places within the valley can be managed. Again, this would in my view lead to similar outcomes as the proposed alternative with a reduced spatial extension to the SASZ in combination with a restricted discretionary activity status for a gondola outside the SASZ.*
>
> *11 The much reduced extension area to the Soho SASZ (180ha), as proposed as an alternative, is located high in the Blackmans Creek Basin, extending down to approximately the 900m contour. This basin is visually relatively contained due to the existing topography created by surrounding ridgelines. The upper basin, which would be included in the alternative SASZ extension, is relatively low in gradient, compared to the lower steep valley slopes incised by Blackmans Creek and its tributaries. I consider that ski related activities within this basin would be unlikely to cause high visual effects, given the topography and recessed location of the high-lying basin.*

166. We agree with Ms Pflüger in terms of the landscape effects of the reduced SASZs

7.4. Ecology

167. Mr Davis' ecological evidence considered the area of the proposed rezoning (the full extent) to be representative of a developed agricultural environment. However, defined areas of shrubland communities have been identified within Little Meg Creek and Callaghans Creek. A

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40 Y Pflüger, Supplementary Evidence, parasgraph 5, 10 and 11, pages 3 and 4.

number of indigenous species were identified in the shrubland communities, including the 'at risk – declining' *Olearia lineata* and these areas provided habitat for the eastern falcon listed as 'at risk-recovering'.

168. Mr Davis considered that these defined areas should be excluded from the zone extent. Provided the shrubland communities were excluded, Mr Davis did not oppose the remainder of the proposed rezoning. It is apparent from the various plans and maps provided to us by the Council and the submitter, that the shrubland communities are excluded from Soho's revised SASZ extension.

7.5. Findings

169. We find for the reasons set out above that that the reduced SASZ extension sought by Soho (mostly above the 'snow line' at 1100masl), excluding that area which is out of scope, meets the purpose of the SASZ and will enable SAAs within this area. Any landscape and ecological effects will be no more than minor. Moreover the extension does not create the need for a range of bespoke rules in order to manage possible effects.

7.6. Recommendation

170. That we recommend:

a. Accepting the revised (reduced SASZ within scope) proposed rezoning of Soho (610) as shown in Figure 9 below;
b. Accepting in part the further submission of Queenstown Park Ltd (FS 1097); and
c. Accepting in part the further submission of MCSL (FS 1153).

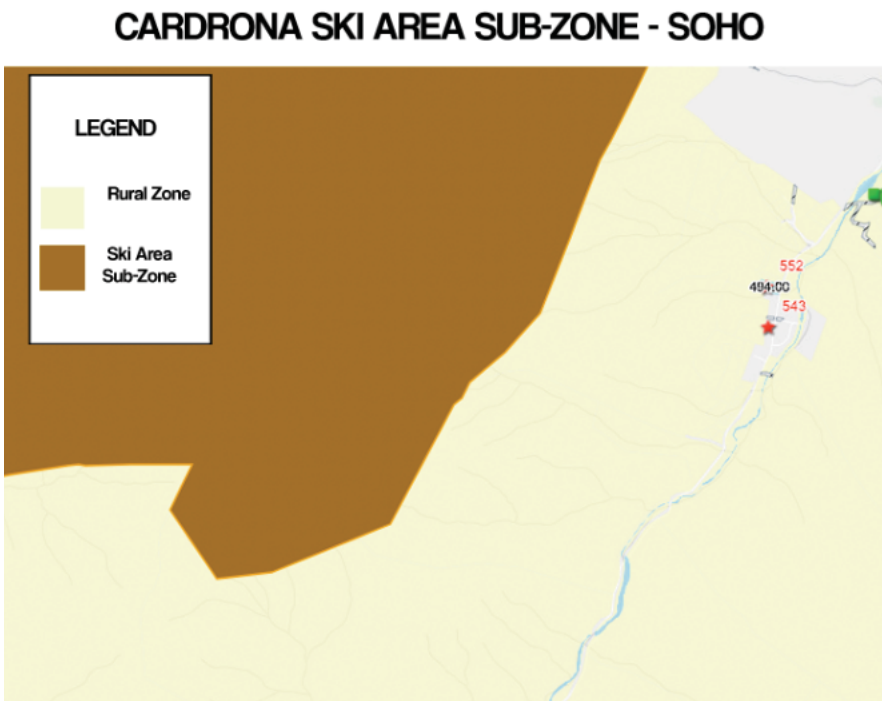

Figure 9: Cardrona SASZ as recommended.

8. TREBLE CONE INVESTMENTS LIMITED – SUBMISSION 613

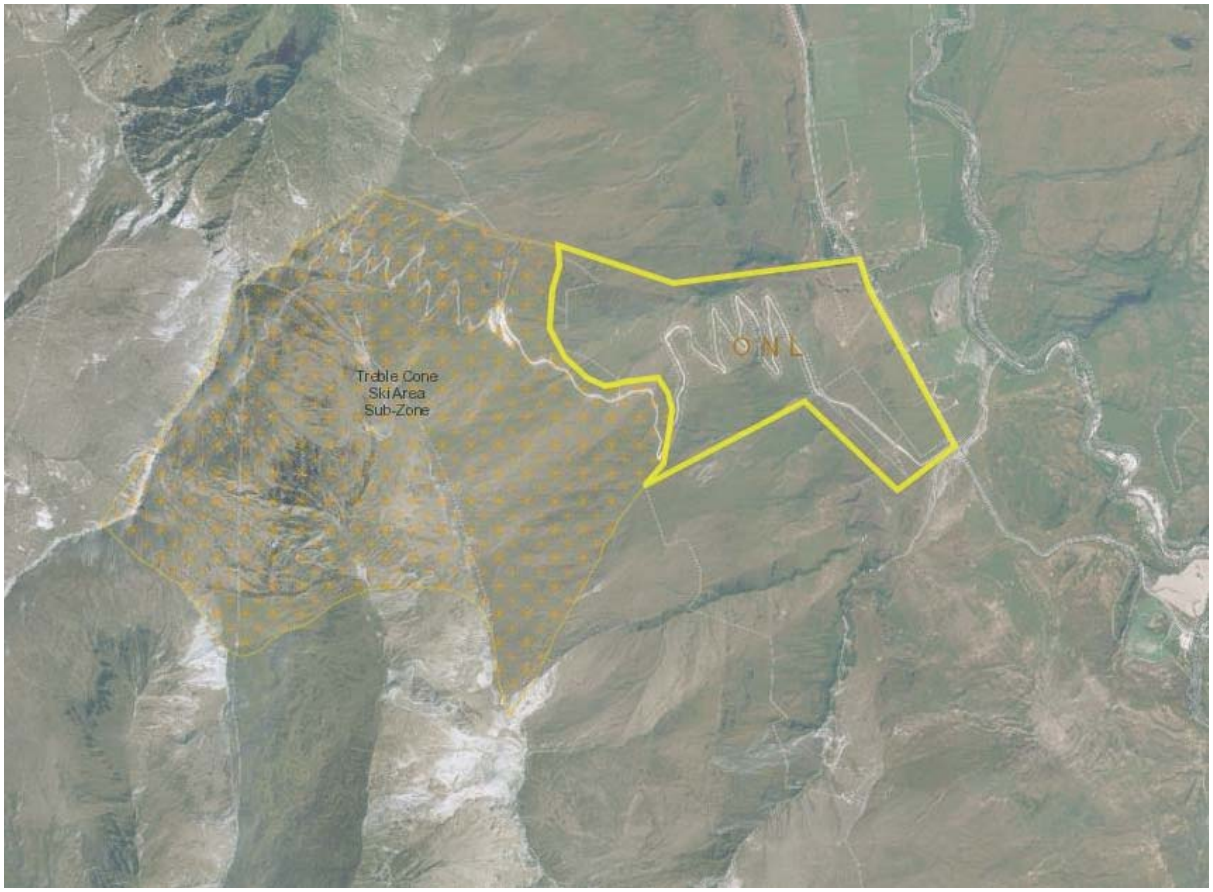

Figure 10: Notified Treble Cone SASZ with the extension sought outlined in yellow

8.1. Overview

171. TCI sought to extend the SASZ, as shown in the image above. It was to include the land from the beginning of the ski field access road to the lowest elevation of the notified extent of the SASZ at approximately 1100 masl. The submission was supported by NZSki (FS1229), however the support was primarily identified for the provisions applying to the SASZ (addressed through Stream 2 – Rural) and was unrelated to the rezoning extent.

172. At the hearing TCI offered an alternative approach that would satisfy their concerns. This was to largely to agree with the Council's reply position as presented at the Rural hearings and in these hearing specifically in relation to SASZs. The 'offer' was that PLS and other transportation systems (eg roading) be Restricted Discretionary Activities (RDA) outside of SASZs. On this basis no extension to the Treble Cone SASZ would be sought.

173. Ms Baker- Galloway set out in her legal submissions for TCI that[41]

> *Having now had the benefit of reviewing the Council's position as set out in its rebuttal evidence lodged 20 April 2017, along with the "full package" set out in Council's replies to other relevant hearing streams, the Submitters have carefully considered the points made*

[41] Ms Baker- Galloway, paras 9 and 10, pg 3.

and can now largely support the position advanced by Council as another option that achieves the Submitters' objectives. To be of assistance the Submitters have therefore refined the package in support of Council's position that involves ..... no extension to the Treble Cone SASZ, along with consequential changes to the plan provisions. It is submitted this option could equally achieve the Submitters' objectives in respect of enabling access to the SASZs in a manner that meets the relevant tests and that gives effect to the objectives and policies of the PDP.

To be clear, the Submitters' relief package submitted in their experts' evidence in chief is not being withdrawn, and is still supported as one suitable alternative to achieve sustainable management and the Submitters' core objectives. However to be of assistance, the Submitters can also now support the alternative promoted by Council, subject to minor changes.

174. Mr Ferguson, in this supplementary evidence dated 5 May 2017 stated:

In light of the Council's Rebuttal Evidence Soho and Treble Cone have considered further the mapping of these SASZs. The main objective for Treble Cone and Soho with respect to the mapping of the SASZs has been to secure through an appropriate rule framework the provision of land based vehicle access and/or passenger lift access to both ski areas. This objective stems from the clear direction provided within the Proposed District Plan ('PDP') to encourage the growth, development and consolidation of ski area activities and the disconnect in planning terms with the provision of the necessary access to such areas through the rural zone.[42](emphasis added)

175. He further set out[43]

In the event the Panel find that the approach outlined in this Supplementary Evidence to the management of access to the SASZs is the most appropriate method to achieve the objectives of the plan relating to the growth development and consolidation of the Treble Cone and Soho ski areas, the revised relief contained within Appendix 2 sets out the basis under which this could be achieved ..."

176. Mr Ferguson's supplementary evidence then went on to set out the wider framework of provisions relating to the SASZs which were part of the earlier hearing streams. He also included (in Appendix 2 to his evidence) a set of revised provisions that he considered appropriate. For the purpose of this report, he included an RDA rule for "Passenger Lift Systems or other transportation system or land based vehicle access used to convey passengers to and from a Ski Area Sub Zone"[44]

177. Ms Banks, in her Reply Statement largely agreed with the submitters and provided a set of provisions similar to those proposed by Mr Ferguson, but in a different format (for example Ms Banks provided two separate RDA rules for PLSs and other transportation system or land based vehicle access used to convey passengers to and from a Ski Area Sub Zone, where as Mr Ferguson had them as one). Ms Banks, as part of the wider amendments to the SASZ provisions, recommended the deletion of Rule 21.4.19 which stated that SAA outside the SASZ

42 C Ferguson, Supplementary evidence para 4, pg 2.

43 ibid para 10, page 3.

44 ibid, Appendix 2 - rule 24.1.19

are a non-complying activity; a necessary change given the recommended changes in the Rural and SASZ hearing recommendations.

178. We note here that we agree with TCI that what it has proposed would achieve TCI's main objective of securing an appropriate rule framework to provide for land based vehicle access and/or passenger lift access to both ski areas. This approach would give effect to the clear direction provided in the PDP to encourage the growth, development and consolidation of ski area activities and the disconnect in planning terms with the provision of the necessary access to such areas through the rural zone.

179. The Rural Hearing Panel has addressed the issue of the appropriate plan provisions for SASZ's (see that report). To 'support' the position by more specifically providing or PLS and other forms of access to and from the SASZ's, that Panel has recommended the additional policy below

> *Provide* for *appropriate alternative (non-road) means of transport to and within Ski Area Sub Zones, by way of passenger lift systems and ancillary structures and facilities*.[45]

180. This policy, along with the 'package' of recommended changes made to the Rural and SASZ provisions better ensure that SASZs can function as the PDP envisages they should. It will also 'achieve' other strategic objectives of enabling economic development, enhancing recreational use, while also protecting/managing outstanding and other landscapes.

181. In terms of the SASZ hearings, we find that having heard all of the evidence, which we briefly addresses below, not extending the SASZ but providing for PLS and other access as an RDA with appropriate matters of discretion is a more efficient approach and method in section 32 terms. This approach avoids establishing SASZ's on the lower slopes (generally below 1100masl), and the potential adverse effects of enabling SAA's at these lower altitudes.

182. We also accept the evidence (Mr Darby and others) that the consent held by TCI for a gondola is likely to be exercised, and we have considered this within the context of the existing environment. We address this briefly below also.

8.2. Landscape

183. Dr Read's evidence described the location of the proposed rezoning as a combination of valley floor and mountain side landscapes. She noted the valley floor was modified pasture whereas the mountainside landscape is steep with indigenous grasses and shrubs with patches of remnant beech in gullies. Dr Read considered that the area has high natural character and is highly memorable, but that the ski field access road was a prominent visual feature on the mountainside which detracted from its natural character and aesthetic coherence.

184. Dr Read was of the opinion that the range of activities and physical works anticipated in the SASZ could have significant adverse effects on the landscape. She also considered that the existing consent for the gondola, as opposed to extending the SASZ, was a better way to mitigate any adverse effects. On this basis Dr Read opposed the proposed rezoning.

185. Ms Pflüger's landscape evidence for TCI provided a detailed description of the existing landscape character and values found within the existing Treble Cone SASZ and the proposed

[45] Recommended Policy 21.2.6.4

extension to it. Her assessment, unlike Dr Read's, concluded that the landscape's ability to absorb change within the Treble Cone extension area was relatively high. This was due to the existing modifications in the ski areas and the existing access to the ski areas. In coming to this view, she had taken into account the existing access road and the consented gondola alignment including an identified base station area, as part of the existing environment.

186. We agree with Ms Pflüger that the landscape could absorb some change for the reasons she set out, including the consented gondola as part of the existing environment.

8.3. Ecology

187. Mr Davis, Council's ecologist, identified the extent of the rezoning to be highly modified, having being subject to extensive pastoral activity including oversowing and top dressing, with indigenous beech forest and shrubland habitat in a defined area at the northern area of the proposed rezoning. Mr Davis was of the opinion that this area of beech forest and shrubland should be excluded from any SASZ, but otherwise did not oppose the proposed rezoning.

188. No other expert ecological evidence was provided. Given our acceptance of not expanding the SASZ but providing for PLS's as a RDA with ecology as one of the matters of discretion, we are satisfied that any ecological issues would be adequately addressed.

8.4. Findings

189. We have set out our recommendation already above. However we wish to record that we accept Mr Darby's evidence that it is likely that the existing gondola consent will be given effect to, and how important the gondola access is to the future of the Treble Cone ski field.

190. This is encapsulated in Mr Darby's summary statement, where he states[46]:

> *The consented gondola to the Treble Cone ski area is a critical part of the development plan for the long terms security of the ski area. It is anticipated that the current access road will reach carrying capacity, and the gondola is the solution to addressing the growth and safety matters arising from that carrying capacity. Also the consented gondola is necessary to reduce the current risk associated with access being dependant on the ski access road, which is vulnerable to closure from time to time.*

191. As already mentioned above, we accept the gondola consent forms part of the existing environment.

192. As part of the 'package' of controls sought by TCI, Mr Ferguson proposed the following matters of discretion for the PLS and other access methods:

a. The route of the passenger lift system and the extent to which the passenger lift system breaks the line and form of the landscapes with special regard to skylines, ridges, hills and prominent slopes.
b. Impacts on landscape values from the alignment, surface treatment and design of any vehicle access, including measures that can mitigate effects on visual quality and amenity values of the landscape.
c. Whether the materials and colours to be used are consistent with the rural landscape of which the passenger lift system will form a part.
d. Whether the geotechnical conditions are suitable for the passenger lift system or vehicle access and the extent to which they are relevant to the route.

[46] Mr Darby, Summary Statement, para 10, pg 3.

e. Lighting.
f. The ecological values of the land affected by vehicle access, structures and activities and any proposed ecological mitigation works.
g. Balancing environmental considerations with operational requirements and economic viability of Ski Area Activities.
h. The positive effects arising from directly linking settlements the District's transportation network with ski area sub zones and providing alternative non-vehicular access.

193. Ms Banks proposed a similar set of provisions (worded differently) but also included light reflectivity and erosion and sediment control.

194. We have recommended a rule more similar to Mr Ferguson's provisions, particularly having one rule addressing both PLS and other access methods, whereas Ms Banks had them as two rules. The recommended plan provisions are set out at the end of this report and in Chapter 21 – Rural as shown in Appendix 1 to Report 4A.

195. It was discussed at the hearing if the phrase "and economic viability of Ski Area Activities" - should remain in the matters of discretion. In a different context, Mr Goldsmith, for MCSL, set out in his legal submissions (at Appendix 2) matters about financial and commercial viability, and why these were not relevant. We agree.

196. Mr Darby considered that this phase was important (along with other matters of discretion, including the positive effects of any development of PLS's). He stated:[47]

"....I recommend the matters of discretion include reference to important matters such as operational requirements, positive effects, and implications for the economic viability of ski area activities, to ensure the restricted discretionary assessment of any proposal covers matters that are critical to the development of a ski area. We are operating in an international market and to ensure long term sustainability of the ski are industry in this district, we need to ensure the ski areas continue to develop and remain attractive and viable".

197. While we understand what is being sought - i.e. that the overall viability of a ski field may well be enhanced by a PSL, we do not think a Council should have to 'inquire' into the economic viability (balancing or otherwise with other factors). We find that it is appropriate to consider the positive effects of the proposal, and applicants may provide information that shows that one of the positive effects is the greater viability of the ski area.

198. We also support, Ms Banks' suggestion of the inclusion of earthworks provisions (erosion and sediment control). As has been addressed earlier in this report, the Council has now notified, as part of Variation 2, Chapter 25 - Earthworks, and that we recommend the inclusion of earthworks as a matter of control and discretion with reference to Chapter 25.

199. Overall we agree that PSLs and other access options outside of SASZs, where they provide access to and from a SASZ should be more enabled than the notified PDP. The submitter and the Council both agree that this can be achieved by an appropriately draft RDA rule, along with the other 'package' of amendments to the PDP as have been addressed in the Rural recommendation report and this report.

[47] Mr Darby, Summary Statement, para 13, pg 4

8.5. Recommendation

200. We recommend the following:

a. Accept in Part the submission by TCI (407)
b. Accept in Part the submission by TCI (407).
c. Accept in Part the further submission of NZSki (1153)

201. Insert the Rule 21.4.24 in Chapter 21 as set out below:

Rule Number	Activity	Activity Status
21.4.24	Passenger Lift Systems not located within a Ski Area Sub Zone Discretion is reserved to: a. The Impact on landscape values from any alignment, design and surface treatment, including measures to mitigate landscape effects including visual quality and amenity values. b. The route alignment and the whether any system or access breaks the line and form of skylines, ridges, hills and prominent slopes. c. Earthworks associated with the construction the Passenger Lift System. d. The materials used, colours, lighting and light reflectance. e. Geotechnical matters. f. Ecological values and any proposed ecological mitigation works. g. Balancing environmental considerations with operational requirements of Ski Area Activities. h. The positive effects arising from providing alternative non-vehicular access and linking ski area sub zones to the roading network.	RD

PART C: SUMMARY OF RECOMMENDATIONS

9. NZSki – Coronet Peak – Submission 572

202. Our recommendation, set out in Section 2.6 above, is:
   a. Reject the proposed rezoning of 'Dirty Four Creek' to SASZ; and
   b. Reject the proposed rezoning of the 'Back Bowls' to SASZ.

10. Cardrona Alpine Resort Ltd – Submission 615

203. Our recommendation, set out in Section 3.7 above, is:
   a. Reject the proposed rezoning sought by CARL;
   b. Reject the further submissions of Kay Curtis (FS1137) and the Cardrona Valley Residents and Ratepayers Society Inc (FS1105); and
   c. Accept the further submission of MCSL (FS1153).

11. Anderson Branch Creek Ltd – Submission 829

204. Our recommendation, set out in Section 4.5 above, is to reject the submission of Anderson Branch Creek Limited.

12. NZSki – Remarkables SASZ – Submission 572

205. Our recommendation, set out in Section 5.7 above, is that the SASZ be extended above Lake Alta as sought by NZSki (within the boundary of Queenstown Lake District), subject to the inclusion of the following rule in Chapter 21 Table 9 as follows:

21.12.8	Earthworks, buildings and infrastructure within the No Building & Earthworks Line in the Remarkables Ski Area Sub -Zone.	PR

   a. Accept the submission by NZSki;
   b. Accept the supporting further submissions from QPL (FS1097) and Grant Hensman and others (FS1337)- noting the further submission of Grant Hensman and others (FS1337) is primarily associated with the creation of 'Sub-Zone B' discussed below as 'Area 2'.
   c. Reject the opposing further submission by Ian Dee (FS1081).

13. NZSki – Remarkables – Creation of a New SASZ Over the Site Containing the Lower Access Road – Area B

206. Our recommendation , set in Section 7.6 above, is:
   a. Reject the proposed rezoning of 'Sub Zone B' by NZSki (572);
   b. Reject the further submission of Grant Hensman and others (FS1337);
   c. Reject the further submission of QPL (FS1097); and
   d. Accept the further submission of Ian Dee (FS1081).

14. Soho – Submission 610

207. Our recommendation, set out in Section 7.6 above, is:
   a. Accept the revised (reduced SASZ within scope) proposed rezoning of Soho (610);

b. Accept in part the further submission of Queenstown Park Ltd (FS 1097); and
c. Accept in part the further submission of MCSL (FS 1153).

15. Treble Cone Investments Ltd – Submission 613

208. Our recommendation, set out in Section 8.5 above, is:
a. Accept in Part the submission by TCI (407)
b. Accept in Part the submission by TCI (407).
c. Accept in Part the further submission of NZSki (1153)
d. Insert Rule 21.4.24 in Chapter 21 as set out below:

Rule Number	Activity	Activity Status
21.4.24	Passenger Lift Systems not located within a Ski Area Sub Zone Discretion is reserved to: a. The Impact on landscape values from any alignment, design and surface treatment, including measures to mitigate landscape effects including visual quality and amenity values. b. The route alignment and the whether any system or access breaks the line and form of skylines, ridges, hills and prominent slopes. c. Earthworks associated with the construction the Passenger Lift System. d. The materials used, colours, lighting and light reflectance. e. Geotechnical matters. f. Ecological values and any proposed ecological mitigation works. g. Balancing environmental considerations with operational requirements of Ski Area Activities. h. The positive effects arising from providing alternative non-vehicular access and linking ski area sub zones to the roading network.	RD

For the Hearing Panel

Denis Nugent, Chair
Date: 29 March 2018

24a

24b

ONL

ONF

RCL

ONL

RCL

Paddys Ridge

Tuohys Gully Rd

Cardrona Valley Rd

Curtis Rd

Pringles Creek Rd

Soho St

Riverbold Way

Gunn Rd

Alison Ave

Bernard Rd

Wairau Rd

Hardie Place

Matheson Cr

Grierson Lane

Rockhaven

Aubrey Rd

Hunt Place

Lagoon Ave

Dale St

Ivy Lane

Riffleman St

Hebe Court

Poppy Lane

Quail St

Quinnat St

Snowberry St

Warbler Lane

Sherwin Ave

Mallard St

Marbleleaf Lane

Heron Green

Wren St

Frye Cr

Finch St

Ash Ave

Hebbard Court

Carlow St

Wexford St

Kingston St

Arklow St

Kirkwall St

Waterford Terrace

Tipperary St

Dublin St

Carnmore St

Templeton St

Jack Young Place

Kingfisher Cr

Albert Town-Lake Hawea Rd

Lake Hawea-Albert Town Rd

SH 6

Old Racecourse Rd

Monteith Rd

Clan Mac Rd

Halliday Rd

E38A

328

500

585

569

586

552

494

495

543

361

362

450

352

70

186

520

506

510

596

508

327

509

491

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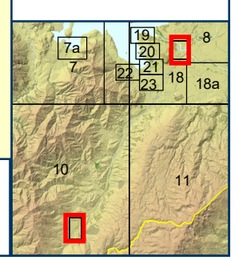

QUEENSTOWN LAKES DISTRICT COUNCIL

PDP Decisions Version Map 24 - Cardrona, Albert Town

0 0.5 1 Km

N

Date Published: 18-Apr-18

Maps created by QLDC GIS Department

Parcel boundaries derived from New Zealand Core Records System Vector Data (Corax) obtained from LINZ under the LINZ Licence Agreement

Polnoon Burn
Carmichaels Creek
Shotover River
Arrow River
Stony Creek
Skippers Heritage Overlay Area
Macetown Heritage Overlay Area
Coronet Peak Ski Area Sub-Zone
Seffertown Heritage Overlay Area
Moonlight Creek
Moke Lake Heritage Overlay Area
Cardrona Ski Area Sub-Zone
Spotts Creek
Spot Burn
Back Creek
Cardrona River
Roaring Meg
Waiorau/Pisa Ski Area Sub-Zone
Central Otago District
SH 6
ONL

16A 140 217 17A 219 228 16A 144 55 35A 218 19 145 130 139 45 67 35A 35A 35A G33C G33B G33A A8C_3 A8C_5 A8C_4 A8C_6 A8C_9 A8C_7 385 6 375 G28A_7 G26A_6 304 387 545 331 610 510 F21C_2 F21A F21C_1 F21B_3 F21B_1 F2A F22A_2 F22A_1 F2D F2B_2 F2B_1 F2C F26C_3 F26C_2 F26C_1 F26A F26B

24a 28 27 26

Legend

- Historic Heritage Features
- Protected Tree
- Aurora Distribution Lines – For Information Only
- State Highway
- Parcel/Road Boundary
- Landscape Classification (ONF,ONL,RCL)
- Urban Growth Boundary
- Territorial Authority Boundary
- Heritage Overlay Area
- Significant Natural Area
- Unformed Roads
- Designated Areas
- Ski Area Sub-Zone
- Waterfall Park
- Medium Density Residential
- Lower Density Suburban Residential
- Town Centres
- Arrowtown Residential Historic Management Zone
- Local Shopping Centre
- Rural
- Rural Residential
- Rural Lifestyle
- Water (zoned Rural unless otherwise shown)

10

QUEENSTOWN LAKES DISTRICT COUNCIL

PDP Decisions Version Map 10 - Skippers, Macetown, Cardrona

0 2.5 5 Km

N

Date Published: 20-Apr-18

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

TABLE OF CONTENTS

PART A: INTRODUCTORY MATTERS

1 PRELIMINARY

1.1 Terminology in this Report

1. Throughout this report, we use the following abbreviations:

Act	Resource Management Act 1991 as it was prior to the enactment of the Resource Legislation Amendment Act 2017, unless otherwise stated
ASAN	Activity Sensitive to Aircraft Noise
BRA	Building Restriction Area
CARL	Cardrona Alpine Resort Limited
Clause 16(2)	Clause 16(2) of the First Schedule to the Act
CMA	Crown Minerals Act
Council	Queenstown Lakes District Council
DoC	Director-General of Conservation and/or Department of Conservation
Forest & Bird	Royal Forest and Bird Protection Society
JBNZ	Jet Boating New Zealand Incorporated
NPSET 2008	National Policy Statement for Electricity Transmission 2008
NPSFM 2011	National Policy Statement for Freshwater Management 2011
NPSFM 2014	National Policy Statement for Freshwater Management 2014
NPSREG 2011	National Policy Statement for Renewable Electricity Generation 2011
NPSUDC 2016	National Policy Statement on Urban Development Capacity 2016
NZFSC	New Zealand Fire Service Commission
NZIA	NZIA Southern and Architecture + Women Southern
NZTM	New Zealand Tungsten Mining Limited
OCB	Outer Control Boundary
ODP	The Operative District Plan for the Queenstown Lakes District as at the date of this report

ONF	Outstanding Natural Feature(s)
ONL	Outstanding Natural Landscape(s)
PDP	Stage 1 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015
Proposed RPS	The Proposed Regional Policy Statement for the Otago Region Decisions Version dated 1 October 2016
QAC	Queenstown Airport Corporation Limited
QPL	Queenstown Park Limited
QRL	Queenstown Rafting Limited
REPA	Runway End Protection Area
RJL	Real Journeys Limited
RMA	Resource Management Act 1991 as it was prior to the enactment of the Resource Legislation Amendment Act 2017, unless otherwise stated
RPS	The Operative Regional Policy Statement for the Otago Region dated October 1998
Rural Chapters	Chapters 21, 22 and 23 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015
SNA	Significant Natural Area
Stage 2 Variations	the variations, including changes to the existing text of the PDP, notified by the Council on 23 November 2017.
UCES	Upper Clutha Environmental Society
UGB	Urban Growth Boundary
WCO	Water Conservation Order

1.2 Topics Considered

2. The subject matter of this hearing was the submissions and further submissions made on Chapters 21, 22, 23, 33 and 34 of the PDP (Hearing Stream 2).

3. Chapter 21 Rural Zone, enables farming and also provides for other activities that rely on rural resources. As such, the zone includes Ski Area subzones, and the Rural Industry subzone. These activities are provided for within the context of protecting, maintaining and enhancing landscape values including ONLs/ONFs, nature conservation values, the soil and water resource and rural amenity.

4. Chapter 22 Rural Residential and Rural Lifestyle sets out objectives and policies for managing the spatial location and layout of rural living within the District. It seeks to maintain the character and quality of the zones and address their fit within the wider open space, rural environment and natural landscape values.

5. Chapter 23 Gibbston Character Zone relates to the provision of the viticultural activities and associated commercial activities within a defined area of the Gibbston Valley.

6. Chapter 33 Indigenous Vegetation and Biodiversity provides for the maintenance of biodiversity throughout the district and the protection of significant indigenous vegetation and significant habitats of significant indigenous fauna.

7. Chapter 34 Wilding Exotic Trees sets out provisions to prevent the spreading of wilding exotic trees.

8. These five chapters sit within the strategic framework provided by Chapters 3, 4, 5 and 6 of the PDP.

9. We have set out our recommended versions of each of the chapters in Appendices to this report as follows:
Appendix 1 – Chapter 21;
Appendix 2 – Chapter 22;
Appendix 3 – Chapter 23;
Appendix 4 – Chapter 33; and
Appendix 5 – Chapter 34.

10. In Appendix 6 we set out our recommendations on the submissions on these chapters.

1.3 Hearing Arrangements

11. Stream 2 matters were heard on 2-6 May 2016 inclusive in Hawea, and then, on 17-18 May and 23-27 May 2016, in Queenstown.

12. The parties heard from on Stream 2 Rural Chapters matters were:

Council

- James Winchester and Sarah Scott (Counsel)
- Dr Stephen Chiles
- Dr Marion Read
- Philip Osborne
- Glenn Davis
- Craig Barr

Hawea Community Association[1]

- Dennis Hughes and Paul Cunningham

Longview Environmental Trust and Just One Life Ltd[2]

- Scott Edgar

[1] Submission 771
[2] Submission 659

The Alpine Group Ltd[3]

- Jonathon Wallis

Lakes Landcare Group[4]

- Tim Burdon

Laura and Jan Solbak[5]

Jude Battson[6]

Gaye Robinson[7]

Lake McKay Station[8]

- Colin Harvey
- Mike Kelly

Sam Kane[9]

Heather Pennycook[10]

Federated Farmers of New Zealand[11]

- Phil Hunt
- Barry Cooper

UCES[12]

- Julian Haworth
- James Hadley[13]

Otago Fish and Game Council[14]

- Peter Wilson
- Clive Manners Wood[15]
- Stewart Mahon[16]

Jeremy Bell Investments Limited[17]

- Phil Page (Counsel)
- Dr Peter Espie

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3 Submission 315
4 Submissions 791, 794
5 Submissions 118, 816
6 Submission 461
7 Submission 188
8 Submission 439
9 Submission 590
10 Submission 585
11 Submission 600
12 Submission 145
13 Submission 675
14 Submission 788
15 Submissions 213, 220
16 Submissions 38
17 Submission 782, 784

- Mandy Bell
- Allan Cubitt

Wakatipu Wilding Conifer Group[18]
- Peter Williamson

NZ Transport Agency[19]:
- Tony MacColl

Queenstown Rafting Limited[20]:
- Jayne Macdonald (Counsel)
- Vance Boyd

Aircraft Owners and Pilots Association[21]
- Vance Boyd

Bungy New Zealand and Van Asch[22], Hadley[23], Broomfield[24], Temple Peak Station[25], Woodlot Properties Limited[26]
- Carey Vivian
- Phillip Bunn[27]
- Steven Bunn[28]

Hutchinson[29], Gallagher[30], Sim[31], McDonald Family Trust[32], McDonald & Associates[33]
- Neil McDonald
- Nick Geddes

Arcadian Triangle Limited[34]
- Warwick Goldsmith

Director-General of Conservation[35]
- Susan Newell (Counsel)
- Brian Rance
- Laurence Barea

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18 Submission 740
19 Submission 719
20 Submission 167
21 Submission 211
22 Submission 489
23 Submission 674
24 Submission 500
25 Submission 486
26 Submission 501
27 Submission 265
28 Submission 294
29 Submission 228
30 Submission 233
31 Submission 235
32 Submisison 411
33 Submission 414
34 Submissions 497, 836
35 Submission 373

- Geoffrey Deavoll

Glentui Heights Limited[36], Bobs Cove Developments Limited[37]
- Dan Wells

QAC[38]
- Rebecca Wolt (Counsel)
- Kirsty O'Sullivan

Skydive Queenstown Limited[39]
- Jayne Macdonald (Counsel)
- Christopher Day
- Jeff Brown

NZTM[40]
- Maree Baker-Galloway (Counsel)
- Gary Grey
- Carey Vivian

RJL[41], Te Anau Developments[42]
- Fiona Black
- Ben Farrell

CARL[43]
- Ben Farrell

NZFS[44]
- Emma Manohar (Counsel)
- Donald McIntosh
- Ainsley McLeod

Rachel Brown[45]

Ngai Tahu Tourism[46]
- John Edmonds

Susan Cleaver[47] and Carol Bunn[48]
- Phillip Bunn

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36 Submission 694
37 Submission 712
38 Submission 433
39 Submission 122
40 Submission 519
41 Submission 621
42 Submission 607
43 Submission 615
44 Submission 438
45 Submission 332
46 Submission 716
47 Submission 221
48 Submission 423

Deborah MacColl[49] and Barnhill Corporate Trustee Ltd[50]

- Deborah MacColl

Jules Tapper[51]

Carlton Campbell[52]

Totally Tourism Ltd[53] and Skyline Enterprises Ltd[54]

- Sean Dent

Darby Planning LP[55]

- Hamish McCrostie
- Richard Tyler
- Yvonne Pflüger
- Michael Copeland
- Chris Ferguson

NZSki Limited[56]

- Jane Macdonald (Counsel)
- Sean Dent

Ayrburn Farm Estate Ltd[57]; Allenby Farms Ltd[58]; Ashford Trust[59]; Wakatipu Equities[60]; Robert and Elvena Heyward[61]; Byron Ballan[62]; Crosshill Farms Ltd[63]; Bill & Jan Walker Family Trust[64]; GW Stalker Family Trust, Mike Henry, Mark Tylden, Wayne French, Dave Finlin, Sam Strain[65]; Slopehill Joint Venture[66]; Hansen Family Partnership[67]; Roger and Carol Wilkinson[68].

- Warwick Goldsmith and Rosie Hill (Counsel)
- Grant Stalker
- Anthony Strain
- Doug Reid
- Patrick Baxter
- Stephen Skelton

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49 Submission 285
50 Submission 626
51 Submission 114
52 Submission 162
53 Submission 571
54 Submission 574
55 Submission 608
56 Submission 572
57 Submission 430
58 Submission 502
59 Further Submission 1256
60 Submission 515
61 Submission 523
62 Submission 530
63 Submission 531
64 Submission 532
65 Submission 535, 534
66 Submission 537
67 Submission 751
68 Further Submission 1292

- Ben Farrell
- Jeff Brown

Transpower New Zealand Limited[69]
- Natasha Garvan (Counsel)
- Andrew Renton
- Aileen Craw

Jet Boating New Zealand[70]
- Eddie McKenzie
- Luke McSoriley

Royal Forest and Bird Protection Society[71]
- Sue Maturin

Mt Cardrona Station Ltd[72]
- Warwick Goldsmith (Counsel)
- Jeff Brown

Queenstown Park Ltd[73] and Queenstown Wharves (GP) Ltd[74]
- John Young (Counsel)
- Professor Tim Hazeldine
- Rob Greenway
- Nikki Smetham
- Simon Beale
- Simon Milne
- Jeff Brown

Hogan Gully Farm[75], Kawarau Jet Holdings Limited[76], ZJV (NZ) Limited[77], Mount Rosa Station Limited[78], Dalefield Trustees Limited[79]
- Jeff Brown

69 Submission 805
70 Submission 758
71 Submission 706
72 Submission 407
73 Submission 806
74 Submission 766
75 Submission 456
76 Submission 307
77 Submission 343
78 Submission 377
79 Submission 350

Graeme Todd Family Trust[80], Leslie & Judith Nelson[81], Trilane Industries Limited[82], Hogans Gully Farming Ltd[83], Cabo Ltd[84], Morven Ferry Ltd[85], James Cooper[86]

- Graeme Todd (Counsel)

Trojan Helmet Ltd[87]

- Rebecca Wolt (Counsel)
- Jeff Brown

13. In addition, X Ray Trust[88], Ministry of Education[89] and Ms Anne Steven[90] tabled evidence but did not appear at the hearing. We have taken that evidence as read. Our inability to discuss any of the matters raised in the evidence with the submitters or their experts has limited the weight we can give that evidence.

14. Ms D Lucas, for UCES[91], was unable to attend the hearing. Ms Lucas' evidence was taken as read. In lieu of the attendance for Ms Lucas, we provided her with written questions. Ms Lucas' answers were provided to the Panel on 20 May 2016.

15. Arising out of Ms Lucas' evidence in regard to Policy 21.2.12.5, we sought a legal opinion from QLDC in-house counsel, as follows*, "Section 6(a) of the Act refers to preservation of the natural character of wetlands, and lakes and rivers and their margins. Is that different from "protect, maintain or enhance"?"*

16. We received a memorandum in response to our question from in-house Counsel for the Council dated 20 May 2016 in relation to meaning of the word *"preservation"* in Section 6 of the Act and whether that is different from *"protect"* used in Policy 21.2.12.5. The advice we received[92] was that protection, used in its ordinary context (as opposed to its use in conjunction with inappropriate subdivision, use and development), is for all intents and purposes the same as preservation.

17. Mr Ferguson, planning witness for various submitters[93], had to leave the hearing for personal reasons before we had completed questioning him. Additional questions were furnished to Mr Ferguson in writing and his response by way of supplementary evidence was received on 27 May 2016.

18. Prior to the commencement of the hearing (13 April 2016), counsel for the Council provided revised copies of the working draft chapters for this hearing stream under cover of a Memorandum that addressed concerns we raised in our Fourth Procedural Minute of 8 April 2016, regarding the wording of objectives and policies.

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80 Submission 27
81 Submission 402
82 Submission 405
83 Submission 456
84 Submission 481
85 Submission 629
86 Submission 400
87 Submission 437, 452
88 Submission 356
89 Submission 524
90 Submission 441
91 Submission 145
92 Memorandum from In House Counsel for QLDC, dated 20 May 2016
93 Submissions 608, 610, 613, 764, 767, 751

19. Again, prior to the commencement of the hearing (19 April 2016), we requested further information by way of additional maps from Council in relation to Dr Read's Evidence in Chief, seeking further detail as to the number and location of building platforms on which houses had been erected and those that had not been built on. The maps requested were supplied under cover of a Memorandum of Counsel for the Council dated 29 April 2016.

1.4 Procedural Steps and Issues

20. A number of procedural matters required consideration, both prior to commencement and during the Steam 2 hearing. These included:
    a. A request by Counsel for Allenby Farms[94] for deferral of ONF, BRA, and zone extension components of its submission until the Planning Map Hearings – granted by the Chair 18 April 2016;
    b. A consequential procedural Minute from the Chair, dated 19 April 2016, deferred all submissions seeking amendments to boundaries of Significant Natural Areas (SNA) to the relevant mapping hearing streams. The Minute confirmed that submissions seeking complete deletion of a SNA would be heard and determined in this Hearing Stream.

21. In addition to those Directions, the Chair granted extensions for:
    a. Filing evidence and legal synopsis of submissions for Jeremey Bell Investments Ltd[95] and for filing evidence for Mr C Day for Skydive Queenstown Ltd[96] on 21 April 2016;
    b. Filing of late evidence for Mr N Geddes and granting request for him to be heard on behalf of a number of submitters[97] on 29 April 2016.

22. On 20 May 2016, the Chair granted leave to Ms O'Sullivan on behalf of QAC to file supplementary evidence that specifically related to questions raised by us during the hearing in regard to the resource management regime applying to Wanaka airport.

23. We also record that a number of submitters and Council were given the opportunity to supply further comment and/or evidence on matters raised during the course of their appearance before us. In this way, the panel received additional material as follows:
    a. A Memorandum of Counsel for the Council dated 5 May 2016 regarding the Wilding Pine risk assessment matrix for 'Calculating Wilding Spread Risk from New Planting and copy of the matrix from Mr Davis' evidence;
    b. A Memorandum of Counsel for the Council dated 16 May 2016 regarding wording of a rule for clearance of indigenous vegetation in Skifield subzones, and providing a flow diagram of how the rules in Chapters 33 work;
    c. Memoranda of Counsel for QAC dated 30 May 2016 and 3 June 2016 regarding Runway End Protection Areas (REPA) for Wanaka Airport;
    d. A Memorandum of Counsel for NZFSC dated 7 June 2016 regarding its Fire Fighting Water Supplies Code of Practice and related matters;
    e. A Memorandum of Counsel for Queenstown Park Ltd dated 15 June 2016 identifying photo-viewpoints from Ms Smetham's landscape evidence and responding to our questions on Rule 21.3.3.6;

94 Submission 502
95 Submissions 782, 784
96 Submission 122
97 Submissions 228, 233, 235, 411, 414

24. On 21 June 2016, we received a letter from Mr C Ferguson on behalf of Island Capital Ltd[98] withdrawing its submission relating to all provisions of the new area of Rural Lifestyle Zoned land immediately east of Glenorchy Township.

25. A number of matters were also raised during the course of this hearing, which we determined were more appropriately deferred to the hearings on the Planning Maps, scheduled for next year or to the Business zone hearings. In addition to the Allenby Farms submission already noted, these included submissions by Lake Hayes Cellar Ltd[99] and Wanaka Airport[100] the minutes for which were respectively dated 17 June 2016 and 16 June 2016.

26. When we heard the submitters and deliberated on Stream 2, Commissioner Lawton was part of the Hearing Panel. In February 2017 Commissioner Lawton resigned from the Council and her role as a commissioner. She has taken no further part in the process following that resignation.

27. We also record that during the course of the hearing, Commissioner St Clair discovered that he had a conflict of interest in relation to submissions and further submissions lodged by Matakauri Lodge Limited. The legal submissions and evidence from Matakauri Lodge Limited entirely related to the issue of the Visitor Accommodation Subzone in the Rural Lifestyle Zone. Mr St Clair stepped aside from hearing any evidence from the submitters whose evidence was directed at that topic[101] and took no part in the deliberations or report drafting in relation to that topic, which is the subject of a separate report[102].

28. Ms Byrch and Mr Scaife each made submissions on a number of topics in Chapter 22 apart from the Visitor Accommodation Subzone. Mataukauri Lodge Limited lodged further submissions in opposition to those wider submissions. We heard no submissions or evidence from Matakauri Lodge Limited in respect of those other submissions. We record that while those wider submissions and further submissions are dealt with in this report, Mr St Clair did not participate in the deliberations on, or report preparation of, the relevant provisions in Chapter 22.

1.5 Wakatipu Basin

29. On 1 July 2016, the Chair issued a Minute noting that based on the evidence presented to us, we had reached a preliminary view that a detailed study of the Wakatipu Basin was required. The Chair's minute included the following extract *"(during the)… course of the hearing, based on the evidence from the Council and submitters, we came to the preliminary conclusion that continuation of the fully discretionary development regime of the Rural General Zone of the ODP, as proposed by the PDP, was unlikely to achieve the Strategic Direction of the PDP in the Wakatipu Basin over the life of the PDP. We are concerned that, without careful assessment, further development within the Wakatipu Basin has the potential to cumulatively and irreversibly damage the character and amenity values which attracts residents and other activities to the area."*[103]

30. We reached this position having noted that the landscape evidence put before us on behalf of submitters either focused on criticising Dr Read's work or was too general to be helpful, and

98 Submission 772
99 Submission 767
100 Submission 433
101 Matakauri Lodge Limited (Submission 595 and FS1224), Christine Byrch (Submission 243) and Marc Scaife (Submission 811)
102 Report 4B
103 Memorandum Concerning PDP provisions Affecting Wakatipu Basin dated 1 July 2016

the planning evidence on behalf of submitters focussed on rural lifestyle densities in the Wakatipu Basin without consideration of the implications for the remainder of the district. The Chair's Minute also noted that during the hearing we had canvassed this matter with parties with interests in the Wakatipu Basin and that those parties were generally receptive to the proposal. In the conclusion of the Minute, we sought Council's advice on how it would proceed in the light of the preliminary views we had expressed.

31. On 8 July 2016, Counsel for the Council, advised by way of memorandum that the Council would proceed with the Wakatipu Basin Study (WBS) and requested that we confirm the extent of the area that the study would apply to was as shown on the map attached to the memorandum,. In addition, Counsel noted that any decision on a variation to the Plan arising from the study would be a separate matter requiring a decision of Council at a later date.

32. The Chair confirmed by way of Minute dated 8 July 2016 that the area we had in mind for the study was correctly shown on the map of Council's memorandum of the same date.

33. We note that on 4 July 2016, the Chair issued a minute in regard to the Section 42A Report for Hearing Stream 4: Subdivision (Chapter 27) which was released on 1 July 2016, advising that the submissions on the minimum lot sizes for the Rural Lifestyle Zone referred to in paragraphs 14.2 to 14.18 of the Section 42A Report would be deferred so that they might be heard following the WBS if the Council agreed to undertake said study. The Stream 4 hearing had not commenced at that point.

34. As recorded in the Chair's Minute of 1 July 2016, *"we discerned that there was clear distinction between those submitters who sought fine tuning of the provisions relating to the Rural and Rural Lifestyle Zones, and those submitters who sought significant changes to the provisions of those zones specifically as they applied to land in the Wakatipu Basin. It is this latter group of submitters who have submissions linked to subdivision and map provisions."*

35. For completeness we note that on 2 July 2016, we received a memorandum from the UCES, seeking that a similar study to that recommended by us for the Wakatipu Basin be carried out for the Upper Clutha Basin. In response to that memorandum, the Chair issued a Minute in Reply, noting that the hearing was completed and there were no special circumstances for the Panel to accept additional information. In addition, the Minute in Reply noted that any such request for Council to undertake a study should be directed to the Council itself.

1.6 Stage 2 Variations

36. On 23 November 2017 the Council notified the Stage 2 Variations. Within this was a new zoning regime proposed for the Wakatipu Basin. In a Memorandum dated 23 November 2017[104] we were advised that, due to the operation of Clause 16B(1) of the First Schedule to the Act, a number of submissions on Stage 1 would automatically be submissions on the variation and we should not make recommendations on those. The Council listed such submissions in Appendix B of the Memorandum. In a Minute dated 27 November 2017 the Chair sought confirmation that several other submissions omitted from Appendix B, were also to be treated as submissions on the variation.. This was confirmed in a Memorandum dated 8 December 2017.

37. A consequence of the notification of the Stage 2 Variations is that we do not discuss those submissions.

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[104] Memorandum of Counsel on Behalf of the Queenstown Lakes District Council Advising Panel on Matters Relating to Stage 2 of the Queenstown Lakes Proposed District Plan

38. A further consequence of the notification of the new zoning regime for the Wakatipu Basin is that several provisions in Chapter 22 specific to zones or areas with the Wakatipu Basin[105] have been deleted from Stage 1 of the PDP due to the operation of Clause 16B(2) of the First Schedule to the Act. We make no recommendations in respect of those provisions, which we show in light grey in our recommended chapters.

39. The Stage 2 Variations propose the insertion of new provisions for visitor accommodation in Chapters 21[106], 22[107] and 23[108]. We have made allowance for those provisions in the appropriate places in each chapter by leaving spaces in the policies or rules as appropriate. While they are included as they are merged into the PDP, we have not shown them so as to avoid confusion between the provisions we are recommending to the Council and the additional Stage 2 Variation provisions.

40. Additionally, the Stage 2 Variations propose the inclusion of a new activity rule providing for public water ferry services on the surfaces of lakes and rivers in Chapter 21[109]. This has been dealt with in the same manner as the visitor accommodation provisions discussed above.

41. Finally, as noted in Report 1, we have updated the table of district wide chapters found in provision 3.1 of each chapter to include the new district wide chapters notified in the Stage 2 Variations.

42. We make no further comment on these Stage 2 Variation provisions.

1.7 Statutory Considerations

43. The Hearing Panel's Report 1 contains a general discussion of the statutory framework within which submissions and further submissions on the PDP have to be considered, including matters that have to be taken into account, and the weight to be given to those matters. We have had regard to that report when approaching our consideration of submissions and further submissions on the matters before us.

44. Some of the matters identified in Report 1 are either irrelevant or only have limited relevance to the objectives, policies and other provisions we had to consider. The NPSUDC 2016 is in this category. The NPSET 2008, the NPSREG 2011 and the NPSFWM 2014 do, however, have more relevance to the matters before us. We discuss those further below.

45. The Section 42A Reports on the matters before us drew our attention to objectives and policies in the RPS and proposed RPS the reporting officers considered relevant. To the extent necessary, we discuss those in the context of the particular provisions in the three Chapters.

46. The NPSET 2008 sets out objectives and policies which recognise the national benefits of the electricity transmission network, manage the environmental effects of that network, and manage the adverse effects of other activities on the transmission network. The network is

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105 Paragraphs 5 and 6 of Section 22.1, references to Tables 3 and 6 in Provision 22.3.2.10, Rule 22.5.4.3, Rules 22.5.14 to 22.5.18, Rules 22.5.33 to 22.5.37 and the Ferry Hill Sub zone Concept Development Plan in Rule 22.7.2

106 Rule 21.4.15 [notified as 21.4.37], Table 16 Rules 21.19.1 and 21.19.2 [notified as Table 11 rules 21.5.53 and 21.5.54]

107 An insertion in Policy 22.2.2.5 (recommended 22.2.2.4), Policy 22.2.2.5 [notified as 22.2.2.6], Rule 22.4.7 [notified as Rule 22.4.18], Rule 22.5.14 and Rule 22.5.15

108 Rule 23.4.21, Rule 23.5.12 and Rule 23.5.13

109 Rule 21.15.5 [notified as 21.5.43A]

owned and operated by Transpower. In this District, the network consists of a transmission line from Cromwell generally following the Kawarau River before crossing through Lake Hayes Estate, Shotover Country and Frankton Flats to Transpower's Frankton substation, which also forms part of the network.

47. Relevant to the application of the NPSET 2008 are the NESET 2009. These set standards to give effect to certain policies in the NPSET 2008.

48. The NPSGEG 2011 sets out objectives and policies to enable the sustainable management of renewable electricity generation under the Act.

49. The NPSFWM 2014 sets out objectives and policies in relation to the quality and quantity of freshwater. Objective C seeks the integrated management of land uses and freshwater, and Objective D seeks the involvement of iwi and hapu in the management of freshwater. To the extent that these are relevant, we have taken this NPS into account.

50. The NPSUDC 2016, with its focus on ensuring sufficient capacity is provided for urban development, is of little relevance when determining the management of non-urban resources and areas.

51. The tests posed in section 32 form a key part of our review of the objectives, policies, and other provisions we have considered. We refer to and adopt the discussion of section 32 in the Hearing Panel's Report 3. In particular, for the same reasons as are set out in Report 3, we have incorporated our evaluation of changes we have recommended into the report that follows, rather than provide a separate evaluation of how the requirements of section 32AA are met.

1.8 Hearings Panel Make-up

52. We record that Commissioner Lawton sat and heard the submissions in relation to these hearing topics and took part in deliberations. However, with Commissioner Lawton's resignation from the Council on 21 April 2017, she also resigned from the Hearing Panel and took no further part in the finalisation of this recommendation report.

PART B: CHAPTER 21 – RURAL

2 PRELIMINARY

2.1 Over-arching Submissions and Structure of the Chapter

53. At a high level there were a number of submissions that addressed the approach and structure of Chapter 21. We deal with those submissions first.

2.2 Farming and other Activities relying on the Rural Resource

54. Submissions in relation to the structure of the chapter focussed on the inclusion of other activities that rely on the rural resource[110]. Addressing the Purpose of Chapter 21, Mr Brown in evidence considered that there was an over-emphasis on the importance of farming, noting that there was an inconsistency between Chapters 3 and 21 in this regard[111]. In addition, Mr Brown recommended changing the 'batting order' of the objectives and policies as set out in Chapter 21 to put other activities in the Rural Zone on an equal footing with that of farming[112].

55. Mr Barr in reply, supported a change to the purpose so that it would *"provide for **appropriate** other activities that rely on rural resources" (*our emphasis*)*, but noted that there was no hierarchy or preference in terms of the layout of the objectives and therefore he did not support the change in their order proposed by Mr Brown.[113]

56. This theme of a considered preference within the chapter of farming over non-farming activities and, more specifically a failure to provide for tourism, was also raised by a number of other submitters[114]. In evidence and presentations to us, Ms Black and Mr Farrell for RJL questioned the contribution of farming[115] to maintain the rural landscape and highlighted issues with the proposed objectives and policies making it difficult to obtain consent for tourism proposals[116].

57. Similarly, the submission from UCES[117] sought that the provisions of the ODP relating to subdivision and development in the rural area be rolled over to the PDP. The reasons expressed in the submission for this relief, were in summary because the PDP in its notified form:
    a. did not protect natural landscape values, in particular ONLs;
    b. was too permissive;
    c. was contrary to section 6 of the Act and does not have particular regard to section 7 matters; and
    d. was biased towards farming over other activities, resulting in a weakening of the protection of landscape values.

58. Mr Haworth addressed these matters in his presentation to us and considered, "Farming as a mechanism for protecting landscape values in these areas has been a spectacular failure."[118] He called evidence in support from Ms Lucas, a landscape architect, who critiqued the provisions in Chapter 6 of the PDP and, noting its deficiencies, considered that those

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110 E.g. Submissions 122, 343, 345, 375, 407, 430, 437, 456, 610, 613, 615, 806, FS 1229
111 J Brown, Evidence, Pages 3- 4, Para 2.3
112 J Brown, Evidence, Pages 5 - 6, Paras 2.8-2.9
113 C Barr, Reply, Page 2, Para 2.2
114 E.g. Submissions 607, 621, 806
115 F Black, Evidence, Page 3 - 5, Paras 3.8 – 3.16
116 F Black, Evidence, Page 5 , Para 3.17
117 Submission 145
118 J Haworth, Evidence, Page 5, Para 1

deficiencies had been carried through to Chapter 21. Ms Lucas noted that much of Rural Zone was not appropriate for farming and that the objectives and policies did not protected natural character[119].

59. In evidence on behalf of Federated Farmers[120], Mr Cooper noted the permitted activity status for farming, but considered that this came at a significant opportunity cost for farmers. That said, Mr Cooper, on balance, agreed that those costs needed to be assessed against the benefits of providing for farming as a permitted activity in the Rural Zone, including the impacts on landscape amenity.[121]

60. Mr Barr, in his Section 42A Report, accepted that farming had been singled out as a permitted land use, but he also considered that the framework of the PDP was suitable for managing the impacts of farming on natural and physical resources.[122] In relation to other activities that rely on the rural resource, Mr Barr in reply, considered that those activities were appropriately contemplated, given the importance of protecting the Rural Zone's landscape resource.[123] In reaching this conclusion, Mr Barr relied on the landscape evidence of Dr Read and the economic evidence of Mr Osborne presented as part of the Council's opening for this Hearing Stream.

61. Responding to these conflicting positions, we record that in Chapter 3 the Stream 1B Hearing Panel has already found that as an objective farming should be encouraged[124]and in Chapter 6, that policies should recognise farming and its contribution to the existing rural landscape[125]. Similarly, in relation to landscape, the Stream 1B Hearing Panel found that a suggested policy providing favourably for the visitor industry was too permissive[126] and instead recommended policy recognition for these types of activities on the basis they would protect, maintain or enhance the qualities of rural landscapes.[127]

62. Bearing this in mind, we concur that it is appropriate to provide for other activities that rely on the rural resource, but that such provision needs to be tempered by the equally important recognition of maintaining the qualities that the rural landscape provides. In reaching this conclusion, we found the presentation by Mr Hadley[128] useful in describing the known and predictable quality of the landscape under farming, while noting the reduced predictability resulting from other activities. In our view, tourism may not necessarily maintain the qualities that are important to maintenance of rural character (including openness, where it is an important characteristic) and amenity, and it is this latter point that needs to be addressed.

63. In order to achieve this we recommend:
    a. Amending the Purpose of the chapter to provide for 'appropriate other activities' that rely on rural resources;
    b. Objective 21.2.9 (as notified) be deleted and incorporated in Objective 21.2.1; and
    c. Policies under 21.2.9 (as notified) be added to policies under Objective 21.2.1.

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119 D Lucas, Evidence, Pages 5-11
120 Submission 600
121 D Cooper, Evidence, Paras 31-33
122 C Barr, Section 42A Report, Page 17, Para 8.16
123 C Barr, Reply, Page 9, Para 4.3
124 Recommendation Report 3, Section 2.3
125 Recommendation Report 3, Section 8.5
126 Recommendation Report 3, Section 3.19
127 Recommended Strategic Policy 3.3.20
128 J Hadley, Evidence, Pages 2 -3

2.3 Rural Zone to Provide for Rural Living

64. Mr Goldsmith, appearing as counsel for a number of submitters[129], put to us that Chapter 21 failed to provide for rural living, in particular in the Wakatipu Basin[130]. Mr J Brown[131] and Mr B Farrell[132] presented evidence in support of that position. Mr Brown recommended a new policy:

Recognise the existing rural living character of the Wakatipu Basin Rural Landscape, and the benefits which flow from rural living development in the Wakatipu Basin, and enable further rural living development where it is consistent with the landscape character and amenity values of the locality.[133]

65. Mr Barr, in his Reply Statement, considered that the policy framework for rural living was already provided for in Chapter 22 Rural Lifestyle and Rural Residential Zones. However, Mr Barr also opined, *"that there is merit associated with providing policies associated with rural living in the Rural Zone on the basis they do not duplicate or confuse the direction of the Landscape Chapter and assessment matters in part 21.7 that assist with implementing these policies."* [134] Mr Barr emphasised the need to avoid conflict with the Strategic Directions and Landscape Chapters and noted that he did not support singling out the Wakatipu Basin or consider that benefits that follow from rural development had been established in evidence.[135]

66. Mr Barr did recommend a policy that recognised rural living within the limits of a locality and its capacity to absorb change, but nothing further.[136] Mr Barr's recommendation for the policy was as follows;

"Ensure that rural living is located where rural character, amenity and landscape values can be managed to ensure that over domestication of the rural landscape is avoided."[137]

67. We consider that there are three aspects to this issue that need to be addressed. The first is, and we agree with Mr Barr in this regard, that the policy framework for rural living is already provided for in Chapter 22 Rural Lifestyle and Rural Residential Zones. That said we recommend that a description be added to the purpose of each of the Rural Chapters setting out how the chapters are linked.

68. The second aspect is that in its Recommendation Report, the Stream 1B Hearing Panel addressed the matter of rural living as follows:

"785. In summary, we recommend the following amendments to policies 3.2.5.4.1 and 3.2.5.4.2 (renumbered 3.3.22 and 3.3.24), together with addition of a new policy 3.3.23 as follows:

"Provide for rural living opportunities in areas identified on the District Plan maps as appropriate for Rural Residential and Rural Lifestyle development.

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129 Submissions 502, 1256, 430, 532, 530, 531, 535, 534, 751, 523, 537, 515,
130 W Goldsmith, Legal Submissions, Pages 3 - 4
131 J Brown, Evidence, Dated 21 April 2016
132 B Farrell, Evidence, Dated 21 April 2016
133 J Brown, Summary Statement to Primary Evidence, Pages 1 -2, Para 4
134 C Barr, Reply Statement, Page 19, para 6.8
135 C Barr, Reply Statement, Page 20, paras 6.10-6.11
136 C Barr, Reply Statement, Page 21, paras 6.14
137 C Barr, Reply Statement, Page 21, paras 6.15

Identify areas on the District Plan maps that are not within Outstanding Natural Landscapes or Outstanding Natural Features and that cannot absorb further change, and avoid residential development in those areas.

Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character."

759. We consider that the combination of these policies operating in conjunction with recommended policies 3.3.29-3.3.32, are the best way in the context of high-level policies to achieve objectives 3.2.1.8, 3.2.5.1 and 3.2.5.2, as those objectives relate to rural living developments."

69. We similarly adopt that position in recommending rural living be specifically addressed in Chapter 22.

70. Finally, with reference to the Wakatipu Basin, we record that the Council has, as noted above, already notified the Stage 2 Variations which contains specific rural living opportunities for the Wakatipu Basin.

71. Considering all these matters, we are not convinced that rural living requires specific recognition within the Rural Chapter. We agree with the reasoning of Mr Barr in relation to the potential conflict with the Strategic and Landscape chapters and that benefits that follow from rural development have not been established. We therefore recommend that the submissions seeking the inclusion of policies providing for and enabling rural living in the Rural Zone be rejected.

2.4 A Separate Water Chapter

72. Submissions from RJL[138] and Te Anau Developments[139] sought to "Extract provisions relating to the protection, use and development of the surface of lakes and rivers and their margins and insert them into specific chapter…". Mr Farrell addressed this matter in his evidence[140].

73. We note that the Stream 1B Hearing Panel has already considered this matter in Report 3 at Section 8.8, and agreed that there was insufficient emphasis on water issues in Chapter 6. This was addressed in that context by way of appropriate headings. That report noted Mr Farrell's summary of his position that he sought to focus attention on water as an issue, rather than seek substantive changes to the existing provisions.

74. Mr Barr, in reply, was of the view that water issues were adequately addressed in a specific objective with associated policies and the activities and associated with lakes and rivers are contained in one table[141]. We partly agree with each of Mr Farrell and Mr Barr.

75. In terms of the structure of the activities and standards tables, we recommend that tables deal with first the general activities in the Rural Zone and then second with location-specific activities such as those on the surface of lakes and rivers. In addition, we recommend a reordering and

138 Submission 621
139 Submission 607
140 B Farrell, Evidence, Pages 10-11
141 C Barr, Reply, Page 4

clarification of the activities and standards in relation to the surface of lakes and river table to better identify the activity status and relevant standards.

2.5 New Provisions – Wanaka Airport

76. QAC[142] sought the inclusion of new objectives and policies to recognise and provide for Wanaka Airport. The airport is zoned Rural and is subject to a Council designation but we were told that the designation does not serve the private operators with landside facilities at the airport. At the hearing, QAC explained the difficulties that this regime caused for the private operators.

77. Ms Sullivan, in evidence-in-chief, proposed provisions by way of amendments to the Rural Chapter, but following our questions of Mr Barr during Council's opening, provided supplementary evidence with a bespoke set of provisions for Wanaka as a subset of the Queenstown Airport Mixed Use Zone.

78. Having reached a preliminary conclusion that specific provisions for Wanaka Airport were appropriate, we requested that Council address this matter in reply. Mr Winchester, in reply for Council, advised that there was scope for a separate zone for the Wanaka Airport and that it could be completely separate or a component of the Queenstown Airport Mixed Use Zone in Chapter 17 of the PDP. Agreeing that further work on the particular provisions was required, we directed that the zone provisions for Wanaka Airport be transferred to Hearing Stream 7 Business Zones.

79. The Minute of the Chair, dated 16 June 2016, set out the directions detailed above. Those directions did not apply to the submissions of QAC seeking Runway End Protection Areas at Wanaka Airport. We deal with those submissions now.

80. QAC[143] sought two new policies to provide for Runway End Protection Areas (REPAs) at Wanaka Airport, worded as follows:

Policy 21.2.X.3 Retain a buffer around Wanaka Airport to provide for the runway end protection areas at the Airport to maintain and enhance the safety of the public and those using aircraft at Wanaka Airport.
Policy 21.2.X.1 Avoid activities which may generate effects that compromise the safety of the operation of aircraft arriving at or departing from Wanaka Airport.

81. The QAC submission also sought a new rule derived from these policies, being prohibited activity status for REPAs as follows:

Within the Runway End Protection Areas, as indicated on the District Plan Maps,

a. Buildings except those required for aviation purposes

b. Activities which generate or have the potential to generate any of the following effects:

i. mass assembly of people

ii. release of any substance which would impair visibility or otherwise interfere with the operation of aircraft including the creation of smoke, dust and steam

142 Submission 433
143 Submission 433

iii. storage of hazardous substances

iv. production of direct light beams or reflective glare which could interfere with the vision of a pilot

v. production of radio or electrical interference which could affect aircraft communications or navigational equipment

vi. attraction of birds

82. We think it is appropriate to deal with the requested new policies and new rule together, as the rule relies on the policies.

83. In opening legal submissions for Council, Mr Winchester raised jurisdictional concerns regarding the applicability of the rule as related to creation of smoke and dust; those are matters within the jurisdiction of ORC. Mr Winchester also raised a fairness issue for affected landowners arising from imposition of prohibited activity status by way of submission, noting that many permitted farming activities would be negated by the new rule. He submitted that insufficient evidence had been provided to justify the prohibited activity status[144].

84. Ms Wolt, in legal submissions for QAC[145], submitted in summary that there was no requirement under the Act for submitters to consult, that the further submission process was the opportunity for affected land owners to raise any concerns, and that they had not done so. Ms Wolt drew our attention to the fact that one potentially affected land owner had submissions on the PDP prepared by consultants and that those submissions did not raise any concerns. In conclusion, Ms Wolt submitted that the concerns about fairness were unwarranted.

85. At this point, we record that we had initial concerns about the figure (Figure 3.1) showing the extent of the REPA included in the QAC Submission[146] as that figure was not superimposed over the cadastral or planning maps to show the extent the suggested REPA extended onto private land. Rather, the figure illustrated the dimensions of the REPA from the runway. The summary of submissions referred to the Appendix, but even if Figure 3.1 had been reproduced, in our view, it would not have been apparent to the airport neighbours that the REPA covered their land. Against this background, the failure of airport neighbours to lodge further submissions on this matter does not, in our view, indicate their acquiescence.

86. In supplementary evidence for QAC, Ms O'Sullivan provided some details from the Airbiz Report dated March 2013 from which Figure 3.1 was derived[147]. Ms O'Sullivan also included a Plan prepared by AirBiz dated 17 May 2016, showing the spatial extent of the REPA on an aerial photograph with the cadastral boundaries also superimposed[148]. We also received a further memorandum from Ms Wolt dated 3 June 2016, with the relevant extracts from the AirBiz March 2013 report and which included additional Figures 3.2 and 3.3 showing the REPA superimposed on the cadastral map.

87. Given that it was only at that stage that the extent of the REPA in a spatial context was identified, we do not see how any adjoining land owner could know how this might affect them. We do

144 J Winchester, Opening legal Submissions, Page 11, Paras 4.21 – 4.22
145 R Wolt, Legal Submissions, Pages 22-24, Paras 111 - 122
146 Submission 433, Annexure 3
147 K O'Sullivan, Supplementary evidence, Pages 5 – 6, Paras 3.3 - 3.5
148 K O'Sullivan, Supplementary evidence, Appendix C

not consider QAC's submission to be valid for this reason. If the suggested prohibited activity rule fails for this reason, so must the accompanying policies that support it. Even if this were not the case, we agree with Mr Winchester's submission that QAC has supplied insufficient evidence to justify the relief that it seeks. The suggested prohibited activity rule is extraordinarily wide (on the face of it, the rule would preclude the neighbouring farmers from ploughing their land if they had not done so within the previous 12 months because of the potential for it to attract birds). To support it, we would have expected a comprehensive and detailed section 32 analysis to be provided. Ms O'Sullivan expressed the opinion that there was adequate justification in terms of section 32 of the Act for a prohibited activity rule[149]. Ms O'Sullivan, however, focused on the development of ASANs, which are controlled by other rules, rather than the incremental effect of the suggested new rule, and thus in our view, significantly understated the implications of the suggested rule for neighbouring land owners. We do not therefore accept her view that the rule has been adequately justified in terms of section 32.

88. For completeness we note that the establishment of ASANs in the Rural Zone, over which these REPA would apply, would, in the main, be prohibited activities (notified Rule 21.4.28). For the small area affected by the proposed REPA outside the OCB, ASANs would require a discretionary activity consent. Thus, the regulatory regime we are recommending would enable consideration of the type of reverse sensitivity effects raised by QAC.

89. Accordingly, we recommend that submission from QAC for two new policies and an associated rule for the REPA at Wanaka Airport be rejected.

3 SECTION 21.1 – ZONE PURPOSE

90. We have already addressed a number of the submissions regarding this part of Chapter 21 in Sections 3.2 and 3.3 above, as they applied to the wider planning framework for the Rural Zone Chapter. We also record that the Zone Purpose is explanatory in nature and does not contain any objectives, policies or regulatory provisions.

91. Submissions from QAC[150] and Transpower[151] sought that infrastructure in the Rural Zone needed specific recognition. Mr Barr addressed this matter in the Section 42A Report noting;

"Infrastructure and utilities are also contemplated in the Rural Zone and while not specifically identified in the Rural Zone policy framework they are sufficiently provided for in higher order provisions in the Strategic Direction Chapter and Landscape Chapter and the Energy and Utilities Chapter."[152]

92. Ms Craw, in evidence[153] for Transpower, agreed with that statement, provided that the Panel adopted changes to Chapter 3 Strategic Directions regarding recognition and provision of regionally significant infrastructure.

93. Ms O'Sullivan, in evidence for QAC, noted that Wanaka Airport was recognised in the ODP and suggested that it was appropriate to continue that recognition in the PDP. Her evidence was

149 K O'Sullivan, Supplementary evidence, Pages 7 - 8, Paras 3.8 – 3.10
150 Submission 433
151 Submission 805
152 C Barr, Section 42A Report, Chapter 21, Para 8.3
153 A Craw, Evidence, dated 21 April 2016, Paras 21-22

that it was also appropriate to incorporate PC35 provisions into the PDP in order to provide guidance to plan users.[154]

94. Forest & Bird[155] also sought the recognition of the loss of biodiversity on basin floors and NZTM[156] similarly sought recognition of mining. In evidence on behalf of NZTM, Mr Vivian was of the opinion that the combination of traditional rural activities, which include mining, are expected elements in a rural landscape and hence would not offend landscape character.[157]

95. In our view infrastructure and biodiversity are district wide issues that are appropriately addressed in the separate chapters, Energy and Utilities and Indigenous Vegetation and Biodiversity respectively, as well as at a higher level in the strategic chapters. Provision for Wanaka Airport has been deferred to the business hearings for the reasons set out above. We agree with Ms O'Sullivan's additional point regarding the desirability of assisting plan users as a general principle, but find that incorporating individual matters from the chapter into the Purpose section would be repetitive. We think that Mr Vivian's reasoning regarding the combination of traditional rural activities not offending rural landscape goes too far. Nonetheless, we note that mining is the subject of objectives and associated policies in this chapter. These matters do not need to be specified in the purpose statement of every chapter in which they occur. We therefore recommend that these submissions be rejected.

96. The changes we do recommend to this section are those that address the wider matters discussed in the previous section. We recommend that the opening paragraph read:

There are four rural zones in the District. The Rural Zone is the most extensive of these. The Gibbston Valley is recognised as a special character area for viticulture production and the management of this area is provided for in Chapter 23: Gibbston Character Zone. Opportunities for rural living activities are provided for in the Rural-Residential and Rural Lifestyle Zones (Chapter 22).

97. In the five paragraphs following, we recommend accepting the amendments recommended by Mr Barr[158]. Finally, we recommend deletion of the notified paragraph relating to the Gibbston Character Zone and the addition of the following paragraph to clarify how the landscape classifications are applied in the zone:

The Rural Zone is divided into two ~~overlay~~ areas. The first being the ~~overlay~~ area for Outstanding Natural Landscapes and Outstanding Natural Features. The second ~~overlay~~ area being the Rural Character Landscape. These ~~overlay~~ areas give effect to Chapter 3 – Strategic Direction: Objectives 3.2.5.1 and 3.2.5.2, and the policies in Chapters 3 and 6 that implement those objectives.

98. With those amendments, we recommend Section 21.1 be adopted as set out in Appendix 1.

4 SECTION 21.2 – OBJECTIVES AND POLICIES

4.1 Objective 21.2.1

99. Objective 21.2.1 as notified read as follows:

154 K O'Sullivan, Evidence, dated 22 April 2016, Page 9-10, Paras 4.8 – 4.13
155 Submission 706
156 Submission 519
157 C Vivian, Evidence, Page 11, Para 4.28
158 C Barr, Reply Statement, Appendix 1

"Enable farming, permitted and established activities while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values."

100. The submissions on this objective primarily sought inclusion of activities that relied on the rural resource[159], the addition of wording from the RMA such as "avoid, remedy or mitigate" or "from inappropriate use and development"[160] and removal of the word "protecting"[161]. Transpower sought the inclusion of 'regionally significant infrastructure'.

101. As noted in Section 2.1 above, the Council lodged amended objectives and policies, reflecting our request for outcome orientated objectives. The amended version of Objective 21.2.1 read as follows:

"A range of land uses including farming, permitted and established activities are enabled, while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values."

102. We record that this amended objective is broader than the objective as notified, by suggesting the range of enabled activities extends beyond farming and established activities, and circular by referring to permitted activities (which should only be permitted if giving effect to the objective). We have addressed the activities relying on the rural resource in Section 3.2 above. In addition, as we noted in Section 4, we consider infrastructure is more appropriately dealt with in Chapter 30 Energy and Utilities..

103. In his evidence for Darby Planning LP *et al*[162], which sought to remove the word *"protecting"*, Mr Ferguson was of the view that the Section 42A Report wording of Objective 21.2.1 was not sufficiently clear in, *"providing the balance between enabling appropriate rural based activities and recognising the important values in the rural environment."*[163] Mr Ferguson was also of the view that this balance needed to be continued into the associated policies. Similarly, in evidence tabled for X-Ray Trust, Ms Taylor was of the view that *"protecting"* was an inappropriately high management threshold and that it could prevent future development[164].

104. We do not agree. Consistent with the findings in the report on the Strategic Chapters, we consider that removal of the word *"protecting"* would have exactly the opposite result from that sought by Mr Ferguson and Ms Taylor by creating an imbalance in favour of other activities to the detriment of landscape values. This would be inconsistent with the Strategic Objectives 3.2.5.1 and 3.2.5.2 which seek to protect ONLs and ONFs from the adverse effects of subdivision, use and development, and maintain and enhance rural character and visual amenity values in Rural Character Landscapes.

105. We are satisfied that the objective as recommended by Mr Barr reflects both the range of landscapes in the Rural Zone, and, with minor amendment, the range of activities that are appropriate within some or all of those landscapes. The policies to implement this objective should appropriately apply the terms "protecting, maintaining and enhancing" so as to

159 Submissions 343, 345, 375, 407, 430, 437, 456, 513, 515, 522, 531, 537, 546, 608, 621, 624, 806

160 Submissions 513, 515, 522, 531, 537, 621, 624, 805

161 Submissions 356, 608 – we record that these submissions similarly sought the removal of the word protect from Policy 21.2.1.1

162 Submission 608

163 C Fergusson, EiC, dated 21 April 2016, Para 54

164 L Taylor, Evidence, Appendix A, Page 1

implement the higher order objectives and policies. Consequently, we recommend that the wording for Objective 21.2.1 be as follows:

A range of land uses, including farming and established activities, are enabled while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values.

106. In relation to wording from the RMA such as "avoid, remedy or mitigate" or "from inappropriate use and development", Mr Brown in his evidence for Chapter 21 reiterated the view he put forward at the Strategic Chapters hearings that the, *"RMA language should be the "default" language of the PDP and any non-RMA language should be used sparingly, …"*[165], in order to avoid uncertainty and potentially litigation.

107. The Stream 1B Hearings Panel addressed this matter in detail[166] and concluded that, *"we take the view that use of the language of the Act is not a panacea, and alternative wording should be used where the wording of the Act gives little or no guidance to decision makers as to how the PDP should be implemented."* We agree with that finding for the same reasons as are set out in Recommendation Report 3 and therefore recommend rejecting those submissions seeking inclusion of such wording in the objective.

4.2 Policy 21.2.1.1

108. Policy 21.2.1.1 as notified read as follows:

"Enable farming activities while protecting, maintaining and enhancing the values of indigenous biodiversity, ecosystem services, recreational values, the landscape and surface of lakes and rivers and their margins."

109. The majority of submissions on this policy sought, in the same manner as for Objective 21.2.1, to include reference to activities that variously rely on rural resources, as well as inclusion of addition of wording from the RMA such as *"avoid, remedy or mitigate"*[167], or softening of the policy through removal of the word *"protecting"*[168], or inserting the words *"significant"* before the words indigenous biodiversity[169], or amending the reference to landscape to *"outstanding natural landscape values"*[170].

110. In evidence for RJL *et al* Mr Farrell recommended that the policy be amended as follows:

"Enable a range of activities that rely on the rural resource while, maintaining and enhancing indigenous biodiversity, ecosystem services, recreational values, landscape character and the surface of lakes and rivers and their margins."[171]

111. Mr Barr did not recommend any additional amendments to this policy in his Section 42A Report or in reply. We have already addressed the majority of these matters in Section 3.2 above. The additional amendments recommended by Mr Farrell in our view do not align the policy so that

165 J Brown, Evidence , Page 2, Para 1.9
166 Recommendation Report 3, Section 1.9
167 Submissions 343, 345, 375, 456, 515, 522, 531
168 Submissions 356, 608
169 Submissions 701, 784
170 Submissions 621, 624
171 B Farrell, Evidence, Page 15, Para 48

it implements Objective 21.1.1, and are also inconsistent with the Hearing Panel's findings in regard to the Strategic Chapters.

112. We therefore recommend that Policy 21.2.1.1 remain as notified.

4.3 Policy 21.2.1.2

113. Policy 21.2.1.2 as notified read as follows:

> *"Provide for Farm Buildings associated with larger landholdings where the location, scale and colour of the buildings will not adversely affect landscape values."*

114. Submissions to this policy variously sought;
   a. To remove the reference to "large landholdings"[172];
   b. To delete reference to farm buildings and replace with reference to buildings that support rural and tourism based land uses[173];
   c. To change the policy to not "significantly adversely affect landscape values"[174];
   d. To roll-over provisions of the ODP so that farming activities are not permitted activities.[175]

115. The Section 42A Report recommended that the policy be amended as follows;

> *"Provide for Farm Buildings associated with larger landholdings over 100 hectares in area where the location, scale and colour of the buildings will not adversely affect landscape values."*

116. In his evidence, Mr Brown for Trojan Helmet *et al* considered that the policy should apply to all properties, not just larger holdings and that the purpose of what is proposed to be managed, the effect on landscape values, should be clearer[176]. Mr Farrell in evidence for RJL *et al* was of a similar view, considering that 100 hectares was too high a threshold for the provision of farm buildings and that a range of farm buildings should be provided for and were appropriate[177]. Mr Farrell did not support the amendment sought by RJL in relation to changing the policy to not "significantly adversely affect landscape values", but rather recommended that policy be narrowed to adverse effects on the district's significant landscape values. There was no direct evidence supporting the request to widen the reference to buildings that support rural and tourism based land uses. The argument of Mr Haworth for UCES, seeking that the provisions of the ODP be rolled over so that farming activities are not permitted activities have already been addressed in Section 3.2 above. However, later in the report we address the density of farm buildings in response to UCES's submission.

117. In the Section 42A Report, Mr Barr considered that provision for farm buildings of a modest size and height, subject to standards controlling colour, density and location, is an efficient management regime that would lower transition costs for modest size buildings without compromising the landscape[178]. In evidence for Federated Farmers[179], Mr Cooper emphasised the need to ensure that the associated costs were reasonable in terms of the policy

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172 Submission 356, 437, 621, 624
173 Submission 806
174 Submission 356, 621
175 Submission 145
176 J Brown, Evidence, Para 2.11 – 2.12
177 B Farrell, Evidence, Para 51
178 C Barr, Summary of S42A Report, Para 4, Page 2
179 D Cooper, Evidence, Paras 25-26

implementation. We note that while we heard from several farmers, none of them raised an issue with this policy.

118. In reply, Mr Barr did not agree with Mr Brown and Mr Farrell's view that the policy should apply to all properties. Mr Barr's opinion was that the policy needed to both recognise the permitted activity status for buildings on 100 hectares plus sites and require resource consents for buildings on smaller properties on the basis that their scale and location are appropriate[180].

119. Mr Barr also addressed in his Reply Statement, evidence presented by Mr P Bunn[181] and Ms D MacColl[182] as to the policy and rules relating to farm buildings[183]. On a review of these submissions, we note that the submissions do not seek amendments to the farm building policy and rules and consequently, we have not considered that part of the submitters' evidence any further.

120. We concur with Mr Barr and find that the policy will provide for efficient provision of genuine farm buildings without a reduction in landscape and rural amenity values. While a 100 hectare cut-off is necessarily somewhat arbitrary, it both characterises 'genuine' farming operations and identifies properties that are of a sufficiently large scale that they can absorb additional buildings meeting the specified standards. We agree, however, with Mr Brown that the purpose of the policy needs to be made clear, that being the management of the potential adverse effects on the landscape values.

121. We therefore recommend that Policy 21.2.1.2 be worded as follows:

"Allow Farm Buildings associated with landholdings of 100 hectares or more in area while managing the effects of the location, scale and colour of the buildings on landscape values."

4.4 Policies 21.2.1.3 – 21.2.1.8

122. Policies 21.2.3 to 21.2.8 as notified read as follows:

21.2.1.3 Require buildings to be set back a minimum distance from internal boundaries and road boundaries in order to mitigate potential adverse effects on landscape character, visual amenity, outlook from neighbouring properties and to avoid adverse effects on established and anticipated activities.

21.2.1.4 Minimise the dust, visual, noise and odour effects of activities by requiring facilities to locate a greater distance from formed roads, neighbouring properties, waterbodies and zones that are likely to contain residential and commercial activity.

21.2.1.5 Have regard to the location and direction of lights so they do not cause glare to other properties, roads, public places or the night sky.

21.2.1.6 Avoid adverse cumulative impacts on ecosystem services and nature conservation values.

21.2.1.7 Have regard to the spiritual beliefs, cultural traditions and practices of Tangata Whenua.

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180 C Barr, Reply, Page 17, Para 5.12

181 Submission 265

182 Submission 285 and 626

183 C Barr, Reply, Pages 15 - 16, Paras 5.7 – 5.9

21.2.1.8 Have regard to fire risk from vegetation and the potential risk to people and buildings, when assessing subdivision and development in the Rural Zone.

123. Submissions to these policies variously sought;

Policies

21.2.1.3 remove the reference to "avoid adverse effects on established and anticipated activities"[184] or retain the policy as notified[185];

21.2.1.4 remove reference to "requiring facilities to locate a greater distance from"[186], retain the policy[187] and delete the policy entirely[188];

21.2.1.5 retain the policy[189];

21.2.1.6 insert "mitigate, remedy or offset" after the word avoid[190], reword to address significant adverse impacts[191] or support as notified[192];

21.2.1.7 delete the policy[193] and amend the policy to address impacts on Manawhenua[194];

21.2.1.8 include provision for public transport[195].

124. Specific evidence presented to us by Mr MacColl supporting the NZTA submission which supported the retention of Policy 21.2.1.3[196]. In evidence tabled for X-Ray Trust, Ms Taylor considered that Policy 21.2.1.3 sought to manage aesthetic effects as well as reverse sensitivity and that Objective 21.2.4 and the associated policies sufficiently dealt with the management of reverse sensitivity effects. Hence it was her view that reference to that matter in Policy 21.2.3.1 was not required[197].

125. Mr Barr generally addressed these matters in the Section 42A Report[198] and again in his Reply Statement[199]. In the latter Mr Barr considered that the only amendment required to this suite of policies was to Policy 21.2.1.4 which he suggested be amended as follows:

184 Submissions 356, 806
185 Submissions 600, 719
186 Submissions 356, 437
187 Submission 600
188 Submission 806
189 Submission 600
190 Submissions 356, 437
191 Submissions 356, 600, 719
192 Submissions339, 706
193 Submission 806
194 Submission 810: Noting that this aspect of this submission was withdrawn by the representatives of the submitter when they appeared at the Stream1A Hearing. Refer to the discussion in Section 3.6 of Report 2. We have not referred to the point again in the balance of our report for that reason.
195 Submission 798
196 A MacColl, Evidence for NZTA, Page 5, Para 17
197 L Taylor, Evidence, Page 4, Para 5.4
198 Issue 1 – Farming Activity and non-farming activities.
199 Section 4

"Minimise the dust, visual, noise and odour effects of activities by requiring them to locate a greater distance from formed roads, neighbouring properties, waterbodies and zones that are likely to contain residential and commercial activity."

126. We agree with Mr Barr, that this rewording provides greater clarity as to the purpose of this policy. We have already addressed in our previous findings the use of RMA language such as *"avoid, remedy, mitigate"*. In relation to Ms Taylor's suggestion of deleting Policy 21.2.1.3, we consider that policy provides greater clarity as to the types of effects that it seeks to control. We received no evidence in relation to the other deletions and amendments sought in the submissions. We therefore recommend that Policies 21.2.1.3 and 2.2.1.5- 21.2.1.8 remain as notified and Policy 21.2.1.4 be amended as set out in the previous paragraph.

127. At this point we note that in Stream 1B Recommendation Report, the Hearing Panel did not recommend acceptance of the NZFSC submission seeking a specific objective for emergency services, but instead recommended that it be addressed in the detail of the PDP[200]. We address that matter now. In the first instance we note that Mr Barr, recommended a new policy to be inserted into Chapter 22 as follows:

22.2.1.8 Provide adequate firefighting water and fire service vehicle access to ensure an efficient and effective emergency response.[201]

128. Mr Barr considered this separate policy was required rather than amending Policy 22.2.1.7 which addressed separate matters and that the policy should sit under Objective 22.2.1 which addressed rural living opportunities[202].

129. Mr Barr did not consider that such a policy and any subsequent rules were required in Chapter 21 as there were no development rights for rural living provided within that Chapter[203]. In response to our questions, Mr Barr stated that his recommended rules relating to fire fighting and water supply in Chapter 22 could be applied to Chapters 21 and 23[204]. We agree and also consider an appropriate policy framework is necessary. This is particularly so in this zone with its limited range of permitted activities. We agree with Ms McLeod[205] that fire safety is an issue outside of the Rural-Residential and Rural Lifestyle Zones.

130. Accordingly, we recommend that a new policy be inserted, numbered 21.2.1.9, worded as follows:

Provide adequate firefighting water and fire service vehicle access to ensure an efficient and effective emergency response.

131. We address the specific rules for firefighting water and fire service vehicle access later in this report.

4.5 Objective 21.2.2

132. As notified, Objective 21.2.2 read as follows:

200 Recommendation Report 3, Section 2.3
201 C Barr, Chapter 22 Section 42A Report, Page 35, Para 16.13
202 C Barr, Chapter 22 Section 42A Report, Page 35, Para 16.9 – 16.14
203 C Barr, Section 42A Report, Pages 99 -100, Paras 20.1 – 20.5
204 C Barr, Reply – Chapter 22, Page 13, Para 13.1
205 Ms A McLeod, EIC, Page 13, Par 5.25

"Sustain the life supporting capacity of soils"

133. Submissions on the objective sought that it be retained or approved.[206] Mr Barr recommended amending the objective under the Council's memoranda on revising the objectives to be more outcome focused.[207] Mr Barr's recommended wording was as follows;

"The life supporting capacity of soils is sustained."

134. We agree with that wording and that the amendment is a minor change under Clause 16(2) of the First Schedule which does not alter the intent.

135. As such, we recommend that Objective 21.2.2 be reworded as Mr Barr recommended.

4.6 Policies 21.2.2.1 – 21.2.2.3

136. As notified policies 21.2.2.1 – 21.2.2.3 read as follows:

21.2.2.1 Allow for the establishment of a range of activities that utilise the soil resource in a sustainable manner.

21.2.2.2 Maintain the productive potential and soil resource of Rural Zoned land and encourage land management practices and activities that benefit soil and vegetation cover.

21.2.2.3 Protect the soil resource by controlling activities including earthworks, indigenous vegetation clearance and prohibit the planting and establishment of recognised wilding exotic trees with the potential to spread and naturalise.

137. Submissions to these policies variously sought the deletion[208] or retention[209] of particular policies, although in the main, the requests were to soften the intent of the policies through rewording so the that policies applied to "significant soils", [210] and Policy 21.2.2.3 be amended to *"Protect, enhance or maintain the soil resource …"*[211] or *"Protect, the soil resource by controlling earthworks, and appropriately managing the effects of … the planting and establishment of recognised wilding exotic trees with the potential to spread and naturalise."*.[212]

138. We heard no evidence in regard to these submission requests. Mr Barr recommended in the Section 42A Report that Policy 21.2.2.3 be amended as follows "…*and establishment of identified wilding exotic trees* …" for consistency with recommendations made to Chapter 34 on Wilding Exotic Trees.[213]

139. These policies are part of the permitted activity framework for the Chapter in relation to appropriateness of farming within the context of landscape values to be protected, maintained or enhanced. Removal of the policies or softening their wording would not provide the direction required to assist achievement of the objective. We accept, however, the need for the

206 Submissions 289, 325, 356
207 Council Memoranda dated 13 April 2016
208 Submission 806
209 Submissions 600, 806
210 Submissions 643, 693, 702
211 Submission 356
212 Submission 600
213 C Barr, Section 42A Report, Appendix 1

consequential amendment suggested by Mr Barr. We therefore recommend that the Policies 21.2.2.1 and 21.2.2.2 remain as notified and that 21.2.2.3 read as follows:

"Protect the soil resource by controlling activities including earthworks, indigenous vegetation clearance and prohibit the planting and establishment of identified wilding exotic trees with the potential to spread and naturalise."

4.7 Objective 21.2.3

140. As notified, Objective 21.2.3 read as follows:

"Safeguard the life supporting capacity of water through the integrated management of the effects of activities."

141. Submissions on the objective were generally supportive[214] with a specific request for inclusion of "*…capacity of water and water bodies through …".*[215] This submission was not directly addressed in the Section 42A Report or in evidence. We note that the definitions of water and water body in the RMA means that water bodies are included within 'water', and therefore consider that there is no advantage in expanding the objective.

142. Mr Barr recommended amending the objective under the Council's memoranda on revising the objectives to be more outcome focused.[216] The suggested rewording was:

"The life supporting capacity of water is safeguarded through the integrated management of the effects of activities."

143. We agree that this rewording captures the original intention in an appropriate outcome orientated manner and recommend that the objective be amended as such.

4.8 Policy 21.2.3.1

144. As notified, Policy 21.2.3.1 read as follows:

"In conjunction with the Otago Regional Council, regional plans and strategies:

a. Encourage activities that use water efficiently, thereby conserving water quality and quantity

b. Discourage activities that adversely affect the potable quality and life supporting capacity of water and associated ecosystems."

145. Submissions to this policy variously sought its deletion[217] or retention[218], its rewording so as to delete reference to "water quality and quantity" and/or reference to "potable quality, life-supporting capacity and ecosystems".[219]

146. There was no direct reference to these submissions in the Section 42A Report or in evidence.

147. Given that the objective under which this policy sits refers to safeguarding life-supporting capacity, then it seems to us incongruous to remove reference to *"water quality and quantity"*

214 Submissions 289, 356, 600
215 Submissions 339, 706
216 Council Memoranda dated 13 April 2016
217 Submission 590
218 Submission 339, 706, 755,
219 Submissions 600, 791, 794

or *"potable quality, life-supporting capacity and ecosystems"*, which are all relevant to achievement of that objective. We therefore, recommend that the policy as notified remains unchanged.

4.9 New Policy on Wetlands

148. The Forest & Bird[220] and E Atly[221] sought an additional policy to avoid the degradation of natural wetlands. The reasons set out in the submissions included that it is a national priority project to protect wetlands and that rules other than those related to vegetation clearance were needed.

149. We could not identify where this matter was addressed in the Section 42A Report. In evidence for the Forest & Bird, Ms Maturin advised that the Society would be satisfied if this matter was added to Policy 21.2.12.5.[222] We therefore address the point later in this report in the context of Policy 21.2.12.5.

4.10 Objective 21.2.4

150. As notified, Objective 21.2.4 read as follows:

Manage situations where sensitive activities conflict with existing and anticipated activities in the Rural Zone.

151. Submissions on this objective were generally in support of the wording as notified.[223] Transpower[224] sought that the Objective be amended to read as follows;

Avoid situations where sensitive activities conflict with existing and anticipated activities and regional significant infrastructure in the Rural Zone, protecting the activities and regionally significant infrastructure from adverse effects, including reverse sensitivity effects.

152. One other submission did not seek a specific change to the wording of the objective but wanted to "*encourage a movement away from annual scrub burning in the Wakatipu Basin*".[225] We heard no evidence on this particular matter as to the link between the objective and the issue identified. We are both unsure of the linkage between the request and the objective, and whether the issue is within the Council's jurisdiction. We therefore recommend that the submission be rejected.

153. Mr Barr recommended amending the objective under the Council's memoranda on revising the objectives to be more outcome focused.[226] His suggested rewording was:

Situations where sensitive activities conflict with existing and anticipated activities are managed.

154. In evidence for Transpower, Ms Craw[227]

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220 Submission 706
221 Submission 336
222 S Maturin, Evidence, Page 10, Para 62
223 Submissions 134, 433, 600, 719, 723, 730, 732, 734, 736, 738, 739, 760, 843
224 Submission 805
225 Submission 380
226 Council Memoranda dated 13 April 2016
227 A Craw, Evidence, Page 6, Para 30-33

a. Considered that Policy 3.2.8.1.1 in Council's reply addressed Policies 10 and 11 of the NPSET 2008 to safeguard the National Grid from incompatible development
b. Agreed with the Section 42A Report, that infrastructure did not need to be specifically identified within the objective
c. Considered that "avoid" provided stronger protection than "manage"
d. Suggested that if the Panel adopted Policy 3.2.8.1.1. (Council's reply version), then the wording in the previous paragraph would be appropriate.

155. In his evidence, Mr Brown [228] recommended the following wording for the objective;

Reverse sensitivity effects are managed.

156. This was on the basis that the reworded objective had the same intent, but was simpler. We agree that the intent might be the same (which, if correct, would also overcome potential jurisdictional hurdles given that the submission Mr Brown was addressing [229] sought amendments to the policies under this objective, rather than to the objective itself), but this also means that it does not solve the problem we see with the original objective – that it did not specify a clear outcome in respect of which any policies might be applied in order to achieve the objective. Transpower's suggested wording would solve that problem, but in our view, a position of avoiding all conflict is unrealistic and unachievable without significant restrictions on new development that we do not believe can be justified. As is discussed in greater detail in the report on the strategic chapters, the NPSET 2008 does not require that outcome (as regards reverse sensitivity effects on the National Grid).

157. In reply, Mr Barr further revised his view on the wording of the objective as follows;

Situations where sensitive activities conflict with existing and anticipated activities are managed to minimise conflict between incompatible land uses.

158. Mr Barr's reasons for the further amendments included clarification as to what was being managed and to what end result, and that use of the term 'reverse sensitivity' was not desirable as it applied to new activities coming to an existing nuisance.[230] We consider this wording is the most appropriate way to achieve the purpose of the Act given the alternatives offered.

159. We therefore recommend that Objective 2.4.1 be worded as follows;

"Situations where sensitive activities conflict with existing and anticipated activities are managed to minimise conflict between incompatible land uses."

4.11 Policies 21.2.4.1 – 21.2.4.2

160. As notified, policies 21.2.4.1 – 21.2.4.2 read as follows:

21.2.4.1 Recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas.

228 J Brown, Evidence, Page 12, Para 2.17
229 Submission 806 (Queenstown Park Ltd)
230 C Barr, Reply, Appendix 2, Page 2

21.2.4.2 Control the location and type of non-farming activities in the Rural Zone, to minimise or avoid conflict with activities that may not be compatible with permitted or established activities.

161. Submissions to these policies variously sought their retention[231] or deletion[232]. Queenstown Park Limited[233] sought that the two policies be replaced with effects-based policies that would enable diversification and would be forward focused. However, the submission did not specify any particular wording. RJL and D & M Columb sought that Policy 21.2.4.2 be narrowed to apply to only new non-farming and tourism activities[234], while TML and Straterra sought that the policy be amended to *"manage"* rather than *"control"* the location and type of non-farming activities and to *"manage"* conflict with activities "*that may or may not be compatible with permitted or established activities*.[235]

162. In the Section 42A Report, Mr Barr suggested an amendment to Policy 21.4.2.1 as follows;

New activities must recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas.[236]

163. We were unable to find any reasons detailed in the Section 42A Report for this recommended amendment or a submission that sought this specific wording. That said, we do find that it clarifies the intent of the policy (as notified, it leaves open who is expected to recognise the specified matters) and consider that as such, that it is within scope.

164. In his evidence on behalf of TML, Mr Vivian[237] recommended a refinement of the policy from that sought in TML's submission, such that it read:

To manage the location and type of non-farming activities in the Rural Zone, in order to minimise or avoid conflict with activities that may not be compatible with permitted or established activities.

165. In his evidence, Mr Farrell on behalf of RJL Ltd, expressed the view that Policy 21.2.4.2 as notified did not give satisfactory recognition to the benefits of tourism. He supported inserting specific reference to tourism activities and to limiting the policy to new activities. [238]

166. Mr Barr, did not provide any additional comment on these matters in reply.

167. There was no evidence presented as to why these policies should be deleted and in our view their deletion would not be the most appropriate way to achieve the objective.

168. While the amendments suggested by Mr Vivian provide some clarification of the intent and purpose of Policy 21.2.4.2, we find that this is already appropriately achieved with the current wording – we do not think there is a meaningful difference between management and control

231 Submissions 433, 600, 719, 723, 730, 732, 734, 736, 738, 739, 760, 843
232 Submissions 693, 702, 806,
233 Submission 806
234 Submissions 621, 624
235 Submissions 519, 598
236 C Barr, Section 42A Report, Appendix 1
237 C Vivian, EiC, paragraphs 4.30 – 4.37
238 B Farrell, Evidence, Page 16, Paras 52 - 54

in this context. In relation to the benefits of tourism, we find that the potential effects of such activities should not be at the expense of unnecessary adverse effects on existing lawfully established activities. We consider that a policy focus on minimising conflict strikes an appropriate balance between the two given the objective it seeks to achieve. However, we consider this can be better expressed.

169. In relation to the specific wording changes recommended by Mr Farrell, we do not think it necessary to identify tourism as a non-farming type activity, but we agree that, consistently with the suggested change to Policy 21.2.4.1, that the focus of Policy 21.2.4.2 should be on new non-farming activities.

170. Lastly, we consider that the policy could be simplified to delete reference to avoiding conflict as an alternative given that minimisation includes avoidance where avoidance is possible.

171. Hence we recommend that policies 21.2.4.1 and 21.2.4.2 be worded as follows;

21.2.4.1 New activities must recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas.

21.2.4.2 Control the location and type of new non-farming activities in the Rural Zone, so as to minimise conflict between permitted and established activities and those that may not be compatible such activities.

4.12 Definitions Relevant to Mining Objective and Policies

172. Before addressing Objective 21.2.5 and associated policies, we consider it logical to address the definitions associated with mining activities in order that the meaning of the words within the objective and associated polices is clear.

173. NZTM[239] sought replacement of the PDP definitions for "mining activity" and "prospecting", and new definitions for "exploration", "mining" and "mine building" (this latter definition we address in Section 5.15 below).

174. Stage 2 Variations have proposed a new definition of mining activity. We have been advised that the submission and further submissions relating to that definition have been transferred to the Stage 2 Variations hearings. Thus we make no recommendation on those.

175. Mr Vivian in evidence for NZTM drew attention to the need also to include separate definitions of exploration and prospecting. In reply Mr Barr agreed with Mr Vivian.[240]

176. The wording for the new definition of "Exploration" sought by NZTM[241] was as follows;

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

239 Submission 519

240 C Barr, Reply, Page 37, Para 13.2

241 Submission 519, opposed by FS1040 and FS1356

177. Mr Barr did not directly address this definition except as it related to the permitted activity rules, but he did recommend the inclusion of the new definition.[242] We address the matter of permitted activity status later in the decision. Mr Vivian in evidence for NZTM was of the view that the definition was necessary to show the difference between prospecting, mining and exploration and to align the definition with the CMA.[243]

178. We do not have any issue in principle with the suggested definition, but it needs to be recognised that as defined, mineral exploration has potentially significant adverse environmental effects. Our consideration of policy and rules below reflect that possibility.

179. The wording for the definition of "Prospecting" sought by NZTM[244] (showing the revisions from the notified definition) was as follows;

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

a. Geological, geochemical, and geophysical surveys

b. The taking of samples by hand or hand held methods

c. Aerial surveys

d. Taking small samples by low impact mechanical methods."

180. Mr Barr and Mr Vivian agreed that inclusion of reference to *"low impact mechanical methods"* was not necessary given the context in which the term is used. We disagree. Reference to prospecting in policies and rules that we discuss below, proceeds on the basis that prospecting is a low impact activity. We think that it is important that reference to mechanical sampling in the definition should reflect that position. We are also concerned that the definition is inclusive of the activities listed as bullet points. The consequence could be that activities not contemplated occur under the guise of Mineral Prospecting. We doubt that there is scope to replace the word "includes" and recommend, via the Stream 10 Hearing Panel, that the Council consider a variation to amend this definition.

181. In considering these amendments, we conclude that they are appropriate in terms of consistency and the clarity of the application of these terms within the provisions of the Plan.

182. NZTM also requested a new definition be included in the PDP for *"mining"* as it is has a different range of effects compared to exploration and prospecting, and that it should align with the CMA. The wording sought by NZTM was as follows:

Mining

a. means to take, win or extract , by whatever means, -
   i. a mineral existing in its natural state in land, or
   ii. a chemical substance from a mineral existing in its natural state in land and
b. includes –
   i. the injection of petroleum into an underground gas storage facility but

242 C Barr, Section 42A Report, Page 108, Para 21.21

243 C Vivian, Evidence, Page 10, Para 4.21

244 Submission 519, opposed by FS1040 and FS1356

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

183. Mr Barr did not address this submission point directly in the Section 42A Report or in reply. Mr Vivian, again for NZTM, considered it important to include such a definition for reasons of consistency with the CMA, and that while all the aspects of the definition were not necessarily applicable to the District (he acknowledged gas storage as being in this category), it was not unusual to have definitions describing an industry/use as well as an activity in a District Plan.[245]

184. While we do not see any value in referring to underground gas storage facilities when there is no evidence of that being a potential activity undertaken in the district we think that there is value in having a separate definition of mining as otherwise suggested. Among other things, that assists distinction being drawn between mining, exploration and prospecting.

185. In conclusion, we recommend to the Stream 10 Hearing Panel that the definitions pertaining to mining read as follows;

Mining

Means to take, win or extract, by whatever means, -

a. a mineral existing in its natural state in land, or

b. a chemical substance from a mineral existing in its natural state in land

but does not include prospecting or exploration for a mineral or chemical substance.

Mineral Exploration

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

Mineral Prospecting

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

a. Geological, geochemical, and geophysical surveys

b. The taking of samples by hand or hand held methods

c. Aerial surveys

d. Taking small samples by low impact mechanical methods.

4.13 Objective 21.2.5

186. As notified Objective 21.2.5 read as follows:

[245] C Vivian, Evidence, Page 10, Para 4.17

"Recognise and provide for opportunities for mineral extraction providing location, scale and effects would not degrade amenity, water, landscape and indigenous biodiversity values."

187. Submissions on this objective variously sought the inclusion of "wetlands" as something not to be degraded[246], replacement of the words "*providing location, scale and effects would not degrade"* with "*while avoiding, remedying, or mitiga*ting"[247], narrowing the objective to refer to *"significant"* amenity, water, landscape and indigenous biodiversity values[248] or amendment so it should apply in circumstances where the degradation would be *"significant"*.[249]

188. The submission from the Forest & Bird[250] stated that wetlands should be included within the objective as it a national priority to protect them and Mr Barr agreed with that view.[251]

189. Apart from some minor amendments, Mr Barr was otherwise of the view the objective (and associated policies which we address below) were balanced so as to recognise the economic benefits of mining operations while ensuring the PDP provisions appropriately addressed the relevant s6 and s7 RMA matters.[252] Mr Barr's recommended amendments in the Council's memoranda on revising the objectives to be more outcome focused[253] also addressed the submission points. The suggested wording was:

Mineral extraction opportunities are provided for on the basis the location, scale and effects would not degrade amenity, water, wetlands, landscape and indigenous biodiversity values.

190. In evidence, Mr Vivian for NZTM considered that the objective as notified did not make sense and the wording sought by NZTM (seeking that it refer to significant values) was more effects based.[254]

191. We concur with Mr Barr that his reworded objective is both balanced and appropriate in achieving the purpose of the Act. Given that most mineral extraction opportunities are likely to occur within ONL's, a high standard of environmental protection is an appropriate outcome to aspire to. We also find that inclusion of wetlands is appropriate[255] and the amended version addresses the 'sense' issues raised by Mr Vivian. We have already addressed the insertion of RMA language "avoid, remedy, mitigate" in Section 5.1 above.

192. In conclusion, we recommend that the objective be worded as follows;

21.2.5 Mineral extraction opportunities are provided for on the basis the location, scale and effects would not degrade amenity, water, wetlands, landscape and indigenous biodiversity values.

4.14 Policies 21.2.5.1 – 21.2.5.4

193. As notified Policies 21.2.5.1 – 21.2.5.4 read as follows:

246 Submissions 339, 706
247 Submissions 519, 806
248 Submission 519
249 Submission 598
250 Submission 706
251 C Barr, Section 42A Report, Page 108, Para 21.21
252 Section 42A Report, Page 105, Para 21.4
253 Council Memoranda dated 13 April 2016
254 C Vivian, Evidence, Page 13, Paras 4.42- 4.43
255 C Barr, Section 42A Report, Appendix 4, Page 1

21.2.5.1 Recognise the importance and economic value of locally sourced high-quality gravel, rock and other minerals for road making and construction activities.

21.2.5.2 Recognise prospecting and small scale recreational gold mining as activities with limited environmental impact.

21.2.5.3 Ensure that during and following the conclusion of mineral extractive activities, sites are progressively rehabilitated in a planned and co-ordinated manner, to enable the establishment of a land use appropriate to the area.

21.2.5.4 Ensure potential adverse effects of large-scale extractive activities (including mineral exploration) are avoided or remedied, particularly where those activities have potential to degrade landscape quality, character and visual amenity, indigenous biodiversity, lakes and rivers, potable water quality and the life supporting capacity of water.

194. The submissions to these policies variously sought:

Policies

21.2.5.1 replace the word "sourced" with mined, broaden the policy by recognising that the contribution of minerals is wider than just road making and construction, and insert additional wording to further emphasise the economic and export contribution of minerals.[256]

21.2.5.2 insert the word *"exploration"* after *"prospecting"*[257]

21.2.5.3 replace the word *"Ensure"* with the word *"Encourage"*[258], and provide provisions so that rehabilitation does not cause ongoing adverse effects from discharges to air and water[259]

21.2.5.4 remove reference to *"large scale"* extractive activities[260], amend the policy to relate to mineral exploration *"where applicable"*, and following *"avoided or remedied"* add *"mitigated*".[261]

195. As noted above, Mr Barr considered the policies were balanced, recognising the economic benefits while ensuring the PDP provisions addressed the relevant section 6 and section 7 RMA matters.[262] Mr Barr considered that it was appropriate to broaden Policy 21.2.5.1 rather than restrict it to road making and construction activities.[263] Mr Vivian in evidence for NZTM agreed and suggested that the policy should also reflect minerals present in the district.[264] We concur with Mr Barr and Mr Vivian that these amendments better align the policy with the objective. Therefore we recommend Policy 21.2.5.1 read:

256 Submissions 519, 598
257 Submission 598
258 Submission 519
259 Submission 798
260 Submissions 339, 706
261 Submissions 519, 598
262 Section 42A Report, Page 105, Para 21.4
263 Section 42A Report, Page 105, Para 21.5 and Pages 1-2, Appendix 4
264 C Vivian, Evidence, Page 14, Para 4.48

Have regard to the importance and economic value of locally mined high-quality gravel, rock and other minerals including gold and tungsten.

196. Mr Barr agreed with the inclusion of *"exploration"* into Policy 21.2.5.2.[265] We were unable to find any specific reasons for this addition other than a comment that this was in response to the submission from Straterra.[266] Consideration of this issue needs to take into account our earlier discussion on the definition of "mineral exploration". While the evidence we heard indicated that exploration would typically have a low environmental impact and therefore might appropriately be referred to in this policy, the defined term would permit much more invasive activities. Accordingly while we agree that exploration should be referred to in this context, it needs to be qualified to ensure that is indeed an activity with limited environmental impact.

197. Therefore, we recommend Policy 21.2.5.2 be worded as follows;

Provide for prospecting and small scale mineral exploration and recreational gold mining as activities with limited environmental impact.

198. Mr Barr did not recommend any amendments to Policy 21.2.5.3. Mr Vivian did not agree with NZTM's submission seeking the replacement of the word *"Ensure"* with the word "*Encourage*". Mr Vivian's view was that *"encourage"* implied that rehabilitation was optional, whereas *"ensured*" implied it was not. We agree with Mr Vivian in this regard.

199. Mr Vivian also suggested that:

'…the word "progressively" is deleted and [sic] rehabilitation is already ensures [sic] in a "planned and coordinated manner".' [267]

200. On this point, we do not agree with Mr Vivian. A reference to planned and co-ordinated rehabilitation may mean that the rehabilitation is all planned to occur at the closure of a mine. That is not the same as progressive rehabilitation, and has potentially much greater and more long-lasting effects.

201. We did not receive any evidence on the ORC submission seeking the addition of provisions so that rehabilitation does not cause ongoing adverse effects from discharges to air and water. In any case, we think this is already addressed under Objective 21.2.3 and the associated policies as far the jurisdiction of a TLA extends to these matters under the Act.

202. Therefore, we recommend Policy 21.2.5.3 be adopted as notified.

203. In relation to Policy 21.2.5.4, Mr Barr took the view in the Section 42A Report that the widening of the policy (i.e. amending the policy so that it applied to all mining activities rather than just larger scale activities) would ensure that those activities would be appropriately managed, irrespective of the scale of the activity. In addition, Mr Barr considered that the inclusion of mitigation would provide an additional option to avoidance or remediation.[268] Mr Vivian agreed with Mr Barr as regards the inclusion of the word mitigation. However, Mr Vivian was also of the view that the policy as worded, without the qualification of "where applicable' for mineral

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265 Section 42A Report, Appendix 1, Page 21-3, Policy 21.2.5.2

266 Submission 5

267 C Vivian, Evidence, Page 18, Para 4.75

268 Section 42A Report, Page 2, Appendix 4

exploration would foreclose small scale mining activities and exploration activities that are permitted activities.[269]

204. On Mr Barr's point regarding the widening of the policy to apply to all activities regardless of scale, we find that this would be in direct contradiction to Policy 21.2.5.2 which recognises that some small-scale mining operations will have a limited environmental impact, that is to say, an impact which is not avoided or (implicitly) remedied.

205. We consider that rather than focussing on the scale of the extractive activity, the better approach is to focus on the scale of effects. If the policy refers to potentially significant effects, that is consistent with Policy 21.2.5.2 and an avoidance or remediation policy response is appropriate in that instance. The alternative suggested by Mr Barr (adding reference to mitigation) removes the direction provided by the policy and leaves the end result unsatisfactorily vague and uncertain when applied to mining and exploration operations with significant effects. We also do not consider that adding the words "*where applicable"* has the beneficial effect Mr Vivian suggests. Read in context, it merely means that the policy only applies to exploration where exploration is proposed – something that we would have thought was obvious anyway.

206. Accordingly, we recommend that Policy 21.2.5.4 be worded as follows;

Ensure potentially significant adverse effects of extractive activities (including mineral exploration) are avoided or remedied, particularly where those activities have potential to degrade landscape quality, character and visual amenity, indigenous biodiversity, lakes and rivers, potable water quality and the life supporting capacity of water.

4.15 New Mining Objectives and Policies

207. NZTM sought additional objectives and policies to recognise the importance of mining[270]. The wording of those requested additions was as follows;

Objective

Recognise that the Queenstown Lakes District contains mineral deposits that may be of considerable social and economic importance to the district and the nation generally, and that mining activity and associated land restoration can provide an opportunity to enhance the land resource, landscape, heritage and vegetation values.

Policies

a. *Provide for Mining Buildings where the location, scale and colour of the buildings will not adversely affect landscape values*

b. *Identify the location and extent of existing or pre-existing mineral resources in the region and encourage future mining activity to be carried out in these locations*

c. *Enable mining activity, including prospecting and exploration, where they are carried out in a manner which avoids, remedies or mitigates adverse effects on the environment*

d. *Encourage the use of off-setting or environmental compensation for mining activity by considering the extent to which adverse effects can be directly offset or otherwise compensated, and consequently reducing the significance of the adverse effects*

269 C Vivian, evidence, Pages 18-19, Paras 4.78-4.79

270 Submission 519, opposed by FS1040 and FS1356

e. Manage any waste heaps or long term stockpiles to ensure that they are compatible with the forms in the landscape

f. Encourage restoration to be finished to a contour sympathetic to the surrounding topography and revegetated with a cover appropriate for the site and setting

g. Recognise that the ability to extract mineral resources can be adversely affected by other land use, including development of other resources above or in close proximity to mineral deposits

h. Recognise that exploration, prospecting and small-scale recreational gold mining are activities with low environmental impact.

208. Mr Barr, in the Section 42A Report, set out his reasons for recommending rejection of these amendments[271]. As noted in Section 5.14 above, Mr Barr was of the view that the existing objectives and policies were balanced, recognising the economic benefits while ensuring the PDP provisions addressed the relevant section 6 and section 7 RMA matters.[272]

209. Mr Vivian, for NZTM, noted that Objective 21.2.5 addressed the adverse effects of mining but considered there was no objective to recognise the importance of mineral deposits in the District. He was of the view that that result was inconsistent with the RPS.[273] Mr Vivian recommended the rewording of the new objective sought by NZTM as follows:

Acknowledge the District contains mineral deposits that may be of considerable social and economic importance to the district and the nation generally.

210. We also heard evidence from Mr G Gray, a director of NZTM, as to the social and economic benefits of mining[274].

211. Having considered the evidence in regard to the suggested new objective, we find that the matters raised are already included in the first part of objective 21.2.5 ("*Mineral extraction opportunities are provided for …")* and that this gives effect to both the RPS and proposed RPS.[275] That said, Mr Barr and Mr Vivian considered that it was necessary to include a policy to recognise that the ability to extract mineral resources can be adversely affected by other land uses in order to achieve the objective, as well as to be consistent with the RPS.[276] We agree with Mr Barr and Mr Vivian for the reasons set out in their evidence that a new policy on this matter needs to be added. We consider that the proposed course of action might be addressed more simply and so we recommend a new policy numbered 21.2.5.5, to read as follows:

Avoid or mitigate the potential for other land uses, including development of other resources above, or in close proximity to mineral deposits, to adversely affect the extraction of known mineral deposits.

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271 C Barr, Section 42A Report, Pages 105-106, Paras 21.6 – 21-10

272 Section 42A Report, Page 105, Para 21.4

273 C Vivian, Evidence Page 15, Para 4.53

274 G Gary, Evidence, Page 6-9

275 proposed RPS, Objective 5.3, Policy 5.3.5

276 C Barr, Reply, Page 37, Para 13.3, Mr C Vivian, Evidence, Page 16, Para 4.58

212. Mr Barr and Mr Vivian agreed also that the policies sought by NZTM listed as (b) and (c) above were respectively inappropriate and unnecessary and already addressed under Objective 21.2.5. We agree. We also agree with Mr Vivian that policy (f) above (in relation to restoration) is already addressed under Policy 21.2.5.3 and is therefore unnecessary. Similarly, policy (h) above duplicates Policy 21.2.5.2 and is again unnecessary. We therefore recommend that those parts of the submission be rejected.

213. In the Section 42A Report, Mr Barr was of the view that a policy specifically on mining buildings (policy (a) above) was not appropriate and overstated the importance of mining buildings in the context of the resources that require management. Mr Barr went on to opine that the mining buildings should have the same controls as other non-farming buildings.[277] In addition to this policy, NZTM also sought the inclusion of a definition for mining building apparently to avoid the need to meet the height requirements applying to other buildings. Mr Barr also recommended that this submission be rejected. Mr Barr's explained his position as follows:

It is my preference that this request is rejected because mining is a discretionary activity, therefore creating a disjunction between removing standards for all buildings and mining buildings. In addition, the locational constraints emphasised by NZTM are likely to mean that these buildings are located in within the ONL or ONF. Therefore, I recommend that mining buildings are not provided any exemptions.[278]

214. Mr Vivian had a contrary view, that traditional rural activities including mining were expected elements of the rural landscape and did not offend landscape character. Mr Vivian went on;

This proposition is supported by the inclusion of Rule 21.4.30(d) which permits the mining of aggregate for farming activities provide [sic] the total volume does not exceed 1000 m^3 in any one year. As such, mining buildings necessary for the undertaking of mining activities do not have the same issues associated with them as other buildings, such as residential, visitor accommodation or commercial activities.[279]

215. We do not follow Mr Vivian's reasoning. Mr Vivian sought to leverage off the limited provision for aggregate extraction in the permitted activity rules, but provided no evidence as to the nature and extent of mining buildings that would accompany such an aggregate extraction operation (if any) compared to the range of buildings that might accompany a large scale mining operation. Nor is it apparent to us that the historic evidence of mining is necessarily representative of the structures that would be required for a new mine. Mr Gray gave evidence that an underground tungsten mining operation would have minimal above ground impact, but it was not clear to us that this would be the case for all mining operations, and if it were, that it would remove the need for special recognition of *"mining buildings"*.

216. We share the concerns of Mr Barr that NZTM's proposal could lead to large mining related buildings being potentially located in ONLs/ONFs and that it is more effective to manage the effects of mining buildings within the framework for mining activities as discretionary activities. Hence, we recommend that the request for a definition and policy on mining buildings be rejected.

217. In relation to the proposed policy (e) above (*Manage any waste heaps or long term stockpiles to ensure that they are compatible with the forms in the landscape*), Mr Vivian considered this

277 C Barr, Section 42A Report, Page 105, Para 21.6

278 C Barr, Section 42A Report, Page 108, Para 21.19

279 C Vivian, Evidence, Page 11, Para 4.24

an important policy to be included under Objective 21.2.5.[280] We consider that this does not take the matter very far. Mr Barr did not directly address this proposed policy. We think that this policy is unnecessary, as the issue of waste heaps and stockpiles and their form in the landscape is only an aspect of more general issues raised by the effects of mining on natural forms and landscapes that have already been addressed by the Stream 1B Hearing Panel in the context of Chapter 6.[281]

218. On the final matter of a new policy regarding environmental compensation (policy (d) above), Mr Vivian in evidence[282] and Mr Barr in reply, agreed that such a policy was appropriate, with Mr Barr noting that it required separation from the "biodiversity offsetting" policy in Chapter 33 so as to avoid confusion.[283] Mr Barr recommending the following wording for the new policy to be numbered 21.2.5.6;

Encourage environmental compensation where mineral extraction would have significant adverse effects.

219. We agree with Mr Barr and Mr Vivian in part. However, we think that compensation for significant adverse effects goes too far (among other things, it implies that mineral extraction may have significant adverse effects, which would not be consistent with Objective 21.2.5) and that it should be residual effects which cannot be avoided that are addressed by compensation. We also consider that it would assist if greater direction were provided as to why environmental compensation is being encouraged.

220. Accordingly, we recommend that Policy 21.2.5.6 be worded as follows:

Encourage use of environmental compensation as a means to address unavoidable residual adverse effects from mineral extraction.

4.16 Definitions Relevant to Ski Activity Objectives and Policies

221. As with the objective and policies relating to mining addressed above; we consider it logical to address the definitions associated with ski activities in order that the meaning of the words within the objective and associated polices is clear.

222. As notified the definition of Ski Area Activities read as follows;

Means the use of natural and physical resources for the purpose of providing for:

a. recreational activities either commercial or non-commercial

b. chairlifts, t-bars and rope tows to facilitate commercial recreational activities.

c. use of snow groomers, snowmobiles and 4WD vehicles for support or operational activities
d. activities ancillary to commercial recreational activities

e. in the Waiorau Snow Farm Ski Area Sub Zone vehicle and product testing activities, being activities designed to test the safety, efficiency and durability of vehicles, their parts and accessories.

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280 C Vivian, Evidence, Page 16, Para 4.67
281 Recommendation Report 3, Section 8.6
282 C Vivian, Evidence, Pages 16-17, Paras 4.62 – 4.66
283 C Barr, Reply, Page 37, Para 13.4

223. The submissions from Soho Ski Area Ltd and Blackmans Creek No.1 LP[284], and Treble Cone Investments Ltd[285] sought more clarity in the preamble, the expansion of the definition at "(b)" to include *"passenger lift or other systems"* and the addition of the following;

a. Visitor and residential accommodation associated with ski area activities
b. Commercial activities associated with ski area activities or recreation activities
c. Guest facilities including ticketing, offices, restaurants, cafes, ski hire and retailing associated with any commercial recreation activity
d. Ski area operations, including avalanche control and ski patrol
e. Installation and operation of snow making infrastructure, including reservoirs, pumps, snow makers and associated elements
f. The formation of trails and other terrain modification necessary to operate the ski area.
g. The provision of vehicle and passenger lift or other system access and parking
h. The provisions of servicing infrastructure, including water supply, wastewater disposal, telecommunications and electricity.

224. Similarly, the submission from Mt Cardrona Station Ltd[286] sought that "(b)" be replaced with the term *"passenger lift systems"* and that buildings ancillary to ski activities be included within the definition. The Mt Cardrona Station Ltd submission also sought a new definition for *"passenger lift systems"* as follows;

Means any mechanical system used to convey or transport passengers within or to a Ski Area Sub-Zone, including chairlifts, gondolas, T-bars and rope tows, and including all moving, fixed and ancillary components of such systems such as towers, pylons, cross arms, pulleys, cables, chairs, cabins, and structures to enable the embarking and disembarking of passengers.

225. Also in relation to the Ski Area Activities definition, the submission from CARL[287] sought that "earthworks and vegetation clearance" be added to the ancillary activities under "(d)" in the definition as notified.

226. Mr Barr considered that amendment to the definition of Ski Area Activities for the inclusion of passenger lift systems and the new definition for passenger lift systems sought by Mt Cardrona Station Ltd were appropriate in that they captured a broad range of transport systems as well as enabling reference to the definition in the rules without having to repeat the specific type of transport system.[288] Mr Brown's evidence for Mt Cardrona Station Ltd also supported the amendment noting that the provision of such systems would significantly reduce vehicle traffic to the ski area subzone facilities, as well as the land required for car parking.[289] We agree in part with Mr Barr and Mr Brown for the reasons set out in their evidence. However, we note that there are things other than passengers that are transported on lifts, such as goods and materials, that should also be encompassed with the definition. We recommend that the definition be worded to provide for *"other goods*" to avoid such a limitation.

227. In relation to the amendment to the preamble and the matters to be added to the definition sought by Soho Ski Area Ltd and Blackmans Creek No.1 LP, and Treble Cone Investments Ltd, in general Mr Barr was of the view that those matters were addressed in other parts of the PDP.

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284 Submission 610
285 Submission 613
286 Submission 407
287 Submission 615
288 C Barr, Section 42A Report, Page 57, Para 14.18
289 J Brown, Evidence, Page 22, Para 2.37

However, Mr Barr also accepted that some of the changes were valid.[290] Mr Ferguson[291], held a different view, particularly in relation to the inclusion of residential and visitor accommodation within the definition. Relying on Mr McCrostie's evidence[292], he stated that the *"Inclusion of visitor accommodation within this definition is one of the ways by which the finite capacity of the resource can be sustained while balancing the financial viability and the diversity of experience necessary to remain internationally competitive."*[293] We address the policy issues regarding provision for residential and visitor accommodation in Ski Area Sub Zones later in the report, but for the present, we find that the additions to the definition sought by Soho Ski Area Ltd and Blackmans Creek No.1 LP, and Treble Cone Investments Ltd, beyond those recommended by Mr Barr, would have implications for the range of effects encompassed within the term and hence we recommend that those further additions be rejected.

228. We record in particular that Mr Barr in reply, noted that the potential effects of inclusion of a range of buildings (e.g. ticketing offices, base or terminal buildings) were wider than the matters of discretion put forward by Mr Brown in his summary statement[294] and hence, in his view, the definition should not be expanded to include them. We agree. We also consider that to include such buildings would be inconsistent with the overall policy approach of the Rural Zone to buildings.

229. Mr Barr, also recommended rejection of the submission regarding the inclusion of earthworks and vegetation clearance sought by CARL as earthworks were not part of this District Plan Review and vegetation was addressed in Chapter 33: Indigenous Vegetation.[295] We heard no evidence in relation to this submission on the definition itself and hence do not recommend the change sought. However, we record that we address the policy issues regarding earthworks and vegetation clearance in relation to Ski Area Activities later in this report.

230. The submissions from Soho Ski Area Ltd and Blackmans Creek No.1 LP[296], and Treble Cone Investments Ltd[297] also sought amendment to the definition of *"building"* to clarify that facilities, services and infrastructure associated with ski lifts systems were excluded from the definition. This matter is related to the submission sought by Mt Cardrona Station Ltd[298] that buildings ancillary to ski activities be included within the definition of Ski Area Activities.

231. In relation to the definition of building, Mr Barr in his Section 42A Report, was of the view that this matter was more appropriately dealt with under the definitions hearing as the submission related to gondolas generally and not specifically to Ski Area Activities or Ski Sub Zones.[299] Mr Ferguson's understanding was that section 9 of the Building Act specifically excluded ski tows and stand-alone machinery, so therefore specifically excluding that equipment would add clarity without substantively altering the position.[300]

290 C Barr, Section 42A Report, Pages 61-62, Para 14.40
291 EiC for Soho Ski Area Ltd and Blackmans Creek No.1 LP, and Treble Cone Investments Ltd
292 EiC for Soho Ski Area Ltd and Blackmans Creek No.1 LP, and Treble Cone Investments Ltd
293 C Ferguson, Evidence, Page 26, Para 104
294 C Barr, Reply, Page 39, Paras 14.6 – 14.7
295 C Barr, Section 42A Report, Page 63, Paras 14.45 – 14.47
296 Submission 610
297 Submission 613
298 Submission 407
299 C Barr, Section 42A Report, Page 61, Paras 14.38
300 C Ferguson, Evidence, Page 28, Para 109

232. In this case, we concur with Mr Barr and find that the definition of building is a wider matter that should appropriately be considered in the definitions hearing. Our findings above with respect to the effect of including buildings within the definition of "passenger lift systems" and "ski area activities" have addressed the potential issues around base and terminal buildings.

233. In conclusion, we recommend to the Stream 10 Hearing Panel that the definitions pertaining to Ski Area Activities and Passenger Lift Systems read as follows;

Passenger Lift Systems
Means any mechanical system used to convey or transport passengers and other goods within or to a Ski Area Sub-Zone, including chairlifts, gondolas, T-bars and rope tows, and including all moving, fixed and ancillary components of such systems such as towers, pylons, cross arms, pulleys, cables, chairs, cabins, and structures to enable the embarking and disembarking of passengers. Excludes base and terminal buildings.

Ski Area Activities
Means the use of natural and physical resources for the purpose of establishing, operating and maintaining the following activities and structures:

a. recreational activities either commercial or non-commercial;

b. passenger lift systems;

c. use of snow groomers, snowmobiles and 4WD vehicles for support or operational activities;

d. activities ancillary to commercial recreational activities including, avalanche safety, ski patrol, formation of snow trails and terrain;

e. Installation and operation of snow making infrastructure including reservoirs, pumps and snow makers;

f. in the Waiorau Snow Farm Ski Area Sub-Zone vehicle and product testing activities, being activities designed to test the safety, efficiency and durability of vehicles, their parts and accessories.

4.17 Objective 21.2.6

234. As notified, Objective 21.2.6 read as follows:

"Encourage the future growth, development and consolidation of existing Ski Areas within identified Sub Zones, while avoiding, remedying or mitigating adverse effects on the environment."

235. The submissions on this objective variously sought that it be retained[301], the objective be revised to reflect that Council should not be encouraging growth in ski areas and should control lighting effects[302], that the objective be broadened to apply to not just existing ski areas and be amended to provide for integration with urban zones[303], and that it provide for better

301 Submissions 610, 613
302 Submission 243
303 Submission 407

sustainable management for the Remarkables Ski Area, provide for summer and winter activities and provide for sustainable gondola access and growth.[304]

236. In the Council's memorandum on revising the objectives to be more outcome focused[305], Mr Barr's recommended rewording was as follows:

The future growth, development and consolidation of Ski Area Activities is encouraged within identified Ski Area Sub Zones, while avoiding remedying or mitigating adverse effects on the environment.

237. Mr Barr did not support the submission from QPL in regard to the Remarkables Ski Area as the submission provided no justification.[306] In relation to the submission from Mt Cardrona Station Ltd seeking the inclusion of the connection to urban areas, Mr Barr did not support this, opining that it would create an, *"expectation that urban zones are expected to establish where they could easily integrate and connect to the Ski Area Sub Zones."*[307] Mr Barr also considered that the submission on the objective appeared to advance the rezoning sought by Mt Cardrona Station Ltd rather than applying broadly to all Ski Area Sub-Zones.

238. In evidence for various submitters, Mr Brown supported the objective (and related policies) because of the contribution of the ski industry to the district[308], but recommended that it be reworded as follows:

21.2.6 Objective
The future growth, development and consolidation of Ski Area Activities is encouraged within identified Ski Area Sub Zones, and where appropriate Ski Area Sub Zones are connected with other areas, including urban zones, while adverse effects on the environment are avoided, remedied or mitigated.

239. Mr Brown explained the reasons for his recommended changes as including,
    a. Replacement of "*Skiing*" with "*Ski Area*" so that the terminology is internally consistent and aligns with the definitions in PDP[309]
    b. There are opportunities for better connection between ski areas and urban zones via passenger lift systems and to reduce reliance on vehicle access and effects of vehicle use, and road construction and maintenance[310]

240. In reply Mr Barr, reiterated his concerns regarding the reference to urban areas.[311]

241. We find that an objective encouraging growth in ski areas is appropriate and we agree with Mr Brown that consolidation in existing ski areas is an efficient way to minimise adverse effects.[312] However, we consider that some clarification is required as to what form that *"encouragement"* takes. In addition, and in general, we also find that connections to ski areas for access purposes is also appropriate, but agree with Mr Barr that the specific reference to urban areas goes too

304 Submission 806
305 Council Memorandum dated 13 April 2016
306 C Barr, Section 42A Report, Page 54, Para 14.6
307 C Barr, Section 42A Report, Page 58, Para 14.22
308 J Brown, Evidence, Page 19, Para 2.30
309 J Brown, Evidence, Page 21, Para2.31 (a)
310 J Brown, Evidence, Page 21, Para2.31 (c) – 2.33
311 C Barr, Reply, Page 38, Para 14.2
312 J Brown, Evidence, Page 22, Para 2.30

far. However, we also find that it more appropriate to address access as a policy rather than as part of the objective.

242. We therefore recommend that Objective 21.2.6 be reworded as follows;

The future growth, development and consolidation of Ski Area Activities within identified Ski Area Sub-Zones, is provided for, while adverse effects on the environment are avoided, remedied or mitigated.

4.18 Policies 21.2.6.1 – 21.2.6.3

243. As notified, policies 21.2.6.1 – 21.2.6.3 read as follows:

21.2.6.1 Identify Ski Field Sub Zones and encourage Ski Area Activities to locate and consolidate within the sub zones.

21.2.6.2 Control the visual impact of roads, buildings and infrastructure associated with Ski Area Activities.

21.6.2.3 Provide for the continuation of existing vehicle testing facilities within the Waiorau Snow Farm Ski Area Sub Zone on the basis the landscape and indigenous biodiversity values are not further degraded.

244. The submissions to these policies variously sought:

Policies

21.2.6.1 Retain the policy[313] and widen the policy to encourage tourism activities[314].

21.2.6.2 Retain the policy[315], or amend to replace the word "*Control"* with *"Enable and mitigate*"[316] (We note that the submission from CARL[317] merely repeated the wording of the policy and provided no indication of support/opposition or relief sought).

21.2.6.3 amend the policy to "*encourage*" continuation and "*future development"* of existing vehicle testing "*only*" within the Waiorau Snow Farm[318]

245. Mr Barr did not directly refer to Policy 21.2.6.1 in his Section 42A Report. In general Mr Barr did not support the relief sought by CARL as it did not provide substantial benefit to the Cardrona Ski Area Sub-Zone, when compared to other zones.[319] Mr Farrell, the planner giving evidence for CARL, stated that the "*the resort lends itself to the provision of four season tourism activities such as mountain biking, tramping, sightseeing, and mountain adventure activities"*, and as such the policy should be amended to insert reference to *"tourism"*[320] .

313 Submissions 610, 613
314 Submission 615
315 Submission 610, 613
316 Submission 621
317 Submission 615
318 Submission 376
319 C Barr, Section 42A Report, Page 63, Para 14.44
320 B Farrell, Evidence, Page 17, Para 56

246. This notion of Ski Areas being year-round destinations rather than just ski season destinations, was also raised by CARL and by other submitters seeking the addition of new policies to provide for such activities. We address the detail of those submissions later in this report. However, for present purposes, we find that recognising ski areas as year-round destinations and that activities outside ski seasons contribute to the viability and consolidation of activities in those areas is a valid policy position that implements Objective 21.2.6. We consider, however, that some amendment is required to the relief supported by Mr Farrell as there are many tourism activities that are not suited to location in Ski Areas and it is not realistic to seek consolidation of all tourism activities within those areas.

247. In relation to the amendments sought to Policy 21.2.6.2, Mr Brown in evidence, sought that the word control be replaced with the word manage, for the reason that manage is more consistent with "*avoid, remedy or mitigate*" as set out in the objective and is more effective.[321] On the same matter, Mr Farrell, in his evidence for CARL, did not support the replacement of the word *"Control"*, with *"Enable and mitigate"*, agreeing with the reasons of Mr Barr in the Section 42A Report. [322] We were unable to find any direct reference in the Section 42A Report to Mr Barr's reasons for recommending that the wording of the policy remain as notified. We find that the policy as notified set out what was to be controlled, but did not indicate to what end or extent. We were not able to find any submissions that would provide scope for the inclusion of a greater degree of direction. The same situation would apply if the term manage (or for that matter, "*enable and mitigate")* was used and we do not regard the change in terminology suggested by Mr Brown as a material change that might be considered to more appropriately achieve the objective than the notified wording. We therefore recommend that the policy remain as notified.

248. In the Section 42A Report, Mr Barr did not address the submission from Southern Hemisphere Proving Grounds Limited in regard to Policy 21.2.6.3. The submission itself stated the reason for the relief sought was to align the policy more precisely with the objective. We did not receive any evidence in support of the submission. We find that the encouragement of future growth and development in the policy goes beyond the intent of the policy which is balanced by reference to there being no further degradation of landscape and biodiversity values and that the other changes sought do not materially alter its effect. We therefore recommend that the submission be rejected.

249. Hence we recommend the wording of Policies 21.2.6.1 – 21.2.6.3 as follows:

21.2.6.1 Identify Ski Area Sub-Zones and encourage Ski Area Activities and complementary tourism activities to locate and consolidate within the Sub-Zones.

21.2.6.2 Control the visual impact of roads, buildings and infrastructure associated with Ski Area Activities.

21.6.2.3 Provide for the continuation of existing vehicle testing facilities within the Waiorau Snow Farm Ski Area Sub-Zone on the basis that the landscape and indigenous biodiversity values are not further degraded.

321 J Brown, Evidence, Page 19, Para 2.31(b), Page 21, Para 2.34

322 B Farrell, Evidence, Page 17, Paras 57 - 58

4.19 New Ski Area Objectives and Policies

250. QPL[323] sought additional objectives and policies specific to the Remarkables Ski Area to follow Objective 21.2.6 and Policies 21.2.6.1 – 21.2.6.3. The wording of those requested additions was as follows;

Objective

Encourage the future growth and development of the Remarkables alpine recreation area and recognise the importance of providing sustainable gondola access to the alpine area while avoiding, remedying or mitigating adverse effects on the environment.

Policies

a. Recognise the importance of the Remarkables alpine recreation area to the economic wellbeing of the District, and support its growth and development.

b. Recognise the importance of providing efficient and sustainable gondola access to the Remarkables alpine recreation area while managing potential adverse effects on the landscape quality.

c. Support the construction and operation of a gondola that provides access between the Remarkables Park zone and the Remarkables alpine recreation area, recognising the benefits to the local, regional and national community.

251. Mr Barr considered that the new objective and policies applied to the extension of the Ski Area Sub-Zone at Remarkables Park and therefore should be deferred to the mapping hearings.[324] We heard no evidence or submissions to the contrary and hence have not reached a recommendation on those submissions. However, we do address the second new policy sought in a more general sense of 'gondola access' as it applies to Ski Area Sub-Zones below.

252. CARL[325] sought an additional policy as follows;

Provide for expansion of four season tourism and accommodation activities at the Cardrona Alpine Resort.

253. Mr Barr did not consider that requested policy provided any additional benefit to the Cardrona Ski Area Sub-Zone over that provided by the recommended amendments to the objectives and policies included in his Section 42A Report.[326] Having heard no evidence to the contrary (Mr Farrell did not address it in his evidence for CARL), we agree with Mr Barr and recommend that the submission be rejected.

254. Mt Cardrona Station Limited sought an additional policy to be worded as follows:

Provide for appropriate alternative (non-road) means of transport to Ski Area Sub Zones from nearby urban resort zones and facilities including by way of gondolas and associated structures and facilities.

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323 Submission 608

324 C Barr, Section 42A Report, Page 55, Para 14.9

325 Submission 615

326 C Barr, Section 42A Report, Page 63, Para 14.44

255. Related to the above request, Soho Ski Area Limited & Blackmans Creek No.1 LP[327] and Treble Cone Investments Limited[328] sought an additional policy as follows;

To recognise and provide for the functional dependency of ski area activities to transportation infrastructure, such as vehicle access and passenger lift based or other systems, linking on-mountain facilities to the District's road and transportation network.

256. Mr Barr, in the Section 42A Report, considered that there was merit in the policy generally, as sought in these submissions. We agree in part with the likely potential benefits set out in Mr Brown's evidence.[329] However, we agree also with the point made by Mr Barr when he clarified in reply that he did not support the link to urban zones sought by Mt Cardrona Station Limited[330]. We do not consider that the planning merit of recognising the value of non-road transport systems to ski areas depends on their inter-relationship with urban resort zones (or any other sort of urban zone for that matter).

257. Accordingly, we recommend the wording and numbering of an additional policy, as follows:

21.2.6.4 Provide for appropriate alternative (non-road) means of transport to and within Ski Area Sub-Zones, by way of passenger lift systems and ancillary structures and facilities.

258. Soho Ski Area Limited & Blackmans Creek No.1 LP[331] and Treble Cone Investments Limited[332] sought an additional policy as follows;

Enable commercial, visitor and residential accommodation activities within Ski Area Sub Zones, which are complementary to outdoor recreation activities, can realise landscape and conservation benefits and that avoid, remedy or mitigate adverse effects on the environment.

259. Mr Barr was generally supportive of visitor accommodation, but expressed concern as to impacts on amenity of residential activity and subdivision.[333] Mr McCrostie[334] set out details of the nature of visitor and worker accommodation sought, which included seasonal use of such accommodation.[335]

260. Mr Ferguson[336] opined that the short stay accommodation for Ski Areas did not sit well with the PDP definitions of residential activity or visitor accommodation due to the length of stay component,[337] but suggested that this could be corrected by amendment to the rules.[338] Mr Barr in reply concurred that a policy to guide visitor accommodation in Ski Area Sub-Zones would assist decision making as it is a distinct activity type from visitor accommodation in the

327 Submission 610
328 Submission 613
329 J Brown, Evidence, Page 20, Para 2.31 (c)
330 C Barr, Reply, Page 38, Para 14.2
331 Submission 610
332 Submission 613
333 C Barr, Section 42A Report, Page 59, Para 14.30
334 EiC for Soho Ski Area Limited & Blackmans Creek No.1 LP and Treble Cone Investments Limited
335 H McCrostie, Evidence Pages 5 – 7, Para 5.8 and Page 10, Para 6.7
336 EiC for Soho Ski Area Limited & Blackmans Creek No.1 LP and Treble Cone Investments Limited
337 C Ferguson, Evidence, Page 30 -33, Paras 117 - 125
338 C Ferguson, Evidence, Page 29, Pars 114 - 115

Rural Zone. He preferred the wording "*provided for on the basis*", with qualifiers, rather than "*enabled*" as the requested activity status was not permitted. [339]

261. We consider that an appropriate policy needs to be established first, and then for the rules to follow from that. We agree in part with Mr Ferguson and Mr Barr as to the need for the policy, but agree that an enabling approach goes too far given the potential for adverse environmental effects. We also consider that clarification by way of a definition for Ski Area accommodation for both visitors and workers, would assist development of a more effective and efficient policy. We put this question to Mr Ferguson, who in his written response provided the following suggested definition;

Ski Area Sub Zone Accommodation
Means the use of land or buildings within a Ski Area Sub Zone and associated with the operation of a Ski Area Activity for short-term living accommodation, including the payment of fees, for guests, staff, worker and custodial management accommodation where the length of stay is less than 6 months and includes:

a. hotels, motels, apartments, backpackers accommodation, hostels, lodges and chalets; and

b. centralised services or facilities such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are associated with the visitor accommodation activity.[340]

262. Mr Barr in reply, considered that the generic visitor accommodation definition was adequate as sub clause c of that definition provides for specific zones to alter the applicability of the definition, in this case for Ski Area Sub-Zones. We find that both suggestions do not fully address the issue. As noted above the policy needs to be determined first and we also find that there would less confusion for plan users if a separate definition is provided. Having said that, we take on board Mr Barr's point that care needs to be taken with the drafting of rules (and policies for that matter) to ensure that accommodation provided for longer than 6 month stays does not fall into a regulatory 'hole' or create internal contradictions through references to visitor accommodation that is for longer than 6 months.

263. We are broadly comfortable with Mr Ferguson's suggested wording with the exception of two matters. First, we consider greater clarity is required around the extent of associated services or facilities. The second matter is that including the 6 month stay presents the issue of what would be 'the activity' if the length of stay was longer? To avoid this situation we think that the length of stay is more appropriately contained within the rule, rather than the definition.

264. We therefore recommend to the Stream 10 Hearing Panel that a new definition be included in Chapter 2 which reads as follows:

Ski Area Sub Zone Accommodation
Means the use of land or buildings for short-term living accommodation for visitor, guest, worker, and

a. Includes such accommodation as hotels, motels, guest houses, bunkhouses, lodges and the commercial letting of a residential unit: and

339 C Barr, Reply, Page 40 , Para 14.11
340 C Ferguson, Written Response To Commissioners Questions, 27 May 2016, Page 10, Para 6

b. May include some centralised services or facilities such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are ancillary to the accommodation facilities: and

c. Is limited to visitors, guests or workers, visiting and or working in the respective Ski Area Sub Zone.

265. Taking all of the above into account, we recommend a new policy and numbering as follows;

21.2.6.5 Provide for Ski Area Sub Zone Accommodation activities within Ski Area Sub Zones, which are complementary to outdoor recreation activities within the Ski Area Sub Zone, that can realise landscape and conservation benefits and that avoid, remedy or mitigate adverse effects on the environment.

4.20 Objective 21.2.7

266. As notified Objective 21.2.7 read as follows:

Objective
Separate activities sensitive to aircraft noise from existing airports through:

a. The retention of an undeveloped open area; or

b. at Queenstown Airport an area for Airport related activities; or

c. where appropriate an area for activities not sensitive to aircraft noise

d. within an airport's Outer Control Boundary to act as a buffer between airports and other land use activities.

267. Two submissions supported this objective[341] and one submission from QAC sought that the objective be deleted and replaced with the following:

Retention of an area containing activities that are not sensitive to aircraft noise, within an airport's Outer Control Boundary, to act as a buffer between airports and Activities sensitive to Aircraft Noise.[342]

268. In the Council's memorandum on revising the objectives to be more outcome focused[343], Mr Barr's recommended rewording was as follows:

An area to contain activities that are not sensitive to aircraft noise is retained within an airport's Outer Control Boundary, to act as a buffer between airports and Activities Sensitive to Aircraft Noise.

269. Ms O'Sullivan in evidence for QAC, suggested "*further refinement to remove repetition and ensure the objective is more in in keeping with PC26 and PC35*"[344] and Mr Barr in reply agreed.[345] That wording being:

341 Submissions 271, 649
342 Submission 433
343 Council Memorandum dated 13 April 2016
344 K O'Sullivan, Evidence, Page 8, Para 4.5
345 C Barr, Reply, Page 24, Para 8.3

An area that excludes activities which are sensitive to aircraft noise, is retained within an airport's Outer Control Boundary, to act as a buffer between airports and Activities Sensitive to Aircraft Noise.

270. We accept the recommendation of Ms O'Sullivan and Mr Barr, and recommend that Objective 21.2.7 be worded as set out in the previous paragraph.

4.21 Policies 21.2.7.1 – 21.2.7.4

271. As notified Policy 21.2.7.1 read as follows:

> *21.2.7.1 Prohibit all new activity sensitive to aircraft noise on any Rural Zoned land within the Outer Control Boundary at Wanaka Airport and Queenstown Airport to avoid adverse effects arising from aircraft operations on future activities sensitive to aircraft noise.*

272. Submissions on this policy sought that it be retained[346], deleted[347], or reworded[348] as follows:

> *Prohibit any new [non-existing] activity sensitive to aircraft noise on any rural zoned land within the outer Control Boundaries of Queenstown airport and Wanaka airport, Glenorchy, Makarora area and all other existing informal airports including private airstrips with the QLDC, used for fixed wing aircraft.*

273. Mr Barr did not address this policy directly in the Section 42A Report apart from in Appendix 1, where Mr Barr recommended that the notified policy be retained. The only additional evidence we received was from was Ms O'Sullivan, supporting Mr Barr's recommendation.[349]

274. In relation to the submission by Mr Wright (Submission 385) suggesting rewording, we note that this would require mapping of an outer control boundary for all airports/ informal airports identified. We do not have the evidence before us to undertake that task (Mr Wright did not include that information with his submission and did not appear at the hearing). As a result, we do not know what areas the Outer Control Boundaries of airports other than Wanaka and Queenstown could encompass or the existing and potential future uses of those areas. Nor do we have any evidence of the extent of aircraft use of those other airports. Consequently, we have no means to assess the costs and benefits (either qualitatively of quantitatively) if the relief sought were granted as required by section 32.

275. We do not consider that deletion of the policy would be the most appropriate means to achieve the relevant objective either – it would largely deprive the Council of the means to achieve that outcome. Accordingly, we recommend the policy be retained as notified subject to minor amendments to make "activity" plural.

276. As notified, Policy 21.2.7.2 read as follows:

> *21.2.7.2 Identify and maintain areas containing activities that are not sensitive to aircraft noise, within an airport's outer control boundary, to act as a buffer between the airport and activities sensitive to aircraft noise.*

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346 Submission 443
347 Submission 806
348 Submission 385
349 K O'Sullivan, Evidence , Page 7, Para 4.3

277. The submission from QAC sought that this policy be deleted[350] as it was redundant in light of Policies 21.2.7.1 and 21.2.7.3.

278. Mr Barr did not address this policy directly in the Section 42A Report apart from in Appendix 1, where Mr Barr recommended that the policy be retained. The only additional evidence we received was from was Ms O'Sullivan supporting Mr Barr's recommendation.[351] We consider that Policy 21.2.7.2 serves a useful purpose, distinct from Policies 21.1.7.1 and 21.2.7.3, by providing for activities that are neither ASANs nor open space. Accordingly, we recommend the policy be retained as notified.

279. Policies 21.2.7.3 and 21.2.7.4 as notified read as follows:

21.2.7.3 Retain open space within the outer control boundary of airports in order to provide a buffer, particularly for safety and noise purposes, between the airport and other activities.

21.2.7.4 Require as necessary mechanical ventilation for any alterations or additions to Critical Listening Environment within any existing buildings containing an Activity Sensitive to Aircraft Noise within the Queenstown Airport Outer Control Boundary and require sound insulation and mechanical ventilation for any alterations or additions to Critical Listening Environment within any existing buildings containing an Activity Sensitive to Aircraft Noise within the Queenstown Airport Air Noise Boundary.

280. The submission from QAC sought that these policies be retained[352]. There were no submissions seeking amendments to these policies[353] Again Mr Barr and Ms O'Sullivan were in agreement that they should be retained as notified.

281. In conclusion, we recommend that Policies 21.2.7.1 – 21.2.7.4 be retained as notified.

4.22 Objective 21.2.8

282. As notified, Objective 21.2.8 read as follows:

Avoid subdivision and development in areas that are identified as being unsuitable for development.

283. Submissions on this objective ranged from support[354], seeking its deletion[355], to its amendment[356] as follows:

Avoid, remedy or mitigate subdivision and development in areas specified on planning maps identified as being unsuitable for development.

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350 Submission 806

351 K O'Sullivan, Evidence , Page 7, Para 4.3

352 Submission 806

353 Although there were further submissions opposing QAC's submissions, those further submissions do not provide jurisdiction to amend the policies – refer discussion of this point in the context of the Strategic Chapters – Report 3 at Section 1.7.

354 Submission 339, 380, 706

355 Submissions 356, 806

356 Submissions 636, 643, 688, 693, 702

284. In the Section 42A Report, Mr Barr described the intention of the objective as being to manage development (usually rural living or commercial developments) from constraints such as hazards, noxious land uses, or identified landscape or rural amenity reasons. He noted that the ODP contained a number of building line restrictions or similar constraints. Taking account of the submissions, he reached the view that the objective could be rephrased so as not to be so absolute and better framed[357]. Responding to the submission from X Ray Trust[358] that the purpose of the objective was unclear as to what was trying to be protected, Mr Barr's view was that the policies would better define the areas in question. Mr Barr recommended rewording as follows;

Subdivision, use and development is avoided, remedied or mitigated in areas that are unsuitable due to identified constraints for development.

285. In the Council's memorandum on revising the objectives to be more outcome focused[359], Mr Barr recommended further rewording as follows;

Subdivision, use and development in areas that are unsuitable due to identified constraints is avoided, remedied or mitigated.

286. Ms Taylor's evidence for X Ray Trust agreed with this suggested rewording[360]. We agree that the absolute nature of the objective as notified could be problematic in regard to development proposals in the rural area. We also consider that the overlap between this objectives and the objectives in other parts of the plan dealing with constraints such as natural hazards and landscape needs to be addressed. We do not think that limiting the objective to areas identified on the planning maps is appropriate. That would still include notations such as ONL lines, the significance of which is addressed in Chapters 3 and 6. We regard the purpose of this objective as being to provide for constraints not addressed in other parts of the plan and we think the objective needs to say that. In effect it is operating as a catch all and in that context an avoid remedy or mitigate position is appropriate to preserve flexibility. However, we consider that a minor wording change is necessary to clarify that it is the effects of the constraints that are remedied or mitigated.

287. In summary, therefore, we recommend that Objective 21.2.8 be reworded to read;

Subdivision, use and development in areas that are unsuitable due to identified constraints not addressed by other provisions of this Plan, is avoided, or the effects of those constraints are remedied or mitigated.

4.23 Policies 21.2.8.1 – 21.2.8.2

288. As notified Policy 21.2.8.1 read as follows:

Assess subdivision and development proposals against the applicable District Wide chapters, in particular, the objectives and policies of the Natural Hazards and Landscape chapters.

357 C Barr, Section 42A Report, Page 102, Para 20.13
358 Submission 356
359 Council Memorandum dated 13 April 2016
360 L Taylor, Evidence, Appendix A, Page 5

289. Submissions on this policy ranged from support[361]; its deletion as superfluous or repetitive[362], amendment to include "indigenous vegetation, wilding and exotic trees"[363], amendment to include the Historic Heritage Chapter[364] or amendment to remove the "in particular" references entirely[365].

290. In the Section 42A Report, Mr Barr accepted that proposals were required to be assessed anyway against the District Wide chapters, but considered that a separate policy was needed to provide direction for proposals where the suitability of land had not been predetermined.[366] Mr Barr recommended further amendment to the policy such that it read as follows;

To ensure that any subdivision, use and development is undertaken on land that is appropriate in terms of the anticipated use, having regard to potential constraints including hazards and landscape.

291. Mr Farrell, in evidence for various submitters agreed with Mr Barr's reasons and resulting amendment to the policy[367].

292. We agree that as notified this policy is unnecessary. Mr Barr's suggested amendment addresses that issue, but we are concerned that there is no submission we could identify that would provide jurisdiction to make the suggested amendment. In addition, the issue of overlap with more detailed provisions elsewhere in the plan would need to be addressed. We think that the best course is to delete this policy and leave the objective supported by the second much more detailed policy that we are about to discuss.

293. Accordingly, we recommend that Policy 21.2.8.1 be deleted.

294. As notified Policy 21.2.8.2 read as follows;

Prevent subdivision and development within the building restriction areas identified on the District Plan maps, in particular:

a. In the Glenorchy area, protect the heritage value of the visually sensitive Bible Face landform from building and development and to maintain the rural backdrop that the Bible Face provides to the Glenorchy Township

b. In Ferry Hill, within the building line restriction identified on the planning maps.

295. The only submission related to this policy was by QPL[368] which sought its deletion along with the relevant objective and associated policy. This matter was not addressed in the Section 42A Report or in evidence. It appears to us that QPL's objection is linked to its opposition to particular building line restrictions affecting its property. Removal of the policy would leave no policy support for the identified building line restrictions. As such, we recommend that they be retained. If there are objections (like QPL's) to particular restrictions, they should be addressed

361 Submission 335
362 Submissions 433, 806
363 Submissions 339, 706
364 Submission 810
365 Submissions 513, 515, 522, 531, 537
366 C Barr, Section 42A Report, Page 102, Para 20.14
367 B Farrell, Evidence, Page 17, Para 61
368 Submission 806

in the Plan Map hearings. As it is, the Stream 13 Hearing Panel is recommending deletion of the building restriction area affecting QPL's property.

296. In summary, we recommend that Policy 21.2.8.2, be renumbered 21.2.8.1 but otherwise be retained as notified. We do note, however, that this policy has been amended by the Stage 2 Variations by the deletion of clause b. Our recommendation, therefore, only relates to the introductory words and clause a.

4.24 Objective 21.2.9

297. As notified, Objective 21.2.9 read as follows;

Ensure commercial activities do not degrade landscape values, rural amenity, or impinge on farming activities.

298. Submissions on the objective ranged from support[369], its deletion[370], amendment to include nature conservation values[371] or Manawhenua values[372], amendment to soften the policy by replacing *"Ensure*" with "*Encourage*" and inserting *"significant"* before the word landscape[373], and also amendment to provide for a range of activities so as to make it effects based in accordance with the RMA and for consistency.[374]

299. In considering these submissions, first in the Section 42A Report, and then further in reply, Mr Barr's recommended wording for the objective was as follows:

A range of activities are undertaken that rely on a rural location on the basis they do not degrade landscape values, rural amenity, or impinge on permitted and established activities.

300. We have already addressed our reasoning for combining this Objective 21.2.9 into Objective 21.2.1 (see Section 3.2 above). However, one aspect not directly addressed in the Section 42A Report was the submission opposed to an objective and policy approach that seeks to avoid or limit commercial activities in the Rural Zone[375]. We received no evidence in support of the submission. The reason for opposition, as set out in the submission was that there was no section 32 evidence that quantified the costs and benefits of the policy approach. We refer back to the introductory report (Report 1) discussing the requirements of section 32. Consideration of costs and benefits is required at the second stage of the evaluation, as part of the examination under section 32(1)(b) as to whether the provisions are the most appropriate way to achieve the objectives. The test for objectives (under s32(1)(a)) is whether they are the most appropriate way to achieve the purpose of the Act. Accordingly, we consider the submission misdirected and we recommend that it be rejected. We note that the submission from Shotover Trust[376] also sought the deletion of Policies 21.2.9.1 and 21.2.9.2 for the same reasons. We return to that point below.

301. The combining of Objective 21.2.9 into Objective 21.2.1 is, we consider, the most appropriate way to achieve the purpose of Act. While it follows that the individual policies under Objective

369 Submissions 217, 600
370 Submissions 248, 621, 624
371 Submissions 339, 706
372 Submission 810
373 Submission 624
374 Submission 608
375 Submission 248
376 Submission 248

21.2.9 as notified also move to be relocated under the new objective 21.2.1, we address those individual policies 21.2.9.1 – 21.2.9.6 below.

4.25 Policy 21.2.9.1

302. Policy 21.2.9.1 as notified read as follows:

> *21.2.9.1 Commercial activities in the Rural Zone should have a genuine link with the rural land resource, farming, horticulture or viticulture activities, or recreation activities associated with resources located within the Rural Zone.*

303. A submission on this policy sought specific reference to tourism activities.[377]

304. In Mr Barr's view, tourism activities were encompassed within the policy as it referred to commercial activities. Mr Barr was also of the view that for clarity that 'water' should be added to matters to be manged as activities on the surface of water are deemed to be a use of land.[378]

305. Mr Brown in evidence for QPL, noted the equivalent of this policy in its suggested reordered policies required a genuine link to the rural area, and stated that, *"This was important in that activities that could otherwise happen in an urban area, without a need for locating rurally, are discouraged."*[379] Mr Brown did not recommend any amendment to the wording of the policy.

306. We agree with Mr Brown as to the importance of the policy and with Mr Barr in that the reference to commercial activities already encompasses tourism. The amendment suggested by Mr Barr as to the inclusion of the word water we find does provide clarity as to the applicability of the policy, and we think is within scope, even though there is no submission directly seeking that wording.

307. As regards Submission 248 (noted above) opposing this and the following policy on the basis that the Council has not quantified the costs and benefits, we note the discussion of the Hearing Panel on the Strategic Chapters[380] (Report 3 in relation to Chapters3-6). If the submitter seeks to convince us these policies should be amended or deleted, it was incumbent on it to produce its own assessment of costs and benefits to enable us to be satisfied that course was appropriate. As it is, we are left with Mr Barr's uncontradicted, but admittedly qualitative evaluation[381], supported by Mr Brown's evidence, as above. We recommend the submission be rejected.

308. We therefore recommend that Policy 21.2.9.1 be relocated to be Policy 21.1.1.10 and worded as follows:

> *Commercial activities in the Rural Zone should have a genuine link with the rural land or water resource, farming, horticulture or viticulture activities, or recreation activities associated with resources located within the Rural Zone.*

4.26 Policy 21.2.9.2

309. Policy 21.2.9.2 as notified read as follows;

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377 Submission 806

378 C Barr, Section 42A Report, Page 46, Paras 13.24-13.25 and Appendix 4 – S32AA evaluation

379 J Brown, Evidence, Page 9, Para 2.14(d)

380 Report 3, Section 1.6

381 C Barr, Section 42A Report, pages 79-83

21.2.9.2 Avoid the establishment of commercial, retail and industrial activities where they would degrade rural quality or character, amenity values and landscape values.

310. The submissions on this policy;
   a. Sought deletion of the policy[382]
   b. Sought avoidance of forestry activities and addition of nature conservation values as a matter that could be degraded[383]
   c. Sought rewording so as to remove the word avoid and replace with enabling a range of activities while avoiding, remedying or mitigating adverse effects in order to ensure the maintenance of rural quality or character, amenity values and landscape values[384]

311. Mr Barr's view was that the use of the term avoid was appropriate but he also considered that the policy could be more positively phased. Mr Barr was also of the view that *"avoid, remedy or mitigate"* was better replaced with *"protect, maintain and enhance"*. The latter was derived from the overall goal of achieving sustainable management and in Mr Barr's opinion, reference to maintenance and enhancement can be used to take account of the positive merits of a proposal.[385] Mr Barr's revised wording of the policy was as follows;

Provide for the establishment of commercial, retail and industrial activities only where these would protect, maintain or enhance rural character, amenity values and landscape values.

312. Mr Farrell in evidence for RJL, considered the addition of the word *"only"* to be inappropriate, as it would mean that protection, maintenance or enhancement was required for the establish of a commercial activity.[386] Mr Farrell also considered the policy could be improved by reference to the quality of the environment rather than *"character"'* and *"landscape values"*.

313. Mr Brown in evidence for QPL (in the context of his revised policy ordering of the notified Objectives and Policies for 21.2.9 and 21.2.10) considered that 'protect, maintain and enhance' would be too high a hurdle for even the simplest of applications, particularly if considered at the scale of a single site.[387] Mr Brown recommend revised wording of his equivalent policy (21.2.2.4 in his evidence) to 21.2.9.2, by addition of the words *"wherever practical"*.

314. We note that Policy 21.2.9.2 is worded similarly to Policy 21.2.1.1, but in this case applies to commercial activities. In keeping with our findings on Policy 21.2.1.1 and taking account of our recommended shifting of Policies 21.2.9.1 – 21.2.9.6 to sit under Objective 21.2.1, the amendments suggested by Mr Farrell and Mr Brown do not align the policy in implementing the associated objective and are also inconsistent with the Stream 1B Hearing Panel's findings in relation to the Strategic Chapters.

315. Accordingly, we recommend that Policy 21.2.9.2 be relocated to be Policy 21.2.1.11 and worded as follows:

Provide for the establishment of commercial, retail and industrial activities only where these would protect, maintain or enhance rural character, amenity values and landscape values.

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382 Submissions 621, 624
383 Submission 706
384 Submission 806
385 C Barr, Section 42A Report, Page 46 - 47, Paras 13.27 – 13.28
386 B Farrell, Evidence, Page 18, Para 68
387 J Brown, Evidence, Page 8 Para 2.14 (b) – (c)

316. We address the submission of Mr Atly and the Forest & Bird as to nature conservation values in consideration of Policy 21.2.9.3 where similar amendments were sought.

4.27 Policy 21.2.9.3

317. Policy 21.2.9.3 as notified read as follows;

> *21.2.9.3 Encourage forestry to be consistent with topography and vegetation patterns, to locate outside of the Outstanding Natural Features and Landscapes, and ensure forestry does not degrade the landscape character or visual amenity values of the Rural Landscape.*

318. Submissions on this policy sought to make it more directive, exclude forestry from significant natural areas and add nature conservation values to matters not to be degraded.[388]

319. Mr Barr did not support making the policy more directive through replacing 'Encourage' with the term 'Avoid', as this would imply prohibited activity status. Mr Barr also considered that the inclusion of significant natural areas was a useful cross reference to the rules restricting the planting of exotic species in SNAs. Finally on this policy, Mr Barr did not support the inclusion of nature conservation values as elements of the definition of nature conservation values are set out in the policy.[389] We heard no other evidence on this matter.

320. The Stream 1B Hearing Panel has recommended that the policy referring to forestry refer to "production forestry" to make it clear that the policy focus has no connection to indigenous vegetation or biodiversity provisions and to limit the breadth of the reference to timber harvesting (which might otherwise be seen as inconsistent with the policy focus on controlling wilding species)[390]. We recommend the same change to this policy for the same reasons, and for consistency.

321. We agree with and adopt the reasoning set out by Mr Barr and recommend that the policy be relocated to be Policy 21.2.1.12 and worded as follows:

> *Encourage production forestry to be consistent with topography and vegetation patterns, to locate outside of the Outstanding Natural Features and Landscapes and outside of significant natural areas, and ensure production forestry does not degrade the landscape character or visual amenity values of the Rural Character Landscape.*

4.28 Policy 21.2.9.4

322. There were no submissions on Policy 21.2.9.4 and thus we do not need to consider it further, other than relocate it to become Policy 21.1.1.13.

4.29 Policy 21.2.9.5

323. Policy 21.2.9.5 as notified read as follows:

> *21.2.9.5 Limit forestry to species that do not have potential to spread and naturalise.*

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388 Submissions 339, 706

389 C Barr, Section 42A Report, Page 47, Para 13.22

390 See the discussion regarding recommended Policy 6.3.6 in Report 3, Section 8.5

324. Submissions on this policy sought that it be deleted[391] or be amended to apply only to exotic forestry.[392]

325. These submissions were not directly addressed in the Section 42A Report, although an amendment to the policy to limit it to exotic species only was incorporated in the recommended revised Chapter in Appendix 1. Mr Brown in evidence for QLP adopted Mr Barr's recommended amendment.[393]

326. We agree that the policy is appropriately clarified by its specific reference to exotic forestry and recommend that it be relocated to be Policy 21.2.1.14 and worded as follows:

Limit exotic forestry to species that do not have potential to spread and naturalise.

4.30 Policy 21.2.9.6

327. Policy 21.2.9.6 as notified read as follows;

21.2.9.6 Ensure traffic from commercial activities does not diminish rural amenity or affect the safe and efficient operation of the roading and trail network, or access to public places.

328. Submissions on this policy variously sought that it be retained[394], that it be deleted[395], or that it be amended to apply to only new commercial activities.[396]

329. Mr Barr did not recommend an amendment to this policy in the Section 42A Report.

330. Mr Farrell in evidence for RJL and D & M Columb, was of the view that this policy was not necessary as traffic effects were already addressed in the transport chapter of the ODP; that the policy should apply to all activities not just commercial activities and should be amended from *"does not diminish"* to *"maintain"*. [397] Mr Brown, in evidence for QPL did not recommended any amendment to the policy.[398]

331. We disagree with Mr Farrell that the transport chapter of the ODP removes the necessity for the policy. The policy has wider applicability than just transport issues through its inclusion of reference to rural amenity. We also consider that the policy is efficient and effective in its specific reference to the traffic effect of commercial operations not diminishing amenity, as it is precisely this issue that makes the policy consistent with objective.

332. However, we agree with the suggestion in the RJL and Columb submissions that the focus of the policy should be on *"new"* commercial activities.

333. Accordingly, we recommend that the wording policy be amended to insert the word *"new"* before "*commercial*" but otherwise be retained as notified and relocated to become Policy 21.2.1.15.

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391 Submission 806
392 Submission 600
393 J Brown, Evidence, Page8, Para 2.13
394 Submission 719
395 Submissions 621, 624
396 Submission 806
397 B Farrell, Evidence, Page 19 , Para 72
398 J Brown, Evidence, Page8, Para 2.13

4.31 Objective 21.2.10

334. As notified, Objective 21.2.10 read as follows;

Recognise the potential for diversification of farms that utilises the natural or physical resources of farms and supports the sustainability of farming activities.

335. Submissions on this policy sought that it be retained[399], or sought various wording amendments so that the objective applied to wider range of rural activities than just farms[400].

336. In the Section 42A Report, Mr Barr set out his view that the objective and associated policies had been included for the purpose of providing for the ongoing viability of farming and maintaining rural character and not to apply to activities on rural land that were not farming.[401] Notwithstanding this, Mr Barr considered that there was merit in the submission of Trojan Helmet, seeking that the range of land uses to which the objective was applicable be broadened, so long as it supported sustainability for natural resources in a productive and efficiency use context, as well as protecting landscape and natural resource values. He also considered it to be more effects based.[402] Mr Barr recommended rewording of the objective as follows;

Diversification of farming and other rural activities that supports the sustainability natural and physical resources.

337. In the Council's memorandum on revising the objectives to be more outcome focused[403], Mr Barr recommended further rewording as follows;

The potential for diversification of farming and other rural activities that supports the sustainability of natural and physical resources.

338. Mr Brown in evidence for Trojan Helmet *et al*; suggested deleting Objective 21.2.10 (along with Objective 21.2.9 and the associated policies for both objectives). We have addressed this batting order and aggregation suggestion in Section 3.2 above. We think that this objective is sufficiently different to 21.2.9 in the matters it addresses to be retained as a discrete outcome separate from the amalgamation of Objectives 21.2.9 and 21.2.1 (as discussed above). However, we consider that Mr Barr's revised wording needs further amendment so that it captures his reasoning as set out above and is consistent with recommended Policy 3.2.1.8. The suggested reference to sustainability in our view leaves the potential range of outcomes too open and fails to ensure the protection of the range of values referred to in Policy 3.2.1.8. It also needs amendment so that it is more correctly framed as an objective, and is then the most appropriate way to achieve the purpose of the Act.

339. As a consequence of amalgamating Objective 21.2.9 (and its policies) into Objective 21.2.1, this objective (and its policies) have been renumbered in Appendix 1.

340. We therefore recommend Objective 21.2.10, renumbered as 21.2.9, be worded as follows:

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399 Submission 217,325, 335, 356, 598, 600, 660, 662, 791, 794

400 Submissions 343,345, 375, 407, 430, 437, 456, 636, 643, 693, 702, 806

401 C Barr, Section 42A Report, Page 49, Para 13.39

402 C Barr, Section 42A Report, Page 50, Para 13.42 – 13.43

403 Council Memorandum dated 13 April 2016

Provision for the diversification of farming and other rural activities that protect landscape and natural resource values and maintains the character of rural landscapes.

4.32 Policy 21.2.10.1

341. Policy 21.2.10.1 as notified read as follows;

Encourage revenue producing activities that can support the long term sustainability of farms in the district.

342. Submissions on this policy variously sought that it be retained[404], be amended to apply to 'rural areas' rather than just 'farms'[405], or be amended to the following wording;

Enable revenue producing activities, including complementary commercial recreation, residential, tourism, and visitor accommodation that diversifies and supports the long term sustainability of farms in the district, particularly where landowners take a comprehensive approach to maintaining and enhancing the natural and physical resources and amenity or other values of the rural area.[406]

343. For similar reasons to those expressed in relation to Objective 21.2.10 (see Section 5.31 above), Mr Barr concurred with the submitters that the policy should be amended to apply to rural areas, and not just farms.

344. The Section 42A Report did not directly address the submission of Darby Planning[407] to widen the policy. In evidence for Darby Planning, Mr Ferguson considered that the amended policy suggested in the submission recognised the importance of the commercial recreation, residential and tourism activities that flows from the Strategic Directions Chapters. He was of the opinion that this more 'comprehensive approach' could lead to more sustainable outcomes.[408]

345. We agree with Mr Barr that Policy 21.2.10.1 should be amended to apply to rural areas, and not just farms, for similar reasons as we have discussed in relation to Objective 21.2.10. Again, for similar reasons as in relation to Objective 21.2.10, the consequence of broadening the policy to apply to rural areas is that some test of environmental performance is then required. Mr Ferguson suggested a test of maintaining and enhancing specified aspects of the rural environment. We consider that this is a good starting point. However, we do not think that the itemisation of commercial recreation, residential and tourism activities is necessary or desirable in this policy. Accordingly, we recommend that the submission of Darby Planning LP be only accepted in part.

346. In summary, we consider the following wording to be the most efficient and effective method to achieve the objective, namely:

Encourage revenue producing activities that can support the long term sustainability of the rural areas of the district and that maintain or enhance landscape values and rural amenity.

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404 Submissions 598, 600

405 Submissions 343, 345, 375, 430, 437, 456

406 Submission 608

407 Submission 608

408 C Ferguson, Evidence, Page 73

4.33 Policy 21.2.10.2

347. Policy 21.2.10.2 as notified read as follows;

Ensure that revenue producing activities utilise natural and physical resources (including buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural values.

348. Submissions on this policy ranged from support[409], amendment to include *"nature conservation values"*[410] or *'"manawhenua values"'*[411] as matters to be maintained or enhanced, amendment to specifically identify *"commercial recreation, residential, tourism, and visitor accommodation"* as revenue producing activities[412], amendment to *"maintain and / or enhance landscape values*" and *"and / or natural values"*[413], and finally amend to apply "generally" only to *"significant"* landscape values. [414]

349. In considering the submissions, for the overall reasons set out in relation to Objective 21.2.10, Mr Barr recommended that Policy 21.2.10.2 be reworded as follows;

Ensure that revenue producing activities utilise natural and physical resources (including buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural resources.[415]

350. In evidence for RJL, Mr Farrell considered that the policy set a high bar for revenue producing activities that he considered other high order provisions in Plan were seeking to enable.[416] Mr Farrell recommended that the policy be reworded as follows;

Promote revenue producing activities that utilise natural and physical resources (including buildings) in a way that maintains and enhances the landscape quality of the environment.

351. In evidence for Darby Planning, Mr Ferguson considered that the amended policy sought by the submitter was, for similar reasons as for 21.2.10.2, a more effective and efficient means of achieving the objectives of the PDP.[417]

352. We have already addressed the submissions on the inclusion of reference to *"nature conservation values'* or *"manawhenua values"* as matters to be maintained or enhanced, and we reach a similar conclusion: that it is not necessary to include reference to these matters in every policy.

353. The recommended wording by Mr Farrell to *"promote"* rather than *"ensure"* we find goes beyond the scope of the original submission and we therefore recommend that that amendment be rejected. Consistent with our finding on Policy 21.2.10.1, we are not convinced by Mr Ferguson's view that the suggested wording in the Darby Planning LP submission is a more effective and efficient means of achieving the objective.

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409 Submissions 430, 598
410 Submissions 339, 706
411 Submission 810
412 Submission 608
413 Submission 356
414 Submissions 621, 624
415 C Barr, Section 42A Report, Page 51, Para 13.44
416 B Farrell, Evidence, Page 19, Para 76
417 C Ferguson, Evidence, Page 13, Para 58

354. We consider however, that Mr Barr's suggestion fails to provide for consumptive activities (like mining) that by definition do not maintain or enhance natural resources.

355. Finally we accept the point made in Submission 356 that where the policy refers to *"natural and physical resources"*, and *"maintain and enhance"*, these need to be put as alternatives. We also consider the policy should be clear that it is existing buildings that it refers to.

356. Accordingly, we recommend that Policy 21.2.10.2 (renumbered 21.1.9.2) be worded as follows;

Ensure that revenue producing activities utilise natural or physical resources (including existing buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural resources.

4.34 Policy 21.2.10.3

357. Policy 21.2.10.3 as notified read as follows:

Recognise that the establishment of complementary activities such as commercial recreation or visitor accommodation located within farms may enable landscape values to be sustained in the longer term. Such positive effects should be taken into account in the assessment of any resource consent applications.

358. Submissions on this policy ranged from support[418]; amendment to include *"nature conservation values"* as matters to be sustained in the future[419]; amendment to specifically identify *"recreation"*, and/or *"tourism"* as complementary activities[420]; and amendment to substitute reference to people's wellbeing and sustainable management of the rural resource (instead of landscape values) as matters provided for by complementary activities, and to require consideration of such positive benefits in the assessment of resource consent applications.[421]

359. In the Section 42A Report, Mr Barr addressed the submissions on this policy in the general discussion on Objective 21.2.10 and Policies 21.2.10.1 and 21.2.10.2 we have noted above. As a result of that consideration, Mr Barr recommended that Policy 21.2.10.3 be reworded as follows;

Have regard to the establishment of activities such as tourism, commercial recreation or visitor accommodation located within farms where these enable landscape values and indigenous biodiversity to be sustained in the longer term.[422]

360. Mr Ferguson considered that the suggested changes did not go far enough. He did, however, identify that the Section 42A Report included some of the specific activities sought in the Darby Planning LP submission in this policy, but not in the preceding Policies 21.2.10.1 and 21.2.10.2.[423] Mr Farrell, in evidence for RJL *et al* supported the amendments in the Section 42A Report[424], but did not specify any reasons for reaching that conclusion.

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418 Submissions 430, 600
419 Submissions 339, 706
420 Submission 608, 621, 624
421 Submission 624
422 C Barr, Section 42A Report, Page 51, Para 13.44
423 C Ferguson, Evidence, Page 12, Paras 54 and 56
424 B Farrell, Evidence, Page 20, Para 80

361. When considered alongside the other policies under Objective 21.2.10, we agree that identification of tourism, commercial recreation and visitor accommodation located within farms is appropriate. We also think that reference to indigenous biodiversity rather than *"nature conservation values"* is appropriate as it avoids any confusion with the use of the defined term for the latter.

362. We do not, however, accept Mr Ferguson's rationale for seeking reference to residential activities. We do not regard expansion of permanent residential activities as being complementary to farming where it is not providing accommodation for on-site farm workers.

363. We do not consider the formula "have regard to" gives any direction as to how the policy will achieve the objective. Given that the objective is about how the provision of certain activities can have beneficial outcomes, we consider this policy would be better expressed as "providing for".

364. Accordingly, we recommend that Policy 21.2.10.3 (renumbered 21.2.9.3) be reworded as follows:

Provide for the establishment of activities such as tourism, commercial recreation or visitor accommodation located within farms where these enable landscape values and indigenous biodiversity to be sustained in the longer term.

4.35 Objective 21.2.11

365. As notified, Objective 21.2.11 read as follows;

Manage the location, scale and intensity of informal airports.

366. Submissions on this objective provided conditional support subject to other relief sought to policies and rules, including location and frequency controls[425], or sought amendments to provide for new informal airports and protect existing informal airports from incompatible land uses.[426] One submission also sought clarification in relation to its application to commercial ballooning in the district.[427]

367. In the Section 42A Report, Mr Barr expressed the view that the definition of aircraft included hot air balloons and therefore a site on which a balloon lands or launches from is an informal airport.[428]

368. Mr Barr did not recommend any amendments to the objective and associated policies for informal airports in the Section 42A Report. Rather, Mr Barr addressed details of the permitted activity standards governing setbacks, frequency of flights, standards for Department of Conservation operational activities and other matters.[429]

369. In the Council's memorandum on revising the objectives to be more outcome focused[430], Mr Barr recommended rewording of the objective as follows;

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425 Submissions 571, 723, 730, 732, 734, 736, 738, 739, 760, 843

426 Submission 607

427 Submission 217

428 C Barr, Section 42 Report, Page 76, Para 16.36

429 C Barr, Section 42 Report, Pages 69 - 78

430 Council Memoranda dated 13 April 2016

The location, scale and intensity of informal airports is managed.

370. Mr Dent, in evidence for Totally Tourism[431], considered that the objective was poorly worded and should be amended to indicate that informal airports are desired within the Rural Zone, but should be subject to their effects on amenity being managed.[432] Mr Dent recommended the objective be reworded as follows;

The operation of informal airports in the Rural Zone is enabled subject to the management of their location, scale and intensity.

371. Mr Farrell in evidence for Te Anau Developments[433], supported the submitter's request for new informal airports to be *"provided for"* in the objective protection of existing informal airports from incompatible land uses. Mr Farrell expressed the view that existing *"… informal airports face operational risks from potential reverse sensitivity effects associated with noise sensitive activities, which is an operational risk, and could result in unnecessary costs, to tourism operators."*[434]

372. In reply, Mr Barr, agreed and accepted the intent of Mr Dent's recommended amendment to the objective[435]. Mr Barr also agreed with Mr Farrell that a policy protecting existing informal airports from incompatible land uses was warranted, but not at expense of a policy that protects amenity from airports[436]. Mr Barr recommended alternative wording for the objective and set out a brief section 32AA analysis[437].

373. An objective that sets out that something is to be managed, but does not specify to what purpose or end result, does not take one very far. We agree with Mr Dent that it is the effects of informal airports that should be managed, but consider that his suggestion of 'enabling' goes too far. We found Mr Farrell's reasoning as to operational risks a little difficult to follow and the amended wording of the objective he supported unsatisfactory because it failed to address amenity effects. In conclusion, we prefer Mr Barr's reply version, which did address our concerns as to purpose, as being the most appropriate in terms of the alternatives available to us and in achieving the purposes of the Act.

374. Accordingly, we recommend that the wording of Objective 21.2.11 should be as follows:

The location, scale and intensity of informal airports is managed to maintain amenity values while protecting informal airports from incompatible land uses.

4.36 Policy 21.2.11.1

375. Policy 21.2.11.1 as notified read as follows:

Recognise that informal airports are an appropriate activity within the rural environment, provided the informal airport is located, operated and managed so as to minimise adverse effects on the surrounding rural amenity.

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431 Submission 571
432 S Dent, Evidence, Page 4, Paras 17 - 18
433 Submission 607
434 C Barr, Evidence, Page 24, Para 110
435 C Barr, Reply, Page 28, Para 9.19
436 C Barr, Reply, Page 27, Para 9.14
437 C Barr, Reply, Page 5, Appendix 2

376. Submissions on this policy ranged from conditional support subject to other relief sought to policies and rules including location and frequency controls[438]; or sought amendment to the words after '*managed'* to insert *'in accordance with CAA regulations'*[439]; amendment to replace '*minimise*' with '*avoid, remedy mitigate'* and limit to existing rural amenity values [440]; amendment to apply to existing informal airports and to protect them from surrounding rural amenity[441]; and finally amendment to include reference to flight path locations of fixed wing aircraft and their protection from surrounding rural amenity.[442]

377. As noted above, Mr Barr did not recommend any amendments to the policies for informal airports in the Section 42A Report.

378. Ms Macdonald, counsel for Skydive Queenstown Limited[443], suggested an amendment to the relief sought by the submitter, recognising that a function of a territorial authority was management of the effects of land use and that objectives, policies and rules could be prepared to that end. The amended relief was as follows:

Recognise that informal airports are an appropriate activity within the rural environment, provided the informal airport is located, operated and managed so as to minimise adverse effects on the surrounding rural amenity, and in accordance with Civil Aviation Act requirements.[444]

379. Mr Farrell's evidence for Te Anau Developments supporting the submitter's requested change was based on the same reasoning as we set out in relation to Objective 21.2.11 above.

380. Mr Dent in evidence for Totally Tourism considered that the policies (21.2.11.1 and 21.2.11.2) did not provide a credible course of action to implement the objective and set out recommended rewording.[445]

381. Mr Barr, in reply concurred with Mr Dent, and recommended similar changes to those proposed by Mr Dent.[446]

382. As noted in the reasons for the submission from Skydive Queenstown Limited, a territorial authority has no particular expertise in CAA matters. We therefore find that it is not effective and efficient for the policy to include requirements of CAA regulations that are for the CAA to administer.

383. On Mr Farrell's evidence in support of the relief sought by Te Anau Developments we reach a similar finding as for Objective 21.2.11 above. We also find that the protection of informal airports from incompatible uses could potentially be a separate policy and we address that matter in detail below. For present purposes, we find that that that issue should not be

438 Submissions 723, 730, 732, 734, 736, 738, 739, 760, 843
439 Submission 122
440 Submission 607
441 Submission 385
442 Submissions 285, 288
443 Submission 122
444 J Macdonald, Legal Submissions, Page 3, Para 5
445 S Dent, Evidence, Pages 4-5, Paras 19 - 20
446 C Barr, Reply, Page 29, 9.20

referenced in this policy. Similarly we think that the wording recommend by Mr Barr is effective and efficient in its alignment with the objective.

384. Accordingly we recommend that Policy 21.2.11.1 be reworded as follows;

Ensure informal airports are located, operated and managed so as to maintain the surrounding rural amenity.

4.37 Policy 21.2.11.2

385. Policy 21.2.11.2 as notified read as follows:

Protect rural amenity values, and amenity of other zones from the adverse effects that can arise from informal airports.

386. Submissions on this policy ranged from conditional support subject to other relief sought to policies and rules including location and frequency controls[447] or sought amendment to protect informal airports and flight path locations of fixed wing aircraft from surrounding rural amenity[448].

387. As we have already noted, Mr Barr did not recommend any amendments to the policies for informal airports in the Section 42A Report.

388. Similarly we addressed the evidence of Mr Farrell and Mr Dent, as well as Mr Barr's response in reply, under Policy 21.2.11.1 above. Again, we think that protection of informal airports should be addressed separately. Taking account of our recommended amendment to Policy 21.2.11.1, we find that a policy to address the adverse effects in non-rural zones from informal airports is required. Otherwise a policy gap would be remain.

389. Accordingly, we find that Policy 21.2.11.2 should remain as notified.

4.38 Additional Policy – Informal Airports

390. We observed above that there appeared to be a case to protect informal airports from incompatible activities. Considering the issues identified to us by a number of recreational pilots at the hearing and the evidence of Mr Dent, Mr Farrell and Mr Barr, we agree that a policy addressing that matter is appropriate in achieving the stated objective. Mr Barr, in reply, proposed the following wording of such an additional policy as follows;

21.2.11.3 Protect legally established and permitted informal airports from the establishment of incompatible activities.[449]

391. In reaching this view, Mr Barr did not recommend that the new policy flow through to a new rule to the same effect, given the administrative difficulties in identifying existing informal airport locations and noting that Objective 21.2.4 and associated policies already sought to protect permitted and legally established activities.[450] We tested the potential identification of informal airports with some of the recreational pilots at the hearings[451] and reached the conclusion that such a method would not be efficient. Mr Barr's proposed new policy refers to

447 Submissions 723, 730, 732, 734, 736, 738, 739, 760, 843

448 Submission 285, 288, 385, 607

449 C Barr, Reply, Appendix 1

450 C Barr, Reply, Pages 27-28, Paras 9.14 – 9.15

451 Mr Tapper and Mr Carlton

"legally established" informal airports. To our mind, consistent with the wording in the Act, we think that *"lawfully established"* is more correct.

392. We also consider that some qualification of reference to permitted informal airports is required. While Mr Barr is correct that Objective 21.2.4 and the related policies provide for permitted activities these are "anticipated" permitted activities. It would not be efficient to constrain land uses on the basis that they are incompatible with informal airports at all locations where the airports would meet the permitted activity standards. We also consider that it should only be the establishment incompatible activities in the immediate vicinity that the policy addresses.

393. We therefore recommend the inclusion of a new policy (21.2.11.3) worded as follows;

Protect lawfully established and anticipated permitted informal airports from the establishment of incompatible activities in the immediate vicinity.

4.39 New Objective and Policies – Informal Airports

394. Two submissions sought objectives and policies to *"enable the assessment of proposals that exceed the occasional /infrequent limitations"*[452]. The submission reasons identified that this relief was sought as the Plan is *"silent on how applications to exceed Standards 21.5.26.1 and 21.5.26.2 will be assessed and considered".*

395. We did not receive specific evidence on this matter. No specific wording of the objectives or policies were put before us. In the absence of evidence providing and/or justifying such objectives and policies, we recommend that these submissions be rejected.

4.40 Objective 21.2.12

396. Before addressing this specific objective, we note that we have already addressed the submissions seeking that the surface of water and it margins be placed in a separate chapter, in Section 3.4 above, concluding that rather than a separate zone, re-ordering of the rules would enable a clearer understanding of the provisions affecting the surface of waterbodies subset of the rural provisions. This objective and the policies to give effect to it, assist in clarifying which provisions affect waterbodies. In this part of the report we address the other submissions on this suite of objectives and policies.

397. As notified, Objective 21.2.12 read as follows:

Protect, maintain or enhance the surface of lakes and rivers and their margins.

398. Submissions on this objective variously sought that it be retained[453]; be amended to change the word "*Protect*"" to "*Preserve*"[454]; be amended to provide for appropriate recreational and commercial recreational activities[455]; be amended or deleted and replaced with an objective that provides for the benefits associated with a public transport system[456]; be amended to recognise the importance of water based transport[457]; be amended to delete "*protect, maintain and enhance*" and add after the word "*margins*" "*are safeguarded from inappropriate, use and*

452 Submissions 660, 662
453 Submission 356, 600, 758
454 Submission 339, 706
455 Submission 307
456 Submission 621
457 Submission 766

development"[458]; and finally be amended to delete "*protect, maintain and enhance*" and replace with "*avoid, remedy, mitigate*".[459]

399. In the Section 42A Report, Mr Barr considered that itemising the enabling opportunities within the objective would conflict with the "*protect, maintain and enhance"* wording.[460] However, Mr Barr also considered the use of the word "*preserve*" inappropriate and that the objectives and policies must contemplate change, which is the reason for managing the resource.[461] Mr Barr recommended that the submissions to the objective be rejected and no changes made.

400. In the Council's memorandum on revising the objectives to be more outcome focused[462], Mr Barr recommended rewording of the objective as follows;

The surface of lakes and rivers and their margins are protected, maintained or enhanced.

401. In evidence for RJL and Te Anau Developments, Mr Farrell's view was that the objective did not satisfactorily recognise how the surface of lakes and the margins could be used or developed in order to achieve sustainable management and that the qualifier *"from inappropriate use and development"* was required so that the objective accorded with section 6 of the Act[463].

402. Mr Brown in evidence for several submitters[464] recommended the objective be reworded as follows;

The surface of lakes and rivers and their margins are protected, maintained or enhanced while appropriate recreational, commercial recreational, and public transport activities that utilise those resources are recognised and provided for, and their effects managed.[465]

403. Mr Brown considered the change necessary to ensure this objective was appropriately balanced and provided a better context for the associated policies, as well as recognising lake and river-based public transport.[466]

404. In reply, Mr Barr agreed with Mr Brown that the objective should be broader and more specific as to the outcomes sought.[467] Mr Barr's recommended rewording of the objective was as follows;

The surface of lakes and rivers and their margins are protected, maintained or enhanced while providing for appropriate activities including recreational, commercial recreational, and public transport.

405. We agree with the witnesses that that it appropriate for the objective to be broadened. However, to our mind, the objective fails to capture the purpose for which the surface of lakes and rivers are being protected, maintained or enhanced. Turning to Mr Farrell's evidence in

458 Submission 621
459 Submissions766, 806
460 C Barr, Section 42A Report, Page 80, Para 17.9
461 C Barr, Section 42A Report, Page 80, Para 17.10
462 Council Memoranda dated 13 April 2016
463 B Farrell, Evidence, Page 20, Para 84
464 Submissions 307, 766, 806,
465 J Brown, Evidence, Page 14, Para 2.24
466 J Brown, Evidence, Page 15, Para 2.26 (a) and (b)
467 C Barr, Reply, Page 30, Para 10.1

relation to section 6 of the Act, that purpose relates to "*natural character*". Similarly, we find that the location where the "*appropriate activities"* occur also needs to be specified, namely, the "*surface of the lakes and rivers*". In addition, we are mindful of the Stream 1B Hearing Panel's recommendation that a policy in Chapter 6 provide for appropriate activities on the surface of water bodies[468] and the need for alignment.

406. Accordingly, we recommend that the objective be reworded as follows:

The natural character of lakes and rivers and their margins is protected, maintained or enhanced while providing for appropriate activities on the surface of the lakes and rivers, including recreation, commercial recreation, and public transport.

407. In summary, we consider that the revised objective is the most appropriate way to achieve the purpose of the Act in this context and having regard to the Strategic Direction objectives and policies in Chapters 3 and 6, and the alternatives available to us.

4.41 Policy 21.2.12.1

408. Policy 21.2.12.1 as notified read as follows;

Have regard to statutory obligations, the spiritual beliefs, cultural traditions and practices of Tangata Whenua where activities are undertaken on the surface of lakes and rivers and their margins.

409. There was one submission[469] from Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively Manawhenua)[470] seeking the following amendments to the policy;

Have regard to wahi tupuna, access requirements, statutory obligations, the spiritual beliefs, cultural traditions and practices of Manawhenua where activities are undertaken on the surface of lakes and rivers and their margins.

410. We note that the representatives of Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively Manawhenua) advised that the part of their submission seeking the change from the words Tangata Whenua to Manawhenua was no longer pursued when they appeared at the Stream 1A Hearing.

411. The parts of this submission left in play were not addressed in the Section 42A Report, and Appendix 1 of the Section 42A Report showed no recommended changes to the policy. We heard no evidence in regard to the policy and it was not addressed in Reply.

412. We note that the Stream 1A and 1B Hearing Panels have recommended objectives and policies in both Chapter 3[471] and Chapter 5[472] related to protection of wahi tupuna. We therefore find that it is appropriate that reference be made in this policy to wahi tupuna as a relevant issue, which will then link back to those provisions.

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468 Refer Recommended policy 6.3.33

469 We note that Queenstown Wharves GP Ltd, (Submission 766), withdrew its relief sought as to the deletion of all provisions referring to Tangata whenua.

470 Submission 810

471 Refer Recommended objective 3.2.7.1 and the related policies

472 Refer Recommended objective 5.4.5 and the related policies

413. The need or desirability of reference being made to *'access requirements'* is less clear and we do not recommend that change in the absence of evidence to support it.

414. In summary therefore, we recommend that Policy 21.2.12.1 be amended to read:

Have regard to statutory obligations, wahi tupuna, and the spiritual beliefs and cultural traditions of tangata whenua where activities are undertaken on the surface of lakes and rivers and their margins.

4.42 Policy 21.2.12.2

415. Policy 21.2.12.2 as notified read as follows:

Enable people to have access to a wide range of recreational experiences on the lakes and rivers, based on the identified characteristics and environmental limits of the various parts of each lake and river.

416. One submission sought that policy be retained[473]. Another submission sought that the policy be amended to delete the word 'identified' and add to the end of the policy "*specifically in or referred to by this plan*"[474]. A third submission did not recommend any specific wording but sought that the policy be amended to identify the anticipated high level of activity on the Kawarau River and also to recognise the Kawarau River as a strategic link for water based public transport.[475]

417. These submissions were not directly addressed in the Section 42A Report, and Appendix 1 to that report included no recommended changes to the policy.

418. Mr Brown, in evidence for QPL and Queenstown Wharves GP Limited, did not recommend any changes to the policy[476]. Mr Farrell in evidence for RJL *et al*, observed that the environmental limits referred to in the policy were not identified in the policy or elsewhere in the Plan, nor was it explained how they might be applied. In Mr Farrell's view, this would create uncertainty, and lead to unnecessary costs and frustration with plan administration.[477] Mr Farrell suggested this could be addressed by amending the policy so that it referred to the environmental limits identified in the plan.

419. This matter was not addressed in Council's reply and no amendments to the policy were recommended.

420. We note that the policy is to enable access to recreational experience on rivers. Some form of limit on an enabling policy is, in this case, appropriate, but we do not consider that those limits need specification in the plan. The limits may vary from environmental effects to safety issues and, as the policy states, will apply to various parts of each lake or river. For similar reasons, we do not agree that specific reference to the Kawarau River is required.

421. Accordingly, we recommend that the policy be retained as notified.

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473 Submission 766
474 Submission 621
475 Submission 806
476 J Brown, Evidence, Page 14, Para 2.24
477 B Farrell, Evidence, Page 21 Para 88

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 retained[478]. 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 transport[479]. 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 Ltd[481] 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 policy[483], 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 Arm[484]. 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 it[486]. 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.

4.44 Policy 21.2.12.4

433. Policy 21.2.12.4 as notified read as follows;

Recognise the whitewater values of the District's rivers and, in particular, the values of the Kawarau and Shotover Rivers as two of the few remaining major unmodified whitewater rivers in New Zealand, and to support measures to protect this characteristic of rivers.

434. Two submissions sought that the policy be 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 transport[487]. Two submissions sought amendment to the policy to include 'wild and scenic' values and to add the Nevis to the identified rivers.[488]

435. Mr Barr, identified that this policy was included to recognise the WCO on the Kawarau River and part of the Shotover River. Mr Barr agreed with Forest & Bird that the amendment to the WCO in 2013 to include the Nevis River meant that it was appropriate to include reference to that river in the policy[489]. The Section 42A Report did not reference the relief sought regarding the inclusion of *"wild and scenic"* values.

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487 Submissions 766, 806

488 Submissions 339, 706

489 C Barr, Section 42A Report, Page 82 – 83, Para 17.16

436. Mr Brown in evidence for QPL and Queenstown Wharves GP Limited recommended amending the policy to only refer to 'parts' of the Kawarau River as not all of the river was whitewater[490]. Mr Barr, in reply, agreed with that amendment and also recommended a grammatical change to the beginning of the policy.[491]

437. We note that the Frankton Arm is not part of the Kawarau River. Thus the policy would not apply to that part of the lake in any event.

438. We agree that the reference in the policy should be to 'parts' of the Kawarau and Shotover Rivers reflecting the fact that only sections of the rivers are *'whitewater'*. While the WCO identifies other outstanding characteristics (than whitewater) and it is clear that both rivers have large sections that could aptly be described as *'scenic'*, it is the whitewater sections that qualify as *'wild'*. Accordingly, we do not see addition of *'wild **and** scenic'* as adding anything to the policy.

439. Accordingly, we recommend that the policy be reworded as follows:

Have regard to the whitewater values of the District's rivers and, in particular, the values of parts of the Kawarau, Nevis and Shotover Rivers as three of the few remaining major unmodified whitewater rivers in New Zealand, and to support measures to protect this characteristic of rivers.

4.45 Policy 21.2.12.5

440. Policy 21.2.12.5 as notified read as follows;

Protect, maintain or enhance the natural character and nature conservation values of lakes, rivers and their margins, with particular regard to places with nesting and spawning areas, the intrinsic value of ecosystem services and areas of indigenous fauna habitat and recreational values.

441. Two submissions sought that the policy be retained[492]. 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 transport[493]. One submission sought the policy be amended as follows;

Protect, maintain or enhance the natural character and nature conservation values of lakes, rivers and their margins from inappropriate development, with particular regard to places with significant indigenous vegetation, nesting and spawning areas, the intrinsic values of ecosystems, and areas of significant indigenous fauna habitat and recreational values.[494]

442. We addressed the submissions seeking that the policy not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm, above. Submissions on this policy were not directly addressed in the Section 42A Report and Appendix 1 of the Section 42A Report showed no recommended changes to the policy.

443. Mr Farrell in evidence for RJL *et al* supported retention of the policy as notified.

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490 J Brown, Evidence, Page 16, Para 2.26 (d)

491 C Barr, Reply, Appendix 1, Page 21-6, Policy 21.2.12.4, Para 10.1

492 Submissions 339, 706

493 Submissions 766, 806

494 Submission 621

444. At the hearing, Ms Maturin representing Forest & Bird, noted that Forest & Bird should have sought the inclusion of wetlands into this policy, and indicated that Forest & Bird would be satisfied if that intention was added to the policy.[495]

445. Ms Lucas in evidence for UCES, considered that the policy only sought to protect, maintain or enhance natural character, whereas section 6(a) of the Act required that it be preserved.[496]

446. Mr Brown, in evidence for QPL and Queenstown Wharves GP Limited, recommended amending the policy to delete the words *"… natural character …"*[497]. Mr Brown explained that that wording was more appropriate in Policy 21.2.12.7 as

> *"… Policy 21.2.12.5 deals with nature conservation values and focusses on ecological values, and I consider that the intention to "protect, maintain and enhance" these is necessary and desirable. However, a jetty, for example, is likely to have some impact on natural character, and it is likely to be difficult to construct a jetty in a way that protects, maintains or enhances natural character. In this context, "natural character" is more aligned with "visual qualities" rather than with ecological values, and I therefore consider that "natural character" is better located in Policy 21.2.12.7 which deals with the effects of the location, design and use of structures and facilities, and for which the duty is to avoid, remedy or mitigate the effects."*[498]

447. Mr Barr, in reply, recommended a change to replace "*Protect, maintain or enhance*" with *"Preserve"* at the beginning of the policy and to include the words "*from inappropriate activities"*, after the word "*margins*". Mr Barr set out a brief section 32AA evaluation noting that in his view the amendments would better align with section 6 of the Act.[499]

448. The difficulty with this policy is that it is addressing two different considerations – natural character and nature conservation values. As Mr Brown notes, the principal focus is on the latter. Certainly, most of the examples noted relate to nature conservation values. Section 6(a) requires us to recognise and provide for preservation of the natural character of lakes and rivers (and protect them from inappropriate subdivision, use and development). On the face of the matter, *'preservation'* would therefore be a more appropriate policy stance for natural character of lakes and rivers than protection, maintenance and enhancement[500].

449. It does not necessarily follow that the same is true for nature conservation values. This is a similar, but arguably a broader concept than areas of significant indigenous fauna, the *'protection'* of which is required by section 6(c), which would suggest that *'protection'* rather than *'preservation'* is required for nature conservation values.

450. Mr Brown's suggested solution of shifting natural character into Policy 27.2.12.7 faces two hurdles. The first is that an "*avoid or mitigate"* instruction[501] is too weak a policy response for a matter whose preservation is required to be recognised and provided for, as well as being out

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495 S Maturin, Evidence, Page 10, Para 62

496 D Lucas, Evidence Page 9, Para 38

497 J Brown, Evidence, Page 14, Para 2.24

498 J Brown, Evidence, Page 18, Para 2.26 (c)

499 C Barr, Reply, Appendix 2, Page 5

500 Although the WCO speaks in terms of protection of the identified outstanding characteristics of the Kawarau River, which include natural character and, of course, section 6(a) uses both terms.

501 Mr Brown incorrectly described it as imposing a duty to *"avoid, remedy or mitigate".*

of line with the objective. Secondly, Policy 21.2.12.17 deals with structures and facilities. The PDP also needs to address activities on the surface of lakes and rivers.

451. As already noted, we asked in-house counsel at the Council to provide us with legal advice as to whether there is a meaningful difference between *'preservation'* and *'protection'* and her advice, in summary, is that there is not.

452. This suggests to us that the simplest solution is to retain the notified formulation.

453. We agree, however, with Mr Brown that some qualification is necessary for examples such as those he identified, in order for some development in these areas to occur.

454. Given Mr Farrell's support for the policy as notified (giving evidence for RJL) we do not need to give further consideration to the other aspects of the relief in RJL's submission.

455. Lastly, we do not consider that the failure by Forest & Bird to seek relief in the terms it now regards as desirable can be addressed in the manner Ms Maturin suggests.

456. Accordingly, we recommend that Policy 21.2.12.5 be reworded as follows:

Protect, maintain and enhance the natural character and nature conservation values of lakes, rivers and their margins from inappropriate activities with particular regard to nesting and spawning areas, the intrinsic value of ecosystem services and areas of indigenous fauna habitat and recreational values.

4.46 Policy 21.2.12.6

457. Policy 21.2.12.6 as notified read as follows;

Recognise and provide for the maintenance and enhancement of public access to and enjoyment of the margins of the lakes and rivers.

458. Two submissions sought that the policy be 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 transport[502]. One submission sought the policy be amended to include private investment/donation[503]. One submission sought that the policy be amended to include the words *"including jetty's [sic] and launching facilities"*[504] ;

459. We addressed the submissions seeking that the policy not apply to the Frankton Arm and the Kawarau River between Kawarau Falls and Chard Farm, above. Submissions on this policy were not directly addressed in the Section 42A Report and Appendix 1 of the Section 42A Report showed no recommended changes to the policy. We heard no evidence in support of Submissions 194 and 301. The reasons for the relief sought in the submissions related to funding of marina upgrades and the upgrades to specific jetties and boat ramps. We consider these issues are outside the jurisdiction of the Act and therefore recommend those submissions be rejected.

460. Accordingly, we recommend that Policy 21.2.12.6 remain as notified.

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502 Submissions 766, 806

503 Submission 194

504 Submission 301

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 link[505]. 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 TML[507] and Mr Brown's evidence for QPL and Queenstown Wharves Ltd[508] 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]

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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 policy[513]. 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 tourism[514]. 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 Report[515].

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 margins[516]. 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:

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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 effects[519]. 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 wash[521]. Mr Barr recommended that policy remain as notified.

479. Mr Farrell, in evidence for RJL *et al*, agreed with Mr Barr's recommendation[522] and Mr Brown, for QPL, did not recommend any amendments to the policy[523].

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]

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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 context[526]. Mr Barr recommended that the policy remain as notified.

486. Mr Brown, for QPL, did not recommend any amendments to the policy[527]. 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 place[528]. 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.

4.51 Objective 21.2.13

491. As notified, Objective 21.2.13 read as follows;

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

Enable rural industrial activities within the Rural Industrial Sub Zones, that support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.

492. One submission supported the objective[529]. One submission sought clarification as to the location of the Rural Industrial Sub-Zones[530]. One submission sought that the objective be amended as follows:

Enable rural industrial activities and infrastructure within the Rural Industrial Sub Zones, that support farming and rural productive activities, while avoiding remedying or mitigating effects on rural character, amenity and landscape values.[531]

493. In the Section 42A Report, Mr Barr identified that the Rural Industrial Sub Zone was located in Luggate (Map 11a)[532]. In Appendix 2 to that report, Mr Barr recommended that the submission from Transpower be rejected, noting that the Rural Industrial Sub Zone was distinct from the Rural Zone and would lend itself to infrastructure due its character and visual amenity.

494. In the Council's memorandum on revising the objectives to be more outcome focused[533], Mr Barr recommended rewording of the objective as follows;

Rural industrial activities within the Rural Industrial Sub Zones will support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.

495. Ms Craw, in evidence for Transpower, agreed with Mr Barr and noted that were no Transpower assets with the Rural Industrial Sub Zone[534].

496. We agree with Mr Barr's rewording of the objective as being more outcome orientated and find that it is the most appropriate way to achieve the purpose of the Act. We think that Mr Barr's reasoning supports the inclusion of the reference to infrastructure rather than the reverse. If the character and visual amenity (and the permitted activity rules) are consistent with infrastructure in this Sub Zone, the policy should provide for it.

497. Accordingly, we recommend that Objective 21.2.13 be reworded as follows;

Rural industrial activities and infrastructure within the Rural Industrial Sub-Zones will support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.

4.52 Policies 21.2.13.1 – 21.2.13.2

498. We observe that there were no submissions on Policies 21.2.13.1 and 21.2.13.2. We therefore recommend they be renumbered but otherwise be retained as notified.

529 Submission 217
530 Submission 806
531 Submission 805
532 C Barr, Section 42A Report, Page 51, Para 13.48
533 Council Memoranda dated 13 April 2016
534 A Craw, Evidence, Page 5, Para 26

4.53 New Policy – Commercial Operations Close to Trails

499. A submission from Queenstown Trails Trust[535] sought a new policy to enable commercial operations, associated with and close to trail networks.

500. In the Section 42A Report, Mr Barr considered that a policy recognising the potential benefits of the trail was generally appropriate, but that the policy should not extend to creating new rules or amending existing rules for the trails or related commercial activities, as it was important that the effects of such activities should be considered on a case by case basis.[536] Mr Barr undertook a section 32AA of the Act evaluation as to the effectiveness and efficiency of the policy and recommended wording for a policy that supported activities complementary to the trails as follows:

Provide for a range of activities that support the vitality, use and enjoyment of the Queenstown Trail and Upper Clutha Tracks Trail network on the basis that landscape and rural amenity is protected, maintained or enhanced and established activities are not compromised.

501. In reply, Mr Barr recommended the removal of the word *"Trail"* after the words "Upper Clutha Tracks"[537] which we understand was to correct an error.

502. We agree with and adopt Mr Barr's reasoning as set out above. Noting our recommendation above to combine notified Objectives 21.2.1 and 21.2.9, we find the new policy is the most appropriate way in which to achieve our recommended revised Objective 21.2.1.

503. Accordingly, we recommend a new policy to be worded and numbered as follows;

21.2.1.16 Provide for a range of activities that support the vitality, use and enjoyment of the Queenstown Trail and Upper Clutha Tracks networks on the basis that landscape and rural amenity is protected, maintained or enhanced and established activities are not compromised.

4.54 New Objective and Policies – Commercial Recreation Activities

504. A submission from Skydive Queenstown Ltd[538] sought insertion of the following new objective and policies;

Objective
Recognise and provide opportunities for recreation, including commercial recreation and tourism activities.

Policy
Recognise the importance and economic value of recreation including commercial recreation and tourist activities.

Policy
Ensure that recreation including commercial recreation and tourist activities do not degrade rural quality or character or visual amenities and landscape values

535 Submission 671
536 C Barr, Section 42A Report, Pages 45-46, Paras 13.18 – 13.22
537 C Barr, Reply, Appendix 1, Page 21-5
538 Submission 122

505. In the Section 42A Report, Mr Barr addressed this request only in a general sense as part of an overall consideration of commercial activities in the Rural Zone[539], expressing the view that recreation, commercial recreation and tourism were adequately contemplated and managed. Mr Barr recommended that the submission be rejected.

506. The evidence of Mr Brown for Skydive Queenstown Ltd did not, as far as we could identify, directly address this relief sought.

507. In evidence for Totally Tourism Ltd[540] and Skyline Enterprises Ltd[541], Mr Dent noted the objectives and policies under 21.2.9 (as notified) did not refer to *"commercial recreation activity"* and he also noted that there was a separate definition for *"commercial recreation activity"* as compared to the definition *of "commercial activity".*[542] Mr Dent went on to recommend the following objective and policies to fill the identified policy gap as follows;

Objective
Commercial Recreation in the Rural Zone occurs at a scale that is commensurate to the amenity vales of the specified location.

Policy
The group size of commercial recreation activities will be managed so as to be consistent with the level of amenity anticipated in the surrounding environment.

Policy
To avoid, remedy or mitigate the adverse effects of commercial recreation activities on the natural character, peace and tranquillity of remote areas of the District.

Policy
To avoid, remedy or mitigate any adverse effects commercial recreation activities may have on the range of recreational activities available in the District and the quality of the experience of people partaking of these opportunities.

Policy
To ensure the scale and location of buildings, noise and lighting associated with commercial recreation activities are consistent with the level of amenity anticipated in the surrounding environment.

508. In summary, Mr Dent considered that such a suite of provisions was appropriate given the contribution of commercial recreation activities to the district, but accepted that it was important that those activities did not adversely affect amenity values by way of noise, overcrowding and use of remote areas.[543] Mr Dent also noted that he had derived the policies from the ODP Section 4.4- Open Space and Recreation.

509. In reply, Mr Barr supported the intent of the Mr Dent's recommendation, but noted legal submissions from Council on the Strategic Chapters that ODP Section 4.4- Open Space and Recreation was part of Stage 2 of the plan review and not part of this PDP under our consideration. Mr Barr recommended that the submitter resubmit under Stage 2, rather than

539 C Barr, Section 42A Report, Page 20, Para 8.32
540 Submission 571
541 Submission 574
542 S Dent, Evidence, Page 11, Paras 65 -66
543 S Dent, Evidence, Page 11-12, Paras 68 -73

have the provisions in two places. Mr Barr also noted the provisions sought by Mr Dent were not requested in the submission of Totally Tourism Ltd.[544]

510. We consider Mr Dent's suggested objective both narrows the relief sought in Skydive Queenstown's submission and tailors it to be specific to the Rural Zone, and is therefore properly the subject of this chapter (rather than necessarily needing to be dealt with in Stage 2 of the District Plan Review). As such, we consider it is within the scope provided by that submission, and generally appropriate, subject to some tightening to better meet the purpose of the Act.

511. The suggested policies likewise address relevant issues, but require amendment both to align with the objective and to fall within the scope provided by the Skydive Queenstown submission (i.e. ensure rural quality or character or visual amenities and landscape values are not degraded).

512. In addition, we find that the inclusion of these objectives and policies is consistent both with the Stream 1B Hearing Panel's findings on the Strategic Chapters, and with our findings on the inclusion of reference to activities that rely on rural resources. We also consider that given the importance of Commercial Recreation Activities to the district, that it is important that the matter be addressed now, rather than leaving it for consideration as part of a later stage of the District Plan review.

513. Accordingly, we recommend that a new objective and suite of policies to be worded and numbered as follows as follows;

2.2.10 Objective
Commercial Recreation in the Rural Zone is of a nature and scale that is commensurate to the amenity vales of the location.

Policies

21.2.10.1 The group size of commercial recreation activities will be managed so as to be consistent with the level of amenity anticipated in the surrounding environment.

21.2.10.2 To manage the adverse effects of commercial recreation activities so as not to degrade rural quality or character or visual amenities and landscape values.

21.2.10.3 To avoid, remedy or mitigate any adverse effects commercial recreation activities may have on the range of recreational activities available in the District and the quality of the experience of people partaking of these opportunities.

21.2.10.4 To ensure the scale and location of buildings, noise and lighting associated with commercial recreation activities are consistent with the level of amenity existing and anticipated in the surrounding environment.

4.55 New Objective and Policies – Community Activities and Facilities

514. One submission sought the inclusion of objectives, policies and rules for community activities and facilities in the Rural Zone[545]. Appendix 2 of the Section 42A Report recommended the submission be rejected on the basis that the existing provisions in the PDP were appropriate in this regard.

544 C Barr, Reply, Page 34, Para 12.1
545 Submission 524

515. Ms McMinn, in tabled evidence for the Ministry of Education, noted that while the Ministry relies on designations under the Act for the establishment of schools, it also relies on policy support to enable ongoing education and community activities. Ms McMinn advised that the Ministry had similarly submitted on the proposed RPS and that for consistency with the proposed RPS, provisions such as sought in the Ministry's submission should be included[546]. Ms McMinn did not identify where in the Proposed RPS this matter was addressed.

516. We could not identify a response to this matter in the Council's reply.

517. On review of the decisions version of the proposed RPS we could not identify provisions providing for the enablement of education and community activities. The designation powers of a requiring authority are very wide and we are not convinced that additional policy support would make them any less effective.

518. Accordingly, we recommend that the submission of the Ministry of Education be rejected.

4.56 New Objective and Policies - Lighting

519. One submission sought a new objective and policies in relation to the maintenance of the ability to view the night sky, avoid light pollution and to promote the use of LED lighting in new subdivisions and developments[547].

520. Specific wording of the objectives or policies were included in the submission. Mr Barr, in the Section 42A Report considered that Policy 21.2.1.5 and the landscape assessment matters 21.7.14(f) already addressed the matters raised[548]. We did not receive specific evidence in support of the requested objective and policies. We agree with Mr Barr and in the absence of evidence providing and/or justifying such objectives and policies, we recommend that this submission be rejected.

5 21.3 OTHER PROVISIONS AND RULES

521. We understand the purpose of notified Section 21.3 is to provide clarification as to the relationship between Chapter 21 and the balance of the PDP. Section 21.3.1 as notified outlined a number of district wide chapters of relevance to the application of Chapter 21.

522. There was one submission on Section 21.3.1[549], which sought that specific emphasis be given to Chapter 30 as it relates to any use, development or subdivision near the National Grid. Mr Barr recommended acceptance in part of submission but we could find no reasons set out in the report for reaching that recommendation[550]. Ms Craw, in evidence for Transpower, stated incorrectly that the officer's report had recommended declining the relief sought and she considered that the planning maps and existing provisions were sufficient to guide plan users to the rules under Chapter 30 regarding the National Grid[551]. We with agree with Ms Craw that sufficient guidance is already provided by way of the maps.

523. Accordingly, we recommend that the Transpower submission be rejected.

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546 J McMinn, Tabled Evidence, Page 4, Paras 17 - 19
547 Submissions 568
548 C Barr, Sub
549 Submission 805
550 C Barr, Section 42A Report, Appendix 2, Page 80
551 A Craw, Evidence, Page 6 -7, Paras 34 -36

524. Consistent with our approach in other chapters, we recommend the table in 21.3.1 only refer to PDP chapters, and that it distinguish between those notified in Stage 1 and those notified subsequently or yet to be notified (by showing the latter in italics). We recommend this change as a minor and non-substantive change under Clause 16(2) of the First Schedule.

525. Sections 21.3.2 and 21.3.3, as notified, contained a mixture of rules of interpretation and advice notes. We recommend these be re-arranged such that the rules be listed under Section 21.3.2 Interpreting and Applying the Rules, and the remainder under Section 21.3.3 Advice Notes.. The re-arrangement, incorporating the amendments discussed below, are included in Appendix 1.

526. There were no submissions on notified Section 21.3.2. We now address each of the submissions on notified section 21.3.3.

527. We questioned Mr Barr on the as notified Clarification 21.3.3.3 which used "site" to refer to the Certificate of Title, whereas the definition of site in the PDP is an area of land held in one Certificate of Title. Mr Barr agreed that this was an error. We recommend that this be corrected under Clause 16(2) of the First Schedule. Accordingly, we recommend 21.3.3.3. be renumbered 21.3.3.1 (we consider it an advice note) and be reworded as follows;

Compliance with any of the following standards, in particular the permitted standards, does not absolve any commitment to the conditions of any relevant resource consent, consent notice or covenant registered on the computer freehold register of any property.

528. As notified, 21.3.3.5 read as follows:

Applications for building consent for permitted activities shall include information to demonstrate compliance with the following standards, and any conditions of the applicable resource consent conditions.

529. One submission sought this be deleted. It argued that the requirement was ultra vires as the consents in question are under the Building Act[552]. Mr Barr recommended the submission be rejected, but we could find no reasons set out in the report for reaching that recommendation[553]. We received no other evidence in regard to this matter.

530. We consider this provision is no more than an advice note and of no regulatory effect. We have left the wording unaltered and renumbered it 21.3.3.3.. Accordingly, we recommend that the submission of QPL be rejected.

531. Clarification point 21.3.3.7 as notified read as follows;

The existence of a farm building either permitted or approved by resource consent under Table 4 – Farm Buildings shall not be considered the permitted baseline for residential or other non-farming activity development within the Rural Zone.

532. One submission sought this be retained[554], one that it be deleted[555] as the Environment Court had called it into question, and one submission sought that the reference to "*or other non-*

552 Submission 806
553 C Barr, Section 42A Report, Appendix 2, Page 80
554 Submission 45
555 Submission 806

farming" be removed[556]. Mr Barr recommended the submissions seeking deletion or amendment be rejected, but we could find no reasons set out in the report for reaching that recommendation[557]. We received no other evidence in regard to this matter.

533. Taking into account the specific policy provision made for farm buildings (Policy 21.2.1.2) as opposed to the regime applying to residential and other non-farming activities, we conclude there is justification in retaining this statement. We also conclude it is more in the nature of a rule explaining how the regulatory regime of the Chapter applies. Accordingly, we recommend that this clause retain the notified wording after altering the reference to "Table 4" to "Rule 21.4.2 and Table 5" and relocated so as to be provision 21.3.2.5.

534. As notified, clarification point 21.3.3.8 read as follows;

The Ski Area and Rural Industrial Sub Zones, being Sub Zones of the Rural Zone, require that all rules applicable to the Rural Zone apply unless stated to the contrary.

535. Two submissions sought that this clarification be amended to state that in the event of conflict between the Ski Area Sub Zone Rules in as notified Table 7 and the other rules in Chapter 21, the provisions in Table 7 would prevail[558].

536. These submissions were not directly addressed in the Section 42A Report. Mr Fergusson in evidence for Soho Ski Area Ltd and Treble Cone Investments Ltd, addressed this clarification point as part of a wider consideration of the difference between Ski Area Sub Zone Accommodation and Visitor Accommodation in the Rural Area[559]. We addressed this difference between the types of accommodation in Section 5.19 above, and recommended a separate definition for Ski Area Sub Zone Accommodation. We think that this addresses the potential issue raised in the submission and accordingly recommend that the submission be rejected.

537. We find this to be an implementation rule and have relocated to be provision 21.3.2.6.

538. Clarification point 21.3.3.9 related to the calculation of "ground floor area" in the Rural Zone. One submission sought either that the clarification point be deleted, relying on the definition of "ground floor area", or that the definition of "ground floor area" be amended so as to provide for the rural area[560]. Mr Barr recommended the submission be rejected[561] but we could find no reasons set out in the report for him reaching that recommendation. We received no direct evidence on this matter.

539. Although Submission 806 states that there is a definition of "Ground floor area" in Chapter 2, that definition, as notified, only applied to signs[562], not buildings.. We note that the definition of ground floor area included in Section 21.3.3 is also included in Chapters 22 and 23. In our view, rather than repeating this as an implementation rule, it should be included in Chapter 2 as a definition. Therefore, we recommend that Submission 806 is accepted to the extent that

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556 Submission 519

557 C Barr, Section 42A Report, Appendix 2, Page 80

558 Submissions 610, 613

559 C Fergusson, Evidence, Pages 34-35, Para 129 - 133

560 Submission 806

561 C Barr, Section 42A Report, Appendix 2, Page 81

562 We note that the notified definition does not appear to define a ground area in any event and is the subject of the Stage 2 Variations.

21.3.3.9 is deleted and the definition is included in Chapter 2[563]. We also recommend that the equivalent amendments are made in Chapters 22 and 23.

540. Clarification Point 21.3.3.11 set out the meaning of the abbreviations used in the Rule Tables in 21.4 of the PDP. It also notes that any activity that is not permitted or prohibited requires a resource consent.

541. One submission form QPL sought that the clarification point be amended to ensure that the rules are applied on an effects basis[564]. Mr Barr recommended the submission be rejected[565], but we could find no reasons set out in the report for him reaching that recommendation. We received no direct evidence on this matter.

542. On review of the submission itself, it sets out as the reason for the submission that *"the Council should not attempt to list all activities that may occur and should instead rely on the proposed standard to ensure that effects are appropriately managed."*

543. To our mind, this has more to do with the content of rules than clarification of the meaning of the abbreviations, or the effect of activities being permitted or prohibited for that matter. We recommend that the submission as it relates to 21.3.3.11 be rejected. As a result of our re-arrangement of the clauses in 21.3.2 and 21.3.3, this is renumbered 21.3.2.9.

544. In his Reply Statement, Mr Barr recommended inclusion of the following three matters for clarification purposes:

21.3.3.11 The surface of lakes and rivers are zoned Rural, unless otherwise stated.

21.3.3.12 In this chapter the meaning of bed shall be the same as in section 2 of the RMA.

21.1.1.13 Internal alterations to buildings including the replacement of joinery is permitted.

545. We consider the first of these is a useful inclusion to avoid any ambiguity. We do not see the second as helpful as it may imply that when considering provisions in other chapters, the meaning of bed given in section 2 of the Act does not apply. We would have thought the defined term from the Act would apply unless the context required otherwise. Although we are not sure the third is necessary, there is no reason not to include it. We recommend these be included as 21.3.2.8 and 21.3.2.9.

6 SECTION 21.4 – RULES – ACTIVITIES

6.1 Structure of Rules and Tables

546. In considering the rules and their layout in the tables, we found these difficult to follow. For example, in some cases activities and standards were combined under 'activities'. In these situations, we recommend that the activities and standards be separated and the tables be renumbered. We note that we have already addressed the table for the surface of lakes and rivers, activities and standards in Section 3.4 above. Another example is where the rules specify that activities are prohibited with exceptions detailing what is permitted, rather than setting out firstly what is permitted and secondly, if the activity is not permitted, what the appropriate activity status is.

563 As a recommendation to the Stream 10 Hearing Panel.

564 Submission 806

565 C Barr, Section 42A Report, Appendix 2, Page 81

547. Taking those matters into account, we recommend re-ordering the tables into the following sequence, which we consider more logical and easier for plan users to follow:

Table 1	Activities Generally
Table 2	Standards applying generally in zone
Table 3	Standards applying to Farm Activities (additional to those in Table 2)
Table 4	Standards for Structures and Buildings (other than Farm Buildings) (additional to those in Table 2)
Table 5	Standards for Farm Buildings (additional to those in Table 2)
Table 6	Standards for Commercial Activities (additional to those in Table 2)
Table 7	Standards for Informal Airports (additional to those in Table 2)
Table 8	Standards for Mining and Extraction Activities (additional to those in Table 2)
Table 9	Activities in the Ski Area Sub Zone additional to those listed in Table 1
Table 10	Activities in Rural Industrial Subzone additional to those listed in Table 1
Table 11	Standards for Rural Industrial Subzone
Table 12	Activities on the Surface of Lakes and Rivers
Table 13	Standards for Activities on the Surface of Lakes and Rivers
Table 14	Closeburn Station: Activities
Table 15	Closeburn Station: Standards for Buildings and Structures

548. We consider these to be minor correction matters that can addressed under Clause 16(2) and we make recommendations accordingly.

549. In addition, the terminology of the rules themselves needs amendment; using the term "shall" could be read as providing a degree of discretion that is not appropriate in a rule context. We recommend that the term "must" replace the term "shall" except where the context requires the use of "shall" or another term. Again, we consider these to be minor correction matters that can be addressed under Clause 16(2) and we make recommendations accordingly.

6.2 Table 1 (As Notified) - Rule 21.4.1 - Activity Default Status

550. Rule 21.4.1 as notified identified that activities not listed in the rule tables were *"Non-complying"*" Activities. A number of submissions[566] sought that activities not listed in the tables should be made permitted.

551. We did not receive any direct evidence in regard to this matter, although Mr Barr addressed it in his Section 42A Report[567]. We agree with Mr Barr that it is not apparent that the effects of all non-listed activities can be appropriately avoided, remedied or mitigated in the Rural Zone across the District, such that a permitted activity status is the most appropriate way in which to achieve the objectives of Chapter 21. We therefore recommend that the default activity status for activities not listed in the rule table remain non-complying. Consistent with our approach

566 Submissions 624, 636, 643, 688, 693

567 C Barr, Section 42A Report, Paras 8.9 – 8.10

of listing activities from the least restricted to the most restricted, we recommend this rule be located at the end of Table 1. We also recommend that it only refer to those tables that list activities (as opposed to standards applying to activities). To remove any possible ambiguity we recommend it read:

Any activity not otherwise provided for in Tables 1, 9, 10, 12 or 14.

6.3 Rule 21.4.2 – Farming Activity

552. The only submissions on this rule supported it[568]. With the re-arrangement of the tables of standards discussed above, a consequential change is required to this rule to refer to Table 3 as well as Table 2. Other than that change and renumbering to 21.4.1, we recommend the rule be adopted as notified.

6.4 Rule 21.4.3 – Farm Buildings

553. As notified, Rule 21.4.3 provided for the "Construction or addition to farm buildings that comply with the standards in Table 4" as permitted activities.

554. Three submissions sought that the rule be retained[569]. One submission sought to roll-over provisions of the ODP so that farming buildings not be permitted activities.[570] One submission supported permitted activity status for farm buildings, but sought that Council be firm where a landholder establishes farm buildings and then makes retrospective application for consent so that the buildings can be used for a non-farming purposes[571].

555. Mr Barr, in the Section 42A Report, recommended that the submission from UCES be rejected for the reasons set out in the Section 32 Report.[572] The Section 32 Report concluded that administrative efficiencies can be achieved while maintaining landscape protection, by requiring compliance with standards in conjunction with a permitted activity status for farm buildings.[573]

556. We have already addressed the permitted activity status for farming activities in Section 7.3 above. Similarly, we have also addressed farm buildings in Policy 21.2.1.2, as notified, above (Section 5.3) and recommended allowing farm buildings on landholdings over 100 ha subject to managing effects on landscape values.

557. Accordingly, we recommend that Rule 21.4.3 be renumbered 21.4.2 and refer to Table 5, but otherwise be retained as notified.

558. We think that the submission of M Holor[574] raises a genuine issue regarding the conversion of farm buildings to a non-farming use, such as a dwelling. We are aware of situations in the district where applicants seeking consent for such conversions rely on existing environment arguments in order to obtain consent. This is sometimes referred to as 'environmental creep'.

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568 Submissions 325, 384, 600 (supported by FS1209, opposed by FS1034), 608
569 Submissions 325, 348, 608
570 Submission 145
571 Submission 45
572 C Barr, Section 42A Report, Page 29, Para 10.4
573 C Barr, Section 42A Report, Appendix 3, Section 32 Evaluation Report, Landscape, Rural Zone and Gibbston Character Zone, Pages 18 - 19
574 Submission 45

559. As notified, Rule 21.3.3.7 stated that farm building were not to be considered the permitted baseline for residential or other non-farming activities. We have recommended retaining this as implementation provision 21.3.2.5. We do not consider Submission 45 provides scope for any additional provision.

6.5 Rule 21.4.4 – Factory Farming

560. There were no submission on this rule. However, this is an instance where a "standard" in Table 2 (as notified) classified certain types of factory farming non-complying (notified Rule 21.5.11). In addition, notified Rules 21.5.9 and 21.5.10 set standards for pig and poultry factory farming respectively. There were no submissions to Rules 21.5.9, 21.5.10 or 21.5.11.

561. We recommend, as a minor amendment under Clause 16(2), that Rule 21.4.4 be renumbered 21.4.3, amended to be restricted to pigs and poultry, and to refer to Table 2 and 3. In addition, we recommend in the same way that notified Rule 21.5.11 be relocated to 21.4.4. The two rules would read:

21.4.3	Factory Farming limited to factory farming of pigs or poultry that complies with the standards in Table 2 and Table 3.	P
21.4.4	Factory Farming animals other than pigs or poultry.	NC

6.6 Rule 21.4.5 – Use of Land or Building for Residential Activity

562. As notified, Rule 21.4.5 provided for the "the use of land or buildings for residential activity except as provided for in any other rule" as a discretionary activity.

563. One submission sought that this rule be retained[575] and one sought that it be deleted[576].

564. The Section 42A Report did not address these submissions directly. Rather, Mr Barr addressed residential activity and residential/non-farming buildings in a general sense[577], concluding that Rule 21.4.5 was appropriate as non-farming activities could have an impact on landscape[578]. Although not directed to the submissions on this rule, Mr Barr considered that discretionary activity status was more appropriate to that of non-complying.

565. Mr Barr's discussion addressed submissions made by UCES. The UCES position was based on the potential for proposed legislative amendments to make the residential activity application non-notified if they are discretionary activities. This matter was also canvassed extensively in the Stream 4 Hearing (Subdivision). We adopt the reasoning of the Stream 4 Hearing Panel[579] in recommending this submission be rejected.

566. We heard no evidence from QPL in support of its submission seeking deletion of the rule. In tabled evidence for Matukitiki Trust, Ms Taylor agreed with the recommendation in the Section 42A Report.[580]

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575 Submission 355

576 Submission 806

577 C Barr, Section 42A Report, Pages 32-37, Paras 11.1 – 11.28

578 C Barr, Section 42A Report, Pages 36 – 37, Para 11.25

579 Report 7, Section 1.7

580 L Taylor, Evidence, Appendix A, Page 6

567. We accept Mr Barr's recommendation, given the submissions before us and the evidence we heard. Thus, we recommend the rule be retained as notified but be relocated to be Rule 21.4.10.

6.7 Rule 21.4.6 – One Residential Unit per Building Platform

568. As notified, Rule 21.4.6 provided for "One residential unit within any building platform approved by resource consent" as a permitted activity.

569. Three submissions sought that this rule be retained[581], four submissions sought that it be deleted[582], one submission sought that the rule be replaced with the equivalent provisions of the ODP[583] which would have had the effect of deleting the rule, and one submission sought that the rule be amended to clarify that it only applies to the activity itself, as there are other rules (21.4.7 and 21.4.8) that relate to the actual buildings[584].

570. In the Section 42A Report, Mr Barr addressed some of these points directly, noting that it is generally contemplated that there is one residential unit per fee simple lot and that Rule 21.4.12 provides for one residential flat per residential unit. He was of the opinion that the proposed change to a permitted activity status from controlled in the ODP would significantly reduce the number of consents without compromising environmental outcomes.[585]

571. At this point we record that that a similar provision to notified Rule 21.4.6, is also contained in Chapter 22, Rural Residential & Rural Lifestyle (Rule 22.5.12.1) which also has a limit within the Rural Lifestyle Zone of one residential unit within each building platform. Therefore, we address the number of residential units and residential flats within a building platform for the Rural, and Rural Lifestyle zones at the same time.

572. As notified, Rule 22.5.12.1, (a standard) provided for "One residential unit located within each building platform". Non-compliance with the standard results in classification as a non-complying activity.

573. Four submissions sought that this rule be deleted[586] and seven submissions sought that it be amended to provide for two residential units per building platform[587].

574. In the Section 42A Report for Chapter 22, Mr Barr considered that two dwellings within one building platform would alter the density of the Rural Lifestyle zone in such a way as to affect the rural character of the zone and also create an ill-conceived perception "that subdivision is contemplated based on the argument that the effect of the residential unit is already established"[588].

575. Responding to the reasons provided in the submissions, Mr Barr also considered that the rule was not contrary to Objective 3.2.6.1 as notified, which sought to ensure a mix of housing opportunities. In Mr Barr's view, that objective has a district wide focus and does not require

581 Submissions 355, 384, 806
582 Submissions 331, 348, 411, 414
583 Submission 145
584 Submission 608
585 C Barr, Section 42A Report, Page 34, Paras 11.11 - 11.14
586 Submissions 331, 348, 411, 414
587 Submissions 497, 513, 515, 530, 532, 534, 535
588 C Barr, Section 42A Report – Chapter 22, Pages 11 – 12, Paras 8.8 – 9.9

provision for intensification in all zones. Rather, the intention is that intensification be promoted within urban boundaries, but not in other zones.[589]

576. Mr N Geddes, in evidence for NT McDonald Family Trust *et al*[590], was of the view that to require discretionary activity status for an additional residential unit under 21.4.6 while a residential flat was a permitted activity, was unnecessary and unbalanced, and not justified by a s32 analysis. In relation to Rule 22.5.1.2.1, Mr Geddes observed that there was no section 32 analysis supporting the rule and he disagreed with Mr Barr as to the perception that subdivision was contemplated. He noted that subdivision is managed as a discretionary activity under Chapter 27, and two units in one approved building platform would provide a wider range of opportunities[591].

577. Mr Goldsmith, in evidence for Arcadian Triangle, suggested that within the Rural Lifestyle Zone, amending the residential flat provision to a separate residential unit was a fairly minor variation but needed caveats, e.g. further subdivision prevented, to avoid abuse. Mr Goldsmith considered two residential units within a single 1000m^2 building platform would not create a perceptible difference to one residential unit and one residential flat, where the residential flat could be greater than 70m^2. Addressing the subdivision issue raised by Mr Barr, Mr Goldsmith suggested that to make it clear that subdivision was not allowed, the rule could make subdivision a prohibited activity.[592]

578. Mr Farrell, in evidence for Wakatipu Equities Ltd[593] and G W Stalker Family Trust[594] raised similar issues to that of Mr Geddes and Mr Goldsmith. He also expressed the view that the rule contradicted higher level provisions (Objective 3.2.6.1) and noted that two residential units within a building platform would be a more efficient and effective use of resources[595]. However, in his summary presentation to us, Mr Farrell advised that his evidence was particularly directed to issues in the Wakatipu Basin, rather than to the wider District.

579. In reply, Mr Barr noted that residential flat *"…sits within the definition of Residential Unit, therefore, if two Residential Units are allowed, there would be an expectation that a Residential Flat would be established with each Residential Unit. In addition, within a single building platform with two Residential Units there could be four separate living arrangements. From an effects based perspective this could be well beyond what was contemplated when the existing building platforms in the Rural General Zone were authorised."*[596]

580. Mr Barr also considered that in the Rural and Rural Lifestyle Zones, the size of a residential flat could be increased from 70m^2 to 150m^2 to address the concern raised by Mr Goldsmith that the 70m^2 size for a residential flat was arbitrary and related to an urban context. Mr Barr also considered that this solution would mean, among other things, that subdivision of residential flat from a residential unit should be a non-complying activity, and that the only amendment required is to the definition of residential flat which would therefore reduce the complexity

589 C Barr, Section 42A Report – Chapter 22, Page 12, Para 8.10
590 Submissions 411, 414
591 N Geddes, Evidence, Page 6, Paras 34 - 35
592 W Goldsmith , Evidence, Page 14, Paras 4.3 – 4.6 and Summary, Page 1, Para 2
593 Submission 515
594 Submission 535
595 B Farrell, Evidence , Page 36 Para 155
596 C Barr, Reply, Chapter 21, Page 18, Para 6.3

associated with controlling multiple residential units within a single building platform.[597] We note that Mr Barr provided a similar response in reply regarding Chapter 22.

581. Mr Barr's recommended amendment to the definition of residential flat was as follows;

"Means a residential activity that comprises a self-contained flat that is ancillary to a residential unit and meets all of the following criteria:

a. Has a total floor area not exceeding 70m2, and 150m² in the Rural Zone and Rural Lifestyle Zone, not including the floor area of any garage or carport;

b. contains no more than one kitchen facility;

c. is limited to one residential flat per residential unit; and

d. is situated on the same site and held in the same ownership as the residential unit, but may be leased to another party.

Notes:

a. A proposal that fails to meet any of the above criteria will be considered as a residential unit.
b. Development contributions and additional rates apply."

582. Mr Barr recommended that Rule 21.4.6 and 22.5.12 remain as notified.

583. Firstly, we note that as regards the application of this rule in the Wakatipu Basin, the notification of the Stage 2 Variations has overtaken this process. It has also involved, through the operation of Clause 16B of the First Schedule to the Act, transferring many of these submissions to be heard on the Stage 2 Variations.

584. While we agree with Mr Barr that the simplicity of the solution he recommended is desirable, we do note our unease about using a definition to set a standard for an activity[598]. In this instance, however, to remove the standard from the definition would require amendment to all zones in the PDP. We doubt there is scope in the submissions to allow the Council to make such a change. Subject to these concerns, Mr Barr's solution effectively addresses the issues around potential consequential subdivision effects from creating a density of dwellings within a building platform that would not be consistent with the objectives in the strategic chapters and in this chapter.

585. Accordingly, we recommend that aside from renumbering, Rules 21.4.6 and 22.5.12.1 remain as notified and that the definition of Residential Flat be worded as follows:

"Means a residential activity that comprises a self-contained flat that is ancillary to a residential unit and meets all of the following criteria:

a. the total floor area does not exceed:

i. 150m² in the Rural Zone and Rural Lifestyle Zone;

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[597] C Barr, Reply, Chapter 21, Pages 18 - 19, Para 6.5

[598] We note that the Stream 6 Hearing Panel raised the same concerns.

ii. 70m^2 *in any other zone;*

not including in either case the floor area of any garage or carport;

b. it contains no more than one kitchen facility;

c. is limited to one residential flat per residential unit; and

d. is situated on the same site and held in the same ownership as the residential unit, but may be leased to another party.

Notes:

a. A proposal that fails to meet any of the above criteria will be considered as a residential unit.

b. Development contributions and additional rates apply."

586. We return to the issue of density as it applies to other rules and the objectives in Chapter 22 later in this report.

6.8 Rules 21.4.7 & 21.4.8– Construction or Alteration of Buildings Within and Outside a Building Platform

587. As notified, Rule 21.4.7, provided for "*The construction and exterior alteration of buildings located within a building platform approved by resource consent, or registered on the applicable computer freehold register, subject to compliance with the standards in Table 3*." as a permitted activity.

588. As notified, Rule 21.4.8, provided for "The exterior alteration of any lawfully established building located outside of a building platform, subject to compliance with the standards in Table 3." as a permitted activity.

589. Two submissions sought that Rule 21.4.7 be retained[599] and one submission sought that the rule be replaced with the equivalent provisions of the ODP[600] which relate to Construction and Alteration of Residential Buildings located within an approved residential building platform or outside a residential building platform.

590. One submission sought that Rule 21.4.8 be retained[601], one submission sought that the activity status be changed to discretionary and one submission sought that the rule be replaced with the equivalent provisions of the ODP [602] which relate to Construction and Alteration of Residential Buildings located within an approved residential building platform or outside a residential building platform.

591. In the Section 42A Report, Mr Barr addressed these matters, noting that there was general support for the provisions, and that, as we noted above, he considered that permitted activity status would significantly reduce the number of consents without compromising environmental

599 Submissions 238, 608
600 Submission 145
601 Submission 608
602 Submission 145

outcomes.[603] Mr Barr also considered that Rule 21.4.8 was necessary to provide for minor alterations of buildings that were lawfully established prior to the ODP regime which established the requirement for a building platform.[604]

592. Mr Haworth, in evidence for UCES on these rules, expressed the view that permitted activity status would engender an "anything goes" attitude and there would be less scrutiny given to proposals, which often results in greater adverse effects[605]. Mr Haworth considered that the controlled activity status in the same form as in the ODP should be retained so that adverse effects on landscape were adequately controlled.[606]

593. There was no evidence from UCES as to why, after 15 years of experience of the ODP regime, that a controlled activity was a more appropriate approach than a permitted activity with appropriate standards. In particular, no section 32 evaluation was presented to us which would have supported an alternative and more regulated approach. UCES sought this relief for a number of rules in Chapter 21 and in each case, the same position applies. We do not consider it necessary to address the UCES submission further.

594. In response to our questions, Mr Barr, in reply, recommended an amendment to Rule 21.4.8 as notified, to clarify that the rule applied to situations where there was no building platform in place. Mr Barr's recommended wording was as follows;

"The exterior alteration of any lawfully established building located outside of a building platform where there is not an approved building platform in place, subject to compliance with the standards in Table 3."

595. We consider that Mr Barr's suggested rewording confuses rather than clarifies the position, because it refers both to a building outside a building platform and to there being no building platform; a situation which cannot in fact exist. The answer is to delete the words, "*located outside of a building platform*". However, we also envisage a situation where there is a building platform in place and an extension is proposed that would extend the existing dwelling beyond the building platform. The NZIA[607] submission sought to address that circumstance by seeking discretionary activity status. From our reading this is already addressed in Rule 21.4.10 (as notified) that applies to construction not provided for by the any other rule as a discretionary activity and therefore no additional amendment is required to address it.

596. We concur with Mr Barr as to the activity status, and accordingly recommend that Rules 21.4.7 be renumbered 21.4.6 and the wording and activity status remain unchanged other than referring to Tables 2 and 4 rather than Table 3. We further recommend that Rule 21.4.8 be renumbered 21.4.7, the activity status remain permitted and be worded as follows;

"The exterior alteration of any lawfully established building where there is no approved building platform on the site, subject to compliance with the standards in Table 2 and Table 4."

6.9 Rule 21.4.9 – Identification of Building Platform.

597. As notified, Rule 21.4.9, provided for "The identification of a building platform not less than 70m² and not greater than 1000m²." as a discretionary activity.

603 C Barr, Section 42A Report, Page 34, Para 11.13
604 C Barr, Section 42A Report, Page 34, Para 11.14
605 J Haworth, Evidence, Page 21, Para 152
606 J Haworth, Evidence, Page 21, Para 156
607 Submission 328

598. Three submissions sought that the rule be deleted[608].

599. Mr Barr, in the Section 42A Report, recorded the reasons for the requested deletion from two of the submitters as being that "*defaulting to a non-complying activity if outside these parameters is arbitrary because* 'if the effects of a rural building platform sized outside of this range can be shown to be appropriate, there is no reason it should not be considered on a discretionary basis'."[609]

600. Mr Barr, did not disagree with that reason but noted "*that it could create a potential for proposals to identify building platforms that are very large (while taking the risk of having the application declined) and this in itself would be arbitrary. Similarly, if the effects of a rural building platform are appropriate irrespective of the size it would more than likely accord with s104D of the RMA*." [610] In tabled evidence[611] for X-Ray Trust Limited, Ms Taylor agreed with Mr Barr's recommendation[612].

601. We agree with Mr Barr's reasoning. We recommend that these submissions are rejected and that Rule 21.4.9 be remain as worded, but be renumbered 21.4.10.

6.10 Rule 21.4.10 – Construction not provided for by any other rule.

602. As notified, Rule 21.4.10, provided for "The construction of any building including the physical activity associated with buildings including roading, access, lighting, landscaping and earthworks, not provided for by any other rule." as a discretionary activity.

603. Five submissions sought the provision be amended[613] as follows;

"The construction of any building including the physical activity associated with buildings not provided for by any other rule."

604. Mr Barr considered the need to separate farming activities from non-farming activities in the Section 42A Report and noted that roading, access, lighting, landscaping and earthworks associated with non-farming activities can all impact on landscape.[614]

605. While arguably, specific reference to the matters listed is unnecessary since all are 'associated' with construction (and ongoing use) of a building, we think it is helpful to provide clarification of the sort of activities covered, for the reason Mr Barr identifies. Accordingly, we recommend that 21.4.10 be renumbered 21.4.11 and that the wording and activity status remain as notified.

6.11 Rule 21.4.11 – Domestic Livestock

606. There were no submissions on this rule. We recommend it be adopted as notified but renumbered as 21.4.8.

608 Submissions 693, 702, 806
609 C Barr, Section 42A Report, Page 37, Para 11.26
610 C Barr, Section 42A Report, Page 37, Para 11.27
611 FS1349
612 L Taylor, Evidence, Appendix A, Page 8
613 Submissions 636, 643, 688, 693, 702
614 C Barr, Section 42A Report, Pages 36-37, Para 11.25

6.12 Rule 21.4.12 – Residential Flat; Rule 21.4.13 - Home Occupations

607. As notified, Rule 21.4.12, provided for "Residential Flat (activity only, the specific rules for the construction of any buildings apply)." as a permitted activity.

608. As notified, Rule 21.4.13, provided for "Home Occupation that complies with the standards in Table 5." as a permitted activity.

609. One submission sought that Rule 21.4.12 be retained[615]. One submission sought that Rules 21.4.12 and 21.4.13 be deleted[616]. The reason stated for this relief was that the submitter considered these consequential deletions were needed for clarity that any permitted activity not listed but meeting the associated standards is a permitted activity and as such negates the need for such rules.

610. Mr Barr did not address these submissions directly in the Section 42A Report and nor did we receive any direct evidence in support of the deletion of these particular rules.

611. We have already addressed this matter in Section 7.2 above, noting that it is not apparent that the effects of all non-listed activities can be appropriately avoided, remedied or mitigated in the Rural Zone across the District, such that a permitted activity status is the most appropriate way in which to achieve the objectives of Chapter 21. We note that in Stream 6, the council officers recommended that reference to "residential flat" be removed as it was part of a residential unit as defined. That Panel (differently constituted) concluded that, as the definition of "residential unit" included a residential flat, there was no need for a separate activity rule for residential flat, but it would assist plan users if the listing of residential unit identified that such activity included a residential flat and accessory buildings. For consistency, "residential flat" should be deleted from this chapter and recommended Rule 21.4.5 read:

One residential unit, including a single residential flat and any accessory buildings, within any building platform approved by resource consent.

612. We so recommend.

613. We recommend that Rule 21.4.13 be retained as notified and renumbered 21.4.12..

6.13 Rule 21.4.14 – Retail sales from farms

614. As notified, Rule 21.4.14, provided for, as a controlled activity:

"Retail sales of farm and garden produce and wine grown, reared or produced on-site or handicrafts produced on the site and that comply with the standards in Table 5.
Except roadside stalls that meet the following shall be a permitted activity:

a. *the ground floor area is less than 5m²*

b. *are not higher than 2.0m from ground level*

c. *the minimum sight distance from the stall/access shall be 200m*

d. *the minimum distance of the stall/access from an intersection shall be 100m and, the stall shall not be located on the legal road reserve.*

615 Submission 608
616 Submission 806

Control is reserved to all of the following:

- *The location of the activity and buildings*
- *Vehicle crossing location, car parking*
- *Rural amenity and landscape character..”*

as a controlled activity.

615. One submission sought that the rule be amended so as to provide for unrestricted retail[617] and one submission sought that it be amended to a permitted activity for the reason to encourage locally grown and made goods for a more sustainable future[618].

616. These submissions were not directly addressed in the Section 42A Report and nor did we receive any evidence directly in support of these submissions.

617. Given that lack of evidence we recommend that the submissions be rejected.

618. This rule, however, is an example of a situation as we identified in Section 7.5 above, where a permitted activity has been incorporated as an exception within a controlled activity rule. We recommend that the permitted activity be separated out as its own rule, and that the remainder of the rule be retained as notified.

619. Accordingly, we recommend that Rule 21.4.14 be renumbered as 21.4.16 and worded as follows;

Retail sales of farm and garden produce and wine grown, reared or produced on-site or handicrafts produced on the site and that comply with the standards in Table 6, not undertaken through a roadside stall under 21.4.14.

Control is reserved to:

a. the location of the activity and buildings

b. vehicle crossing location, car parking

c. rural amenity and landscape character..”

as a controlled activity.

620. In addition, we recommend a new permitted activity rule numbered 21.4.14 be inserted and worded as follows:

Roadside stalls that meet the standards in Table 6.

621. We further recommend that standards for roadside stalls be inserted into Table 6 worded as follows:

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617 Submission 806

618 Submission 238

21.9.3.1 *The ground floor area of the roadside stall must not exceed 5m²*

21.9.3.2 *The height must not exceed 2m²*

21.9.3.3 *The minimum sight distance from the roadside stall access must be at least 200m*

21.9.3.4 *The roadside stall must not be located on legal road reserve.*

6.14 Rule 21.4.15 – Commercial Activities ancillary to recreational activities

622. As notified, Rule 21.4.15 provided for:

"Commercial activities ancillary to and located on the same site as recreational activities." as discretionary activities.

623. One submission sought that the rule be deleted so as to provide for commercial and recreational activities on the same site[619].

624. This submission was not directly addressed in the Section 42A Report, other than implicitly, through a recommendation that it should be rejected as set out in Appendix 2[620].

625. Mr Brown in evidence for QPL, considered that the rule should be expanded to provide for *"commercial recreational activities"* as well as *"recreational activities"* so as to provide clarification between these two activities which have separate definitions.[621].

626. Mr Barr, in reply considered that the amendment recommended by Mr Brown went some way to meeting the request of the submitter[622] and recommended that the Rule 21.4.15 be amended as follows;

"Commercial activities ancillary to and located on the same site as commercial recreational or recreational activities."

627. We agree with Mr Brown that for the purposes of clarity, commercial recreational activities need to be incorporated into the rule. We heard no evidence in support of the rule being deleted.

628. Accordingly, we recommend that the activity status remain as discretionary, and that Rule 21.4.15 be renumbered as 21.4.17 and worded as follows;

"Commercial activities ancillary to and located on the same site as commercial recreational or recreational activities."

6.15 Rule 21.4.16 – Commercial Activities that comply with standards and Rule 21.5.21 Standards for Commercial Activities

629. As notified, Rule 21.4.16, provided for:

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619 Submission 806

620 C Barr, Section 42A Report, Appendix 2, Page 93

621 J Brown, Evidence, Page 14, Para 2.20 – 2.21

622 C Barr, Reply, Page 10. Para 4.8

"Commercial recreation activities that comply with the standards in Table 5."
as a permitted activity.

630. One submission sought that the rule be retained[623] and one submission sought that the rule be amended to include Heli-Skiing as a permitted activity[624].

631. Rule 21.5.21 (Table 5 Standards for Commercial Activities) needs to be read in conjunction with Rule 21.4.16. As notified it read as follows:

"Commercial recreation activity undertaken on land, outdoors and involving not more than 10 persons in any one group."

632. Non-compliance with this standard required consent as a discretionary activity.

633. Two submissions sought that Rule 21.5.21 be retained[625], three submissions sought the number of persons be increased to anywhere from 15 – 28[626] and one submission sought that number of persons in the group be reduced to 5[627].

634. The Section 42A Report did not address the issue of heli-skiing within the definition of commercial recreational activity.

635. Mr Dent in evidence for Totally Tourism, identified that heli-skiing fell with the definition of "commercial recreational activity". We agree. Mr Dent described a typical heli-skiing activity and referenced the informal airport rules that applied and that heli-skiing activities undertaken on crown pastoral and public conservation land already required Recreation Permits and concessions. To avoid the additional regulation involved in requiring resource consents which would be costly and inefficient Mr Dent recommended that Rule 21.4.6 be reworded as follows;

"Commercial recreation activities that comply with the standards in Table 5, and commercially guided heli-skiing."[628]

636. This would mean that commercially guided heli-skiing would be a permitted activity, but not be subject to the standards in Table 5. Having agreed with Mr Dent that heli-skiing activities fall within the definition of commercial recreational activity, we do not see how an exemption exempting commercially guided heli-skiing from the standard applied to any other commercial recreation activity for commercially guided heli-skiing can be justified. We address the issue of the numbers of person in a group below. We therefore recommend that the submission of Totally Tourism be rejected.

637. In relation to the permitted activity standard 21.5.21, Mr Barr expressed the opinion in the Section 42A Report that

"… that the limit of 10 people is balanced in that it provides for a group that is commensurate to the size of groups that could be contemplated for informal recreation activities. Ten persons

623 Submission 806
624 Submission 571
625 Submission 315
626 Submissions 122, 621, 624
627 Submission 489
628 S Dent, Evidence, Page 13, Para 83

is also efficient in that it would fit a min-van or a single helicopter, which I would consider as one group."[629]

638. Mr Brown in evidence for QPL supported the group size of 10 person, as it recognised the small scale, low impact outdoor commercial recreation activities that can be accommodated without the resulting adverse effects on the environment and hence no need to obtain resource consent, compared to large scale activities that do require scrutiny.[630]

639. Mr Vivian, in evidence for Bungy NZ Limited and Paul Henry Van Asch, was of the opinion that the threshold of 5 people in a group (in the ODP) worked well and changing it to 10 people *"… would significantly change how those commercial guided groups are perceived and interact with other users in public recreation areas*"[631]. Mr Vivian, also noted potential safety issues as from his experience of applying for resource consents for such activities, safety was a key issue in consideration of any such application.

640. Ms Black, in evidence for RJL, was of the view that the number of persons should align with that of other legislation such as the Land Transport Act 2005, which provides for small passenger vehicles that carry 12 or less people and Park Management plans that provide concession parties of up to 15.[632] Mr Farrell, in evidence for RJL, concurred with Ms Black as to the benefit of alignment between the documents and recommended that the rule be reworded as follows:

"Commercial recreation activity undertaken on land, outdoors and involving not more than ~~10~~ 15 persons in any one group (inclusive of guides)."[633]

641. In reply Mr Barr, recommended increasing the number of persons from 10 to 12 to align with the minivan size, for the reasons set out in Ms Black's evidence.[634]

642. Safety in regard to group size may be a factor, but we think that there is separate legislation to address such matters. The alignment between minivan size and other legislation as to the size of any group may be a practical consideration. However, we consider that the more important point is that there are no implications in terms of effects. We also recommend that in both Rules 21.4.16 and Rule 21.5.21, the defined term by used (i.e. commercial recreation**al** activity) for clarity.

643. Accordingly we recommend that apart from that minor clarification and renumbering, Rule 21.4.16 be renumbered 21.4.13 with the Table reference amended, but otherwise remain as notified, and that Rule 21.5.21 be renumbered and worded as follows:

Commercial recreational activities must be undertaken on land, outdoors and must not involve more than 12 persons in any one group.

6.16 Rule 21.4.17 – Cafes and Restaurants

644. There were no submissions on this rule. We recommend it be retained as notified and renumbered as 21.4.18.

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629 C Barr, Section 42A Report, Page 48, Para 13.35
630 J Brown, Evidence, Page 14, Para 2.19
631 C Vivian, Evidence, Pages 26 – 27, Para 5.7
632 F Black, Evidence, Pages 7 – 8, Para 3.24 – 3.25
633 B Farrell, Evidence, Page 27, Para 124
634 C Barr, Reply, Page 10, Para 4.8

6.17 Rule 21.4.18 – Ski Area Activities within a Ski Area Sub Zone

645. As notified, Rule 21.4.18, provided for:

"Ski Area Activities within the Ski Area Sub Zone."

as a permitted activity.

646. One submission sought that the rule be amended to add *"subject to compliance with the standards in Table 7"*[635], as Table 1 does not specify what standards apply for an activity to be permitted (Table 7 as notified being the standards for Ski Area Activities within the Ski Area Sub Zones). Two submissions sought that the rule be moved completely into Table 7[636]. One submission sought that the Rule be amended as follows;

"Ski Area Activities within the Ski Area Sub Zone and Tourism Activities within the Cardrona Alpine Resort (including Ski Area Activities)."[637].

647. Mr Barr, in the part of the Section 42A Report addressing the submission of Soho Ski Area Ltd, noted that Table 1 generally set out activities and the individual tables set out the standards for those activities.[638] Mr Barr identified issues with Table 7. However, we address those matters later in this report. In addressing submissions and evidence on Objective 21.2.6 and the associated policies above, we have already addressed the requested insertion of reference to tourism activities and the specific identification of the Cardrona Alpine Resort, concluding that recognition of tourism activities was appropriate but that the specific identification of the Cardrona Alpine Resort was not; so we do not repeat that here.

648. In Section 7.1 above, we set out our reasoning regarding the overall structural changes to the tables and activities. However, we did not address Ski Activities within Ski Area Sub-Zones in that section. We found the rules on this subject matter to be complicated and the matters listed as standards in Table 7 to actually be activities. In order to provide clarity, we recommend that a separate table be created and numbered to provide for *"Activities within the Ski Area Sub Zones".*

649. None of the submissions on Rule 21.4.18 sought a change to the activity status for the ski area activities and accordingly, we do not recommend any substantive change to the rule. The end result is therefore that we recommend that the submissions seeking that Rule 21.4.18 be amended to refer to the Table 7 standards , and that it be shifted into a new Table 9, both be accepted in part.

6.18 Rule 21.4.19 – Ski Area Activities not located within a Ski Area Sub Zone

650. As notified, Rule 21.4.19, provided for:

"Ski Area Activities not located within a Ski Area Sub Zone, with the exception of heli-skiing and non-commercial skiing."

as a non-complying activity.

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635 Submission 407

636 Submissions 610, 613

637 Submission 615

638 C Barr, Section 42A Report, Page 57, Para 14.19

651. One submission sought that the rule be deleted[639] and one submission sought that the rule be amended or replaced to change the activity status from non-complying to discretionary[640].

652. In the Section 42A Report, Mr Barr considered that purpose of the rule was to encourage Ski Area Activities to locate within the Ski Area Sub Zones, in part to reduce the adverse effects of such activities on ONLs.[641] We agree. The objectives and policies we addressed above reinforce that position.

653. Mr Barr also noted that his recommended introduction of a policy to provide for non-road transportation systems such as a passenger lift system, which would cross land that is not within a Ski Area Sub Zone, would be in potential conflict with the rule. Accordingly, Mr Barr recommended an exception for passenger lift systems.[642]

654. Mr Brown, in evidence for Mt Cardrona Station Ltd, agreed with Mr Barr's recommended amendment, but noted that there was no rule identifying the status of passenger lift systems. Mr Brown considered that the status should be controlled or restricted discretionary, subject to appropriate assessment matters.[643] In his summary presentation to us at the hearing, Mr Brown advised that having reflected on this matter further, he considered restricted discretionary activity status to be appropriate. He recommended a new rule as follows:

Passenger lift systems not located within a Ski Area Sub Zone.

Discretion is reserved to all of the following:

a. The route of the passenger lift system and the extent to which the passenger lift system breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes

b. Whether the materials and colours to be used are consistent with the rural landscape of which the passenger lift system will form a part

c. Whether the geotechnical conditions are suitable for the passenger lift system and the extent to which they are relevant to the route.

d. Lighting

e. The ecological values of the land affected by structures and activities

f. Balancing environmental considerations with operational requirements

g. The positive effects arising from directly linking settlements with ski area sub zones and providing alternative non-vehicular access.[644]

639 Submission 806
640 Submission 615
641 C Barr, Section 42A Report, Page 64, Para 14.53
642 C Barr, Section 42A Report, Pages 64 - 65, Para 14.55
643 J Brown, Evidence, Page 25, Par 2.41
644 J Brown, Summary of Evidence, Pages 4-5, Para 17

655. In reply Mr Barr, noted that Mr Brown's recommended amendment would also be subject to the District Wide rules regarding earthworks and indigenous vegetation clearance and as such, Mr Barr considered the activity status and matters of discretion to be appropriate.[645]

656. Also in reply Mr Barr, while in accepting some of the changes suggested by Mr Brown, recommended that activity status for Ski Area Activities not located within a Ski Area Sub Zone remain as non-complying activities, with exceptions as follows;

Ski Area Activities not located within a Ski Area Sub Zone, with the exception of the following:

a. *Commercial heli skiing not located within a Ski Area Sub Zone is a commercial recreation activity Rule 21.4.16 applies*

b. *Passenger Lift Systems not located within a Ski Area Sub Zone shall be a restricted discretionary activity.*

Discretion is reserved to all of the following:

a. *The route of the passenger lift system and the extent to which the passenger lift system breaks the line and form of the landscapes with special regard to skylines, ridges, hills and prominent slopes*

b. *Whether the materials and colours to be used are consistent with the rural landscape of which the passenger lift system will form a part*

c. *Whether the geotechnical conditions are suitable for the passenger lift system and the extent to which they are relevant to the route*

d. *Lighting*

e. *The ecological values of the land affected by structures and activities*

f. *Balancing environmental considerations with operational requirements*

g. *The positive effects arising from directly linking settlements with ski area sub zones and providing alternative non-vehicular access.*[646]

657. Mr Barr provided justification for these changes by way of a brief section 32AA evaluation, noting the effectiveness of the provision with respect to cross zoning regulatory differences.

658. As we have addressed above, we consider that the Ski Area Activities not located within a Ski Area Sub Zone should be non-complying activities as this aligns with the objectives and policies. We think a description of the exceptions is appropriate, but that should not effectively include another rule with different activity status. Rather, if an exception is to have a different activity status, that should be set out as a separate rule.

659. We now turn to the activity status of a passenger lift system outside a Ski Area Sub Zone. As well as the evidence we heard, the Hearing Panel for Stream 11 (Ski Area Sub Zones) heard further evidence on this issue, with specific reference to particular ski areas. That Panel has

645 C Barr, Reply, Page 38 – 39, Para 14.3 – 14.5

646 C Barr, Reply, Appendix 1, Page 21-11

recommended to us, for the reasons set out in Report 15, that passenger lift systems outside of a Ski Area Sub Zone should be a restricted discretionary activity.

660. We accept and adopt the recommendations of the Stream 11 Panel for the reasons given in Report 15.

661. We recommend that Rule 21.4.19 therefore be reworded, and that a new rule numbered and worded as follows be inserted to address passenger lift systems located outside of Ski Area Sub-Zones. We also recommend that these rules be relocated to under the heading "Other Activities" in Table 1.

Table 1	Activities Rural Zone	Activity Status
21.4.25	Ski Area Activities not located within a Ski Area Sub-Zone, with the exception of the following: a. non-commercial skiing which is permitted as recreation activity under Rule 21.4.22; b. commercial heli-skiing not located within a Ski Area Sub-Zone, which is a commercial recreational activity to which Rule 21.4.13 applies; b. Passenger Lift Systems to which Rule 21.4.24 applies.	NC
21.4.24	Passenger Lift Systems not located within a Ski Area Sub-Zone Discretion is restricted to: a. The Impact on landscape values from any alignment, design and surface treatment, including measures to mitigate landscape effects including visual quality and amenity values. b. The route alignment and the whether any system or access breaks the line and form of skylines, ridges, hills and prominent slopes. c. Earthworks associated with construction of the Passenger Lift System. d. The materials used, colours, lighting and light reflectance. e. Geotechnical matters. f. Ecological values and any proposed ecological mitigation works. g. Balancing environmental considerations with operational requirements of Ski Area Activities. h. The positive effects arising from providing alternative non-vehicular access and linking Ski Area Sub-Zones to the roading network.	RD

6.19 Table 1 - Rule 21.4.20 – Visitor Accommodation

662. As notified, Rule 21.4.20, provided for:

"Visitor Accommodation."

as a discretionary activity.

663. One submission sought a less restrictive activity status[647] and one submission sought that visitor accommodation in rural areas be treated differently to that in urban areas due to their placing less demand on services[648].

664. In the Section 42A Report, Mr Barr considered that comparison of urban area provisions with rural area provision should be treated with caution as those urban provisions were not part of the Stage 1 review of the District Plan. Mr Barr also considered that nature and scale of the visitor accommodation activity and the potential selectivity of the location would be the main factors considered in relation to any proposal. He therefore recommended that the activity status remain discretionary.[649]

665. We heard no evidence in support of the submissions.

666. For the reasons set out in Mr Barr's Section 42A Report, we recommend that other than renumbering it, the rule remain as notified, subject to a consequential amendment arising from our consideration of visitor accommodation in Ski Area Sub Zones discussed below.

6.20 Table 1 - Rule 21.4.21 – Forestry Activities in Rural Landscapes

667. As notified, Rule 21.4.21, provided for:

"Forestry Activities in Rural Landscapes."

as a discretionary activity.

668. Two submissions sought that the activity status be amended to discretionary[650]. Mr Barr, in the Section 42A Report, identified that forestry activities were discretionary in the Rural Landscape areas (Rule 21.4.21) and non-complying in ONLs/ONFs (Rule 21.4.1).[651] We heard no evidence in support of the submissions. In reply, Mr Barr included some revised wording to clarify that it is the Rural Landscape Classification areas that the provision applies to.[652]

669. In the report on Chapter 6 (Report 3), the Hearing Panel recommended that the term used to describe non-outstanding rural landscapes be Rural Character Landscapes. That term should as a consequence be used in this context.

670. The submissions appear to be seeking to retain what was in the Plan as notified. We agree with Mr Barr and recommend that forestry activities remain discretionary in "Rural Character Landscapes".

6.21 Rule 21.4.22 – Retail Activities and Rule 21.4.23 – Administrative Offices

671. Both of these rules provide for activities within the Rural Industrial Sub-Zone. No submissions were received on these rules. We recommend they be retained as notified, but relocated into Table 10 which lists the activities specifically provided for in this Sub-Zone.

6.22 Rule 21.4.24 – Activities on the surface of lakes and rivers

672. As notified, Rule 21.4.24, provided for:

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647 Submission 806

648 Submission 320

649 C Barr, Section 42A Report, Page 103, Para 201.19

650 Submissions 339, 706

651 C Barr, Section 42 A Report, Page 43, Para 13.5

652 C Barr, Reply, Appendix 1, Page 21-11

"Activities on the surface of lakes and rivers that comply with Table 9."

as a permitted activity.

673. One submission generally supported this provision[653]. Other submissions that were assigned to this provision in Appendix 2 of the section 42A Report, actually sought specific amendments to Table 9 and we therefore deal with those requests later in this report.

674. We have already addressed requests for repositioning the provisions regarding the surface of water in Section 3.4 above, and concluding that reordering and clarification of the activities and standards in the surface of lakes and river table to better identify the activity status and standards was appropriate. Accordingly, we recommend that provision 21.2.24 be moved to Table 12 and renumbered, but that the activity status remain permitted, subject to the provisions within renumbered Table 13.

6.23 Rule 21.4.25 – Informal Airports

675. As notified, Rule 21.4.25, provided for:

"Informal airports that comply with Table 6."

as a permitted activity.

676. The submissions on this rule are linked to the Rules 21.5.25 and 21.5.26, being the standards applying to informal airports. It is appropriate to deal with those two rules at the same time as considering Rule 21.4.25.

677. As notified, the standards for informal airport Rules 21.5.25 and 21.5.26 (Table 6) read as follows;

	Table 6 - Standards for Informal Airports	**Non-Compliance**
21.5.25	**Informal Airports Located on Public Conservation and Crown Pastoral Land** Informal airports that comply with the following standards shall be permitted activities: 21.5.25.1 Informal airports located on Public Conservation Land where the operator of the aircraft is operating in accordance with a Concession issued pursuant to Section 17 of the Conservation Act 1987; 21.5.25.2 Informal airports located on Crown Pastoral Land where the operator of the aircraft is operating in accordance with a Recreation Permit issued pursuant to Section 66A of the Land Act 1948; 21.5.25.3 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities; 21.5.25.4 In relation to points (21.5.25.1) and (21.5.25.2), the informal airport shall be located a minimum	D

653 Submission 307

	Table 6 - Standards for Informal Airports	Non-Compliance
	distance of 500 metres from any formed legal road or the notional boundary of any residential unit or approved building platform not located on the same site.	
21.5.26	**Informal Airports Located on other Rural Zoned Land** Informal Airports that comply with the following standards shall be permitted activities: 21.5.26.1 Informal airports on any site that do not exceed a frequency of use of 3 flights* per week; 21.5.26.2 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities; 21.5.26.3 In relation to point (21.5.26.1), the informal airport shall be located a minimum distance of 500 metres from any formed legal road or the notional boundary of any residential unit of building platform not located on the same site. * note for the purposes of this Rule a flight includes two aircraft movements i.e. an arrival and departure.	D

678. There were eleven submissions that sought that Rule 21.4.25 be retained[654], and six submissions that sought it be deleted[655] for various reasons including seeking the retention of ODP rules.

679. For Rule 21.5.25, submissions variously ranged from:
   a. Retain as notified[656]
   b. Delete provision[657]
   c. Delete or amend (reduce) set back distances in 21.5.25.4
   d. Amend permitted activities list 21.5.25.3 to include operational requirements of Department of Conservation[658]

680. For Rule 21.5.26, submissions variously ranged from:
   a. Retain as notified[659]
   b. Delete provision[660]
   c. Delete or amend (increase) number of flights in 21.5.26.1[661]
   d. Delete or amend (reduce) set back distances in 21.5.26.3[662]
   e. Amend permitted activities list 21.5.26.2 to only to emergency and farming[663], or amend to include private fixed wing operations and flight currency requirements[664]

654 Submissions 563, 573, 608, 723, 730, 732, 734, 736, 738, 739, 760, 843
655 Submission 109, 143, 209, 213, 500, 833
656 Submissions 315, 571, 713
657 Submissions 105, 135, 162, 211, 500, 385
658 Submission 373
659 Submissions 571, 600
660 Submissions 93, 105, 162, 209,211, 385, 883
661 Submissions 122, 138, 221, 224, 265, 405, 423, 660, 662
662 Submissions 106, 137, 138, 174, 221, 265, 382, 405, 423, 660, 723, 730, 732, 734, 736, 738, 739, 760, 784, 843
663 Submission 9
664 Submission 373

f. Amend 21.5.26.1 to read as follows "Informal Airports where sound levels do not exceed limits prescribed in Rule 36.5.14".

681. In the Section 42A Report, Mr Barr recorded that the change from the system under the ODP where all informal airports required resource consents, to permitted activity status under the PDP was motivated in part by a desire to reduce the duplication of authorisations that were already required from the Department of Conservation or Commissioner of Lands and that details were set out in the Section 32 Report.[665] Mr Barr also recorded that noise standards were not part of this Chapter, but were rather considered under the Hearing Stream 5 (District Wide Provisions).[666]

682. Our understanding of the combined rules was assisted by the evidence of Dr Chiles. He explained the difficulty in comprehensively quantifying the noise effects from infrequently used airports. We understood that the two New Zealand Standards for airport noise (NZ6805 and NZS6807) required averaging of aircraft sound levels over periods of time that would not adequately represent noise effects from sporadic aircraft movements that are usually associated with informal airports.

683. Dr Chiles explained that the separation distance of 500m required by Rules 21.5.25.4 and 21.5.26.3 should result in compliance with a 50 DB L_{dn} criterion for common helicopter flights unless there were more than approximately 10 flights per day.[667] Dr Chiles was also satisfied that for fixed wing aircraft, at 500m to the side of the runway there would be compliance with 55 dB L_{dn} and 95 dB L_{AE} for up to 10 flights per day. However, he noted, compliance off the end of the runway may not be achieved until approximately 1 kilometre away.[668]

684. For those occasions where compliance with the noise criteria referred to above could not be achieved, Dr Chiles concluded that the relevant rules in Chapter 36 (recommended Rules 36.5.10 and 36.5.11) would apply. As we understood his evidence, the purpose of the informal airport rules in this zone are to provide a level of usage as a permitted activity that could be expected to comply with the rules in Chapter 36, but compliance would be expected nonetheless.

685. Mr Barr reviewed all the evidence provided in his Reply Statement and recommended amendments to the rules:
   a. providing for Department of Conservation operations on Conservation or Crown Pastoral Land;
   b. requiring 500m separation from zone boundaries, but not road boundaries; and
   c. providing for informal airports on land other than Conservation or Crown Pastoral Land to have up to 2 flights per day (instead of 3 per week).

686. We agree that the provision of some level of permitted informal activity in the Rural Zone is appropriate, as opposed to the ODP regime where all informal airports require consent. While we heard from submitters who considered more activity should be allowed as of right, and others who considered no activity should be allowed, we consider Mr Barr and Dr Chiles have proposed a regime that will facilitate the use of rural land by aircraft while protecting rural amenity values. Consequently, we recommend that Rule 21.4.25 be renumbered and amended

665 C Barr, Section 42A Report, Page 71, Paras 16.6 – 16.7
666 C Barr, Section 42A Report, Pages 70 – 71, Paras 16.3 – 16.4
667 Dr S Chiles, EiC, paragraph 5.1
668 ibid, paragraph 5.2

to refer to the standards in Table 7, and that Rules 21.5.25 and 21.5.26 be renumbered and revised to read:

	Table 7 - Standards for Informal Airports	**Non-Compliance**
21.10.1	**Informal Airports Located on Public Conservation and Crown Pastoral Land** Informal airports that comply with the following standards shall be permitted activities: 21.10.1.1 Informal airports located on Public Conservation Land where the operator of the aircraft is operating in accordance with a Concession issued pursuant to Section 17 of the Conservation Act 1987; 21.10.1.2 Informal airports located on Crown Pastoral Land where the operator of the aircraft is operating in accordance with a Recreation Permit issued pursuant to Section 66A of the Land Act 1948; 21.10.1.3 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities, or the Department of Conservation or its agents; 21.10.1.4 In relation to Rules 21.10.1.1 and 21.10.1.2, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit or approved building platform not located on the same site.	D
21.10.2	**Informal Airports Located on other Rural Zoned Land** Informal Airports that comply with the following standards shall be permitted activities: 21.10.2.1 Informal airports on any site that do not exceed a frequency of use of 2 flights* per day; 21.10.2.2 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities; 21.10.2.3 In relation to rule 21.10.2.1, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit of building platform not located on the same site. * note for the purposes of this Rule a flight includes two aircraft movements i.e. an arrival and departure.	D

6.24 Rule 21.4.26 – Building Line Restrictions

687. As notified, Rule 21.4.26, provided for:

"Any building within a Building Restriction Area identified on the Planning Maps."
as a noncomplying activity.

688. The only submission on this rule[669] related to a specific building restriction area adjoining and over the Shotover River delta. That submission was deferred to be heard in Hearing Stream 13. We recommend the rule be retained as notified.

6.25 Rule 21.4.27 – Recreational Activities

689. This rule provided for recreation and/or recreational activities to be permitted. There were no submissions on this rule. We recommend it be retained as notified but relocated and renumbered to be the first activity listed under the heading "Other Activities".

6.26 Rules 21.4.28 & 21.4.29 - Activities within the Outer Control Boundary at Queenstown and Wanaka Airports

690. As notified, Rule 21.4.28, provided for:

> *"New Building Platforms and Activities within the Outer Control Boundary - Wanaka Airport*
> *On any site located within the Outer Control Boundary, any new activity sensitive to aircraft noise or new building platform to be used for an activity sensitive to aircraft noise (except an activity sensitive to aircraft noise located on a building platform approved before 20 October 2010)."*
>
> as a prohibited activity.

691. Two submissions sought that the provision be retained[670]. One submission sought the that provision be deleted or be amended so that the approach applied to ASANs located within the Outer Control Boundary, whether in the Airport Mixed Use Zone or the Rural Zone[671], was consistent.

692. The Section 42A Report did not directly address the relief sought by QPL as it applied to this provision. As with his approach to Objective 21.2.7 and the associated policies, Mr Barr did not address this provision directly in the Section 42A Report apart from in Appendix 1, where Mr Barr recommended that the provision be retained[672]. The only additional evidence we received was from was Ms O'Sullivan. She explained that Plan Changes 26 and 35 to the ODP had set up regimes in the rural area surrounding Wanaka and Queenstown Airports respectively prohibiting the establishment of any new Activities Sensitive to Aircraft Noise (ASANs) within the OCB of either airport[673]. She supported Mr Barr's recommendation to continue this regime in the PDP.

693. We agree with Mr Barr and Ms O'Sullivan. These rules continue the existing resource management regime. We recommend that apart from renumbering, the provision remain worded as notified.

694. As notified, Rule 21.4.29, provided for:

> *"Activities within the Outer Control Boundary - Queenstown Airport*
> *On any site located within the Outer Control Boundary, which includes the Air Noise Boundary, as indicated on the District Plan Maps, any new Activity Sensitive to Aircraft Noise."*
> as a prohibited activity.

669 Submission 806, opposed by FS1340
670 Submissions 433, 649
671 Submission 806
672 C Barr, Section 42A Report, Appendix 1
673 K O'Sullivan, EiC, Section 2

695. Three submissions sought that the provision be retained[674]. Two submissions sought that the provision be deleted[675]. One submission sought the provision be amended to excluded tourism activities from being subject to the provision[676].

696. The Section 42A Report did not directly address the relief sought by Te Anau Developments Limited (607) as it applied to this provision. Mr Barr, as we noted above, did not address this provision directly in the Section 42A Report apart from in Appendix 1, where he recommended that the provision be retained[677]. Ms O'Sullivan, as discussed above, supported Mr Barr's recommendation.[678]

697. Mr Farrell, in evidence for Te Anau Developments Limited, considered that the provision prohibited visitor accommodation and community activities that could contribute to the benefits of tourism activities. He was of the view that there was a lack of policy and evidence to justify a prohibited classification of visitor accommodation and community activities.[679]

698. Mr Farrell went on to recommend that the rule or the definition of Activities Sensitive to Aircraft Noise be amended to:

> *"a. Exclude tourism activities (as sought by Real Journeys[680]); or*
>
> *b. Exclude visitor accommodation and community activities; or*
>
> *c. Alter the activity status could be amended [sic] so that tourism, visitor accommodation, and community activities are classified as discretionary activities."*[681]

699. From a review of the Te Anau Developments Limited submission, there does not appear to be a reference to an amendment to the definition of 'Activities Sensitive to Aircraft Noise'. Rather, it seeks to exclude "tourism activities" from the rule. As such, we think that Mr Farrell's recommended amendments to the definition are beyond scope, because the submission is specific to this rule and the exclusion he recommended would apply also to Wanaka Airport. In addition, it is not axiomatic that "tourism activities" includes visitor accommodation.

700. As to Mr Farrell's assertion that there is a lack of policy and evidence to justify the prohibited activity classification, we are aware that this provision was part of the PC 35 process which went through to thorough assessment in the Environment Court. While we are not bound to reach the same conclusion as the Environment Court, Mr Farrell did not in our view present any evidence other than claimed benefits from tourism to support his position. In particular, he did not address the extent to which those benefits would be reduced if the rule remained as notified, or the countervailing reverse sensitivity effects on the airport's operations if it were to

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674 Submission 271, 433, 649

675 Submissions 621, 658

676 Submission 607

677 C Barr, Section 42A Report, Appendix 1

678 K O'Sullivan, Evidence , Page 7, Para 4.3

679 B Farrell, Evidence, Page 25, Paras 112 - 115

680 On review of Submission 621 (submission point 81) RJL only sought that Rule 21.4.29 be deleted. The submission by Te Anau Developments Limited (607) sought the inclusion of "excluding tourism activities" within the rule.

681 B Farrell, Evidence, Page 26, Para 116

be amended as suggested so as to call into question the appropriateness of the Environment Court's conclusion.

701. Accordingly, we recommend that apart from renumbering, that provision 21.4.29 remain worded as notified, but renumbered.

6.27 Mining Activities - Rule 21.4.30 and 21.4.31

702. As notified, Rule 21.4.30 stated:

The following mining and extraction activities are permitted:

a. Mineral prospecting

b. Mining by means of hand-held, non-motorised equipment and suction dredging, where the total motive power of any dredge does not exceed 10 horsepower (7.5 kilowatt); and

c. The mining of aggregate for farming activities provided the total volume does not exceed 1000m³ in any one year

d. The activity will not be undertaken on an Outstanding Natural Feature.

703. The submissions on Rule 21.4.30 variously sought:
   a. to add 'exploration' to the list of activities and include motorised mining devices [682]
   b. to add reference to landscape and significant natural areas as areas where the activity cannot be undertaken[683]
   c. to delete the restriction under (d) requiring the activity not to be undertaken on Outstanding Natural Features.[684]
   d. to delete the requirement under (c) restricting the mining of aggregate of 1000m^3 in any one year to "*farming activities*"[685]
   e. amendments to ensure sensitive aquifers are not intercepted, and to address rehabilitation.[686]

704. It is also appropriate to consider Rule 21.4.31 at this time, as that rule as notified provided for 'exploration' as a controlled activity. As notified, 21.4.31 stated:

Mineral exploration that does not involve more than 20m³ in volume in any one hectare.

Control is reserved to all of the following:

- *The adverse effects on landscape, nature conservation values and water quality.*

Rehabilitation of the site is completed that ensures:

- *the long term stability of the site.*

682 Submission 519
683 Submission 339, 706
684 Submission 519
685 Submission 806
686 Submission 798

- *that the landforms or vegetation on finished areas are visually integrated into the landscape.*

- *water quality is maintained.*

- *that the land is returned to its original productive capacity.*

705. Two submissions[687] to this rule sought the addition of indigenous vegetation as an alternative state that a site should be rehabilitated to.

706. In the Section 42A Report[688], Mr Barr noted that the NZTM submission seeking to add mineral exploration to Rule 21.4.30, was silent on the deletion of "*mineral exploration*" as a controlled activity in Rule 21.4.31. Mr Barr went on to explain that in his view, that while he accepted the submitter's request to add a definition of mineral exploration, that activity should remain a controlled activity. Mr Vivian agreed with Mr Barr that while NZTM sought permitted activity for mineral exploration, it did not seek the deletion of Rule 21.4.31 and as such Mr Vivian saw no point in adding mineral exploration to Rule 21.4.30[689]. We agree and recommend that the request for mineral exploration as a permitted activity be rejected and that it remain a controlled activity.

707. We did not receive any evidence on the submission from Queenstown Park Ltd, seeking the expansion of the permitted activity status for mining aggregate (1000m^3 in any one year), for activities not restricted to farming. The Section 32 Report records that the activities in Rules 21.4.30 and 21.4.31 were retained from the ODP with minor modifications to give effect to Objectives and Policies 6.3.5, 21.3.5, 21.2.7 and 21.2.8 (as notified).[690] We do not find the analysis very helpful. On the face of the matter, if the activity is acceptable as a permitted activity for one purpose, it is difficult to understand why it should not be permitted if undertaken for a different purpose. However, in this case, the purpose of the aggregate extraction is linked to the scale of effects.

708. Extraction of 1000m³ of aggregate on a relatively small rural property in order that it might be utilised off-site has an obvious potential for adverse effects. Limiting use of aggregate to farming purposes serves a useful purpose in this regard as well as being consistent with policies seeking to enable farming activities.

709. We therefore recommend that the submission from Queenstown Park Limited be rejected.

710. Mr Barr, in the Section 42A Report, did not consider it necessary to add reference to landscape and significant natural areas as areas where the activity cannot be undertaken, given that standards regarding land disturbance and vegetation clearance are already provided for in in Chapter 33.[691] We heard no evidence in support of the submission. Relying on the evidence of Mr Barr, we recommend that the submission of Mr Atly and Forest & Bird New Zealand be rejected.

711. Mr Barr, in the Section 42A Report, agreed with the submission of Forest & Bird and Mr Atly that rehabilitation to 'indigenous vegetation' may be preferable to rehabilitating disturbed land

687 Submissions 339, 706
688 C Barr, Section 42A Report, Page 108, Para 21.21
689 C Vivian, Evidence, Page 25, Para 4.122
690 C Barr, Section 42A Report, Page 87
691 C Barr, Section 42A Report, Page 108-109, Para 21.23

to its original capacity in some circumstances[692]. We agree with Mr Barr that parameters should be included, so that where the land cover comprised indigenous vegetation coverage prior to exploration indigenous vegetation planted as part of rehabilitation must attain a certain standard. We also agree with Mr Barr that it would not be fair on persons responsible for rehabilitation to require indigenous vegetation rehabilitation if the indigenous vegetation didn't comprise a minimum coverage or the indigenous vegetation had been cleared previously for other land uses.

712. Accordingly, we recommend that that an additional bullet point to be added to the matters of control, under Rule 21.4.31, as follows;

Ensuring that the land is rehabilitated to indigenous vegetation where the pre-existing land cover immediately prior to the exploration, comprised indigenous vegetation as determined utilising Section 33.3.3 of Chapter 33.

713. We also consider the matter commencing "Rehabilitation of the site" should be amended by the inclusion of "ensuring" at the commencement to make it a matter of control.

714. Mr Vivian supported the deletion of Rule 21.4.30(d) on the basis that the scale of the activities set out in 21.4.30 (a) and (b) were small and usually confined to river valleys.[693] In addition, Mr Vivian noted that the activities in 21.4.30(c) were potentially of a larger scale and as they were permitted on an annual basis, there was the potential for adverse effects on landscape integrity over time. Mr Vivian concluded that 21.4.30(d) should be combined into Rule 21.4.30(c).

715. Having considered Mr Vivian's evidence in combination with the submissions lodged, we consider it appropriate to create a table containing standards which mining and exploration activities have to meet. In coming to this conclusion we note that notified rule 21.4.30(d) is expressed as a standard, rather than an activity.

716. Consequently, we recommend the insertion of Table 8 which reads:

	Table 8 – Standards for Mining and Extraction Activities		**Non-Compliance**
21.11.1	21.11.1.1	The activity will not be undertaken on an Outstanding Natural Feature.	NC
	21.22.1.2	The activity will not be undertaken in the bed of a lake or river.	

717. With that change, we agree with Mr Vivian's suggestion and recommend that Rules 21.4.30 and 21.4.31 read as follows:

Rule 21.4.29 - Permitted:
The following mining and extraction activities, that comply with the standards in Table 8 are permitted:

a. Mineral prospecting.

692 C Barr, Section 42A Report, Page 109, Para 21.24

693 C Vivian, Evidence, Page 25, Para 4.125

b. Mining by means of hand-held, non-motorised equipment and suction dredging, where the total motive power of any dredge does not exceed 10 horsepower (7.5 kilowatt); and

c. The mining of aggregate for farming activities provided the total volume does not exceed 1000m³ in any one year.

Rule 21.4.30 - Controlled

Mineral exploration that does not involve more than 20m³ in volume in any one hectare
Control is reserved to:

a. The adverse effects on landscape, nature conservation values and water quality.

b. Ensuring rehabilitation of the site is completed that ensures:

i. the long-term stability of the site.

ii. that the landforms or vegetation on finished areas are visually integrated into the landscape.

iii. water quality is maintained.

iv. that the land is returned to its original productive capacity.

c. That the land is rehabilitated to indigenous vegetation where the pre-existing land cover immediately prior to the exploration, comprised indigenous vegetation as determined utilising Section 33.3.3 of Chapter 33.

6.28 Rule 21.4.32 – Other Mining Activity

718. As notified, this rule provided that any mining activity not provided for in the previous two rules was a discretionary activity. There were no submissions on this rule. We recommend it be renumbered, but otherwise be retained as notified.

6.29 Rule 21.4.33 – Rural Industrial Activities

719. As notified, this rule listed the following as a permitted activity:

Rural Industrial Activities within a Rural Industrial Sub-Zone that comply with Table 8.

720. The only submission received on this rule was in support[694]. We recommend that this rule be moved to Table 10 – Activities in Rural Industrial Sub Zone, and with our recommended re-arrangement of the tables, we recommend that the rule refer to the standards in Table 11. Otherwise we recommend the rule be retained as notified.

6.30 Rule 21.4.34 – Buildings for Rural Industrial Activities

721. As notified, this rule provided that buildings for rural industrial activities, complying with Table 8, as a permitted activity. No submissions were received on this rule.

722. As with the previous rule, we recommend it be relocated to Table 10 and that it refer to Table 11. However, we also note an ambiguity in the wording of the rule. While, by its reference to Table 8, it is implicit that it only apply to buildings in the Rural Industrial Sub-Zone, we consider the rule would better implement the objectives and policies of the zone if it were explicitly limited to buildings in the Rural Industrial Sub Zone. We consider such a change to be non-substantive and can be made under Cl 16(2) of the First Schedule. On that basis we recommend the rule read:

Buildings for Rural Industrial Activities within the Rural Industrial Sub-Zone that comply with Table 11.

694 Submission 315

6.31 Rule 21.4.35 – Industrial Activities at a Vineyard

723. This rule, as notified, provided for industrial activities directly associated with wineries and underground cellars within a vineyard as a discretionary activity.

724. No submissions were received to this rule and we recommend it be renumbered and retained as notified. We also recommend that the heading in Table 1 directly above this rule be changed to read: "Industrial Activities outside the Rural Industrial Sub-Zone".

6.32 Rule 21.4.36 – Other Industrial activities

725. As notified this rule provided that other industrial activities in the Rural Zone were non-complying. Again, no submissions were received on this rule.

726. We consider there is an element of ambiguity in the rule, particularly with the removal of the Rural Industrial Sub-Zone activities and buildings to a separate table. We recommend this be corrected by rewording the rule to read:

Industrial Activities outside the Rural Industrial Sub-Zone other than those provided for in Rule 21.4.32.

727. We consider this to be a minor, non-substantive amendment that can be made under Clause 16(2).

7 TABLE 2 – GENERAL STANDARDS

7.1 Rule 21.5.1 – Setback from Internal Boundaries

728. As notified, this rule set a minimum setback of 15m of buildings from internal boundaries, with non-compliance requiring consent as a restricted discretionary activity.

729. No submissions were received on this rule and we recommend it be retained as notified with the matters of discretion listed alphanumerically rather than with bullet points.

7.2 Rule 21.5.2 – Setback from Roads

730. As notified Rule 21.5.2 stated:

Setback from Roads
The minimum setback of any building from a road boundary shall be 20m, except, the minimum of any building setback from State Highway 6 between Lake Hayes and Frankton shall be 50m. The minimum setback of any building for other sections of State Highway 6 where the speed limit is 70 km/hr or greater shall be 40m.

Discretion is restricted to all of the following:

a. Rural Amenity and landscape character

b. Open space

c. The adverse effects on the proposed activity from noise, glare and vibration from the established road.

Non-compliance Status – RD

731. One submission sought that the standard be adopted as proposed[695] and one submission sought that the standard be retained, but that additional wording be added (providing greater setbacks from State Highways for new dwellings) to address the potential reverse sensitivity effects from State Highway traffic noise on new residential dwellings.[696]

732. Mr Barr, in the Section 42A Report, considered that as the majority of resource consents in the Rural Zone were notified or would require consultation with NZTA if on a Limited Access Road, then in his view, the performance standards suggested by NZTA would be better implemented as conditions of consent, particularly if the specific parameters of noise attenuation standard were to change. Mr Barr therefore recommended that the relief sought be rejected.[697]

733. In evidence for NZTA, Mr MacColl, disagreed with Mr Barr's reasoning, noting that NZTA were often not deemed an affected party and without the proposed rule, District Plan users may assume, incorrectly, that any building outside the setback areas as notified, would be outside the noise effect area, when that may not be the case.[698] Mr MacColl further suggested that the rule amendments he supported were required in order that the rule be consistent with the objectives and policies of Chapter 3. In response to questions from the Chair, Mr MacColl advised that the NZTA guidelines for setbacks were the same, regardless of the volume of traffic. We sought a copy of the guideline from Mr MacColl, but did not receive it.

734. Mr Barr, in reply, recommended some minor wording amendment to clarify that the rule applied to the setback of buildings from the road, but not in relation to the 80m setback sought by NZTA.

735. Without evidence as to the traffic noise effects and noise levels depending on the volume of traffic and its speed, we are not convinced as to the appropriateness of a blanket 80 metre setback for new dwellings from State Highway 6 where the speed limit is 70 – 100 km/hr. The only change we recommend is that, for clarity the term "Frankton" be replaced with "Shotover River". We were concerned that using the term "Frankton" could lead to disputes as to where the restriction commenced/ended at that end. It was our understanding from questioning of Mr Barr and Mr MacColl, that it was intended to apply as far as the river.

736. Accordingly, we recommend that it be reworded as follows:

Setback from Roads
The minimum setback of any building from a road boundary shall be 20m, except, the minimum setback of any building from State Highway 6 between Lake Hayes and the Shotover River shall be 50m. The minimum setback of any building for other sections of State Highway 6 where the speed limit is 70 km/hr or greater shall be 40m.

Non-compliance Status – RD

Discretion is restricted to:

a. rural amenity and landscape character

b. open space

695 Submission 600
696 Submission 719
697 C Barr, Section 42A Report, Page 22, Para 9.6
698 A MacColl, EIC, Pages 5-6, Paras 20-21.

c. the adverse effects on the proposed activity from noise, glare and vibration from the established road.

7.3 Rule 21.5.3 – Setback from Neighbours of Buildings Housing Animals

737. As notified, this rule required a 30m setback of any building housing animals from internal boundaries, with a restricted discretionary activity consent required for non-compliance.

738. There were no submissions, and other than listing the matters of discretion alphanumerically, we recommend the rule be adopted as notified.

7.4 Rule 21.5.4 – Setback of buildings from Water bodies

739. As notified Rule 21.5.4 stated:

Setback of buildings from Water bodies
The minimum setback of any building from the bed of a wetland, river or lake shall be 20m.

Discretion is restricted to all of the following:

a. Indigenous biodiversity values

b. Visual amenity values

c. Landscape and natural character

d. Open space

e. Whether the waterbody is subject to flooding or natural hazards and any mitigation to manage the adverse effects of the location of the building

740. Four submissions sought that the standard be adopted as proposed[699]. One submission sought that the standard be amended so that the setback be 5m for streams less than 3m in width[700]. Another submission[701] sought to exclude buildings located on jetties where the purpose of the building is for public transport.

741. In the Section 42A Report, while Mr Barr recognised that the amenity values of a 3m wide stream may not be high, he considered that a 5m setback was too small.[702] We heard no evidence to the contrary. We agree in part with Mr Barr and note that there would be several other factors, such as natural hazards, that would support a 20m buffer. Accordingly, we recommend that the submission by D & M Columb be rejected.

742. As to the exclusion of buildings located on jetties where the purpose of the building is for public transport, Mr Barr noted that Rules 21.5.40 - 21.5.43 would trigger the need for consent anyway, and Mr Barr did not consider that Rule 21.5.4 generated unnecessary consents. Mr Barr was also of the view that it was the effects of any building that should trigger consent, not whether it was publicly or privately owned.[703]

699 Submissions 339, 384, 600, 706
700 Submission 624
701 Submission 806
702 C Barr, Section 42A Report, Page 23, Para 9.9
703 C Barr, Section 42A Report, Page 23, Para 9.10

743. We heard no evidence in support of that submission and concur with Mr Barr that the wording of rule should be retained as notified. Accordingly, we recommend that Rule 21.5.4 be retained as notified.

7.5 Rule 21.5.5 – Dairy Farming

744. As notified, Rule 21.5.5 required that effluent holding tanks, and effluent treatment and storage ponds be located 300m from any formed road or adjoining property with non-compliance a restricted discretionary activity.

745. Submissions on this provision variously sought:
   a. Its retention[704]
   b. Its deletion[705] (No reasons provided)
   c. The addition of "lake, river" to the list of "formed roads or adjoining property"[706]
   d. The addition of "sheep and beef farms" and "silage pits" to the list of "effluent holding tanks, effluent treatment and storage ponds"[707]
   e. Amendment to reduce the specified distance of 300m to a lesser distance[708]
   f. Amendment of the activity status for non-compliance to discretionary.[709]

746. In the Section 42A Report, Mr Barr considered that the addition of "sheep and beef farms" and "silage pits" would capture too wide a range of activities that are not as intensive as dairying and do not have the same degree adverse effects. As such, Mr Barr recommended that that submission be rejected.[710] As regards the inclusion "lake or river" to the list of "formed roads, rivers and property boundaries", Mr Barr considered lakes and rivers are not likely to be on the same site as a dairy farm. Hence in his view, the suggested qualifier to the boundary set back is appropriate.[711]

747. Mr Edgar, in his evidence for Longview Environmental Trust[712], provided examples where the failure to include lake or river, could result in effluent holding tanks, effluent treatment and storage ponds being within 15 metres of the margin of a lake or unformed road. Mr Edgar was also of the view that amendments were required for consistency with Policies 21.2.1.1 and 21.2.1.4. We note that Mr Edgar's evidence did not go as far as recommending reference to unformed as well as formed roads, presumably as this relief was not sought by Longview Environmental Trust. In reply, Mr Barr agreed with Mr Edgar as to the identification of public areas whose amenity values needed to be managed through the mechanism of setbacks[713]. We agree with Mr Edgar and Mr Barr that the setback should include lakes or rivers and that it is appropriate in achieving the objectives.

748. We heard no evidence in support of the submissions seeking to reduce the 300m separation distance. The submission itself identified that 300m would create infrastructural problems for

704 Submissions 335, 384, 600
705 Submission 400
706 Submission 659
707 Submission 642
708 Submissions 701, 784
709 Submission 659
710 C Barr, Section 42A Report, Page 24, Para 9.16
711 C Barr, Section 42A Report, Page 24, Para 9.17
712 S Edgar, EIC, Pages 3-4, Paras 7 - 13
713 C Barr, Reply, Page 14, Para 5.1 – 5.2

farmers.[714] We note that compliance with the 300m distance is for permitted activity status and that any non-compliance, for infrastructural reasons, are provided for as a restricted discretionary activity. Given the potential effects of the activity, and the lack of evidence as to an appropriate lesser distance, we consider the distance to be appropriate in terms of achieving the objectives. Accordingly, we recommend that the submission be rejected.

749. We were unable to identify evidence from Mr Barr or Mr Edgar relating to the submission by Longview Environmental Trust[715] seeking the amendment of the activity status for non-compliance from restricted discretionary to discretionary. The reason set out in the submission for the request is for consistency between Rules 21.5.5 and 21.5.6.[716] We consider that there is a difference between Rules 21.5.5 and 21.5.6 in that 21.5.5 applies to an activity and 21.5.6 applies to buildings. This difference is further reflected in there being separate tables for activities and buildings (including farm buildings). This separation does not imply that they should have the same activity status. Accordingly, we recommend that the Longview Environmental Trust submission be rejected.

750. In summary, we recommend that Rule 21.5.5 be relocated into Table 3 Standards for Farm Activities, renumbered as Rule 21.6.1, and worded as follows:

Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing)
All effluent holding tanks, effluent treatment and effluent storage ponds, must be located at least 300 metres from any formed road, lake, river or adjoining property.

Non-compliance RD
Discretion is restricted to:

a. *Odour*

b. *Visual prominence*

c. *Landscape character*

d. *Effects on surrounding properties.*

7.6 Rule 21.5.6 – Dairy Farming

751. Rule 21.5.6, as notified, required milking sheds or buildings used to house or feed milking stock be located 300m from any formed road or adjoining property, with non-compliance as a discretionary activity.

752. Submissions on this provision variously sought:
   a. Its retention[717]
   b. The addition of "lake, river" to the list of "formed roads or adjoining property"[718]
   c. Amendment to reduce the specified distance of 300m to a lesser distance.[719]

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714 Submission 701, Page 2, Para 16
715 S Edgar, EIC, Pages 3-4, Paras 7 - 13
716 Submission 659, Page 2
717 Submissions 335, 384, 600
718 Submission 659
719 Submissions 701, 784

753. We have addressed the matter of the reduction of the 300m distance in Section 8.5 above and do not repeat that analysis here. We simply note our recommendation is that, for the same reasons, those submissions be rejected.

754. Mr Barr considered that the rule is appropriate in a context where farm buildings can be established as a permitted activity on land holdings greater than 100ha.[720]

755. As regards the addition of lakes and rivers, Mr Barr, again in the Section 42A Report, noted that farm buildings were already addressed under Rule 21.5.4 (as notified) which required a 20m setback from water bodies and therefore, in his view, the submission should be rejected.

756. Mr Edgar, in evidence, raised similar issues with this rule as with 21.5.5 discussed above. In reply, Mr Barr agreed as to the appropriateness of the inclusion of rivers and lakes. Following the same reasoning, we agree with Mr Edgar and Mr Barr that the setback of buildings from water bodies should include recognition of their amenity values. Accordingly, we recommend that Rule 21.5.6 be relocated into Table 5 Standards for Farm Buildings, be renumbered and worded as follows;

21.8.4	**Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing)** All milking sheds or buildings used to house or feed milking stock must be located at least 300 metres from any adjoining property, lake, river or formed road.	D

7.7 Rule 21.5.7 – Dairy Farming

757. Rule 21.5.7, as notified, read as follows;

	Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing) Stock shall be prohibited from standing in the bed of, or on the margin of a water body. For the purposes of this rule: a. Margin means land within 3.0 metres from the edge of the bed b. Water body has the same meaning as in the RMA, and also includes any drain or water race that goes to a lake or river.	PR

758. Submissions on this rule variously sought that it be retained[721], be deleted[722], be widened or clarified to include other livestock including "deer, beef"[723] or expressed concern regarding it overlapping Regional Plan rules[724].

759. In the Section 42A Report, Mr Barr considered that dairy farming was more intensive than traditional sheep and beef grazing with a greater potential to damage riparian margins and contaminate waterbodies. Mr Barr considered that the effects of stock in waterways was not only a water quality issue but also a biodiversity, landscape and amenity value issue, and that the proposed rule complemented the functions of the Otago Regional Council.[725]

720 C Barr, Section 42A Report, Page 24, Para 9.20
721 Submission 335, 384
722 Submission 600
723 Submission 117, 289, 339, 706, 755
724 Submission 798
725 C Barr, Section 42A Report, Pages 25 – 27, Paras 9.24 – 9.36

760. In evidence for Federated Farmers, Mr Cooper raised the issue of confusion for plan users between rules in the Regional Water Plan and Rule 21.5.7. He considered that this was not fully addressed in the Section 32 Report.[726] We agree.

761. To us, this is a clear duplication of rules that does not meet the requirements of section 32 as being the most effective and efficient way of meeting the objectives of the QLDC plan. Accordingly, we recommend that the submission of Federated Farmers be accepted and Rule 21.5.7, as notified, be deleted.

7.8 Rule 21.5.8 – Factory Farming

762. As notified, this rule stated in relation to factory farming (excluding the boarding of animals):

Factory farming within 2 kilometres of a Residential, Rural Residential, Rural Lifestyle, Township, Rural Visitor, Town Centre, Local Shopping Centre or Resort Zone.

763. Non-compliance required consent as a discretionary activity.

764. The only submissions on this rule supported its retention[727], however it has a number of problems. First, it lists zones which are not notified as part of stage 1 (or Stage 2) of the PDP, notably the Rural Visitor and Township. It also lists Resort Zones as if that is a zone or category, which it is not in the PDP.

765. The most significant problem with the rule, however, is that it appears the author has confused standard and activity status. Given that our recommended Rule 21.4.3 classifies factory farming of pigs or poultry as permitted activities, it appears to be inconsistent that such activities would be discretionary when they were located more than 2 kilometres from the listed zones, but permitted within 2 kilometres. We recommend this be corrected under Clause 16(2) of the First Schedule by wording this rule as:

Factory farming (excluding the boarding of animals) must be located at least 2 kilometres from a Residential, Rural Residential, Rural Lifestyle, Town Centre, Local Shopping Centre Zone, Millbrook Resort Zone, Waterfall Park Zone, or Jacks Point Zone.

766. We also recommend it be renumbered and relocated into Table 3.

7.9 Rule 21.5.9 – Factory Farming

767. This rule, as notified, set standards that factory farming of pigs were to comply with. Non-compliance required consent as a non-complying activity. No submissions were received to this rule and we recommend it be adopted as notified with a minor wording changes to make it clear it is a standard, and renumbered and relocated into Table 3.

7.10 Rule 21.5.10 – Factory Farming of Poultry

768. This rule, as notified, set standards that factory farming of poultry were to comply with. Non-compliance required consent as a non-complying activity. No submissions were received to this rule and we recommend it be adopted as notified with a minor wording changes to make it clear it is a standard, and renumbered and relocated into Table 3.

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726 D Cooper, EIC, Para 44

727 Submissions 335 and 384

7.11 Rule 21.5.11 – Factory Farming

769. As notified, this rule read:

> *Any **factory farming** activity other than factory farming of pigs or poultry.*

770. Non-compliance was listed as non-complying. Again there were no submissions on this rule.

771. It appears to us that this rule is intended as a catch-all activity status rule, rather than a standard. We recommend it be retained as notified, but relocated into Table 1 and numbered as Rule 21.4.4.

7.12 Rule 21.5.12 – Airport Noise – Wanaka Airport

772. As notified, this rule read:

> *Alterations or additions to existing buildings, or construction of a building on a building platform approved before 20 October 2010 within the Outer Control Boundary, shall be designed to achieve an internal design sound level of 40 dB Ldn, based on the 2036 noise contours, at the same time as meeting the ventilation requirements in Table 5, Chapter 36. Compliance can either be demonstrated by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the internal design sound level, or by installation of mechanical ventilation to achieve the requirements in Table 5, Chapter 36.*

773. Non-compliance required consent as a non-complying activity.

774. The only submission [728] on this rule sought that it be retained.. As a consequence of recommendations made by the Hearing Stream 5 Panel, Table 5 has been deleted from Chapter 36. The reference should be to Rule 36.6.2 in Chapter 36.

775. We also recommend a minor change to the wording so that the standard applies to buildings containing Activities Sensitive to Aircraft Noise, consistent with the following rule applying to Queenstown Airport. Thus, we recommend that the standard, renumbered as Rule 21.5.5, read:

> *Alterations or additions to existing buildings, or construction of a building on a building platform approved before 20 October 2010 that contain an Activity Sensitive to Aircraft Noise and are within the Outer Control Boundary, must be designed to achieve an internal design sound level of 40 dB L_{dn}, based on the 2036 noise contours, at the same time as meeting the ventilation requirements in Rule 36.6.2, Chapter 36. Compliance can either be demonstrated by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the internal design sound level, or by installation of mechanical ventilation to achieve the requirements in Rule 36.6.2, Chapter 36.*

7.13 Rule 21.5.13 – Airport Noise – Queenstown Airport

776. As notified, this rule contained similar provisions as Rule 21.5.12, albeit distinguishing between buildings within the Air Noise Boundary and those within the Outer Control Boundary. Again, there was only one submission[729] in respect of this rule, and that submission sought that the rule be retained.

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728 Submission 433, opposed by FS1030, FS1097 and FS1117

729 Submission 433, opposed by FS1097 and FS1117

777. Subject to amending the standard to refer to Rule 36.6.2 in place of Table 5 in Chapter 36 and other minor word changes, we recommend the rule be renumbered 21.5.6 and adopted as notified.

8 TABLE 3 – STANDARDS FOR STRUCTURES AND BUILDINGS

8.1 Rule 21.5.14 - Structures

778. Rule 21.5.14, as notified, read as follows;

21.5.14	**Structures** Any structure within 10 metres of a road boundary, which is greater than 5 metres in length, and between 1 metre and 2 metres in height, except for: 21.5.14.1 post and rail, post and wire and post and mesh fences, including deer fences; 21.5.14.2 any structure associated with farming activities as defined in this plan. Discretion is restricted to all of the following: a. Effects on landscape character, views and amenity, particularly from public roads b. The materials used, including their colour, reflectivity and permeability c. Whether the structure will be consistent with traditional rural elements.	RD

779. One submission sought that the rule be retained[730], two sought that "nature conservation values" be added the matters of discretion[731], one submission sought that 21.5.14.2 be amended without specifying such amendments[732], and another sought that 21.5.14.2 be amended to read *"any structure associated with farming activities as defined in this Plan. This includes any structures associated with irrigation including centre pivots and other irrigation infrastructure"*[733]. Lastly, two submissions sought that 21.5.14 be amended to be restricted to matters that are truly discretionary[734].

780. We also note that there were two submissions seeking the heading for Table 3 as notified be amended to specifically provide for irrigation structures and infrastructure.[735]

781. Mr Barr, in Appendix 2 of the Section 42A Report[736], considered that applying nature conservation values to the matters of discretion would be too broad as it would encapsulate ecosystems, hence removing the specificity of the restricted discretionary status and the reason for needing a consent. We heard no other evidence on this matter. We agree with Mr Barr that the relief sought would make the discretion to wide and therefore not be effective in

730 Submission 335, 384
731 Submissions 339, 706
732 Submission 701
733 Submissions 784
734 Submission 701, 784
735 Submissions 701, 784
736 C Barr, Section 42A Report, Appendix 2, Page 107

achieving the objective. Accordingly, we recommend that those submissions be rejected. We note that Mr Atly and Forest & Bird made requests for similar relief to Rules 21.5.15 – 21.5.17. We recommend that those submissions be rejected for the same reasons.

782. Mr Barr, in Appendix 2 of the Section 42A Report[737], considered that irrigators were not buildings, as per the QLDC Practice Note[738] and therefore did not require specific provisions. We heard no other evidence on this matter. We agree with Mr Barr that irrigators are not buildings and therefore the amendments sought are not required. Accordingly we recommend that those submissions be rejected. This similarly applies to the submissions requesting the change to the Table 3 Heading.

783. In the Section 42A Report, Mr Barr addressed a range of submissions that sought that the matters of discretion be tightened, and specifically the removal of reference to "rural amenity values' in the consent of Rule 21.5.18[739]. We address all the submissions on this matter at Rule 21.5.18.

784. In line with our recommendation in Section 7.1 regarding rule and table structure, we recommend that Rule 21.5.14 be relocated to Table 4, renumbered and worded as follows:

21.7.1	**Structures** Any structure which is greater than 5 metres in length, and between 1 metre and 2 metres in height must be located a minimum distance of 10 metres from a road boundary, except for: 21.5.14.1 post and rail, post and wire and post and mesh fences, including deer fences; 21.5.14.2 any structure associated with farming activities as defined in this plan.	RD Discretion is restricted to: a. Effects on landscape character, views and amenity, particularly from public roads b. The materials used, including their colour, reflectivity and permeability c. Whether the structure will be consistent with traditional rural elements.

8.2 Rule 21.5.15 - Buildings

785. Rule 21.5.15, as notified read as follows;

737 C Barr, Section 42A Report, Appendix 2, Page 107

738 QLDC – Practice Note 1/2014

739 Submission 600

21.5.15	**Buildings** Any building, including any structure larger than 5m², that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building are subject to the following: All exterior surfaces shall be coloured in the range of browns, greens or greys (except soffits), including; 21.5.15.1 Pre-painted steel and all roofs shall have a reflectance value not greater than 20%; and, 21.5.15.2 All other surface finishes shall have a reflectance value of not greater than 30%. 21.5.12.3 In the case of alterations to an existing building not located within a building platform, it does not increase the ground floor area by more than 30% in any ten year period. Discretion is restricted to all of the following: a. External appearance b. Visual prominence from both public places and private locations c. Landscape character d. Visual amenity.	RD

786. One submission sought that the rule be retained[740]; two sought that the reference to colour be removed[741]; one submission sought that 21.5.15.1 be deleted[742]; one submission sought that wording be amended for clarity and that the reflectance value not apply to locally sourced schist[743]; another submission sought amendments such that the area be increased to 10m² and that the reflectance value be increased to 36% for walls and roofs, and a number of finishes to be excluded[744]; two submissions sought that buildings within Ski Area Sub-Zones be excluded from these requirements[745]; one submission sought that 21.5.15.3 be less restrictive and amended to 30% in any 5 year period[746]; lastly, one submission sought the benefits of the buildings to rural sustainable land use be added as a matter of discretion.[747]

787. In the Section 42A Report, Mr Barr acknowledged that the permitted limits were conservative, but overall, considered that the provisions as notified would reduce the volume of consents that were required by the ODP[748], and that these issues had been fully canvassed in the Section 32 Report, which concluded that the ODP rules were inefficient.[749] Mr Barr also considered that for long established buildings and any non-compliance with the standards, the proposed rules allow case by case assessment.[750] We concur with Mr Barr that the shift from controlled activity under the ODP to permitted under the PDP, subject to the specified standards, is a more efficient approach to controlling the effects of building colour.

740 Submission 600
741 Submissions 368, 829
742 Submission 411
743 Submission 608
744 Submission 368
745 Submissions 610, 613
746 Submission 829
747 Submissions 624
748 C Barr, Section 42A Report, page 34, paragraph 11.13
749 C Barr. Section 42A Report, Pages 37 – 38, Paras 12.2, 12.5
750 C Barr. Section 42A Report, Page 38, Paras 12.3 – 12.5

788. Mr Barr did not consider that the exclusion of certain natural materials from the permitted activity standards to be appropriate, recording difficulties with interpretation and potential lack of certainty[751]. However, in an attempt to provide some ability for landowners to utilise natural materials as a permitted activity, Mr Barr recommended slightly revising wording of the standard[752].

789. We heard detailed evidence for Darby Planning from Ms Pflüger, a landscape Architect, and for QLDC from Dr Read, also a landscape architect, that schist has no LRV, and concerning the difference between dry stacked schist and bagged schist[753]. The latter was considered by Dr Read to be inappropriate due to its resemblance to concrete walls. Ms Pflüger, on the other hand, was of the view that bagged schist was sufficiently different to concrete walls as to be appropriate in the landscape context of the district. Mr Ferguson, in his evidence for Darby Planning, relying on the evidence of Ms Pflüger, considered that schist should be excluded from the identified surfaces with LRV.[754]

790. In his Reply Statement, Mr Barr maintained his opinion that a list of material should not be included in this rule, as "*over the life of the district plan there will almost certainly be other material that come onto the market and it would be ineffective and inefficient if these materials required a resource consent because they were not listed*."[755]

791. We agree in part with Mr Barr's recommended amendments:
   a. To exclude soffits, windows and skylights (but not glass balustrades) from the exterior surfaces that have colour and reflectivity controls; and
   b. To include a clarification in 21.5.15.2 (as notified) that it includes cladding and built landscaping that cannot be measured by way of light reflective value.

792. However, we disagree with his view that the inclusion of an exemption for schist from the light reflective control would somehow lead to inefficiencies due to other materials coming on the market. We agree with Ms Pflüger that incorporating schist into buildings is an appropriate response to the landscape in this district. We also consider that the term "luminous reflectance value" proposed by Mr Barr is more readily understood if phrased "light reflectance value".

793. Mr Barr in the Section 42A Report, agreed that Rule 21.5.15 need not apply to the Ski Area Sub Zones, because these matters were already provided for by the controlled activity status for the construction and alteration of buildings in those Sub-Zones[756]. Accordingly, we accept Mr Barr's recommendation to clarify that position in this rule and recommend that the submissions on this aspect be accepted. We note that the same submission issue applies to Rule 21.5.16[757] and we reach a similar recommendation. As a consequence, we do not address this matter further.

794. Accordingly, with other minor changes to the wording, we recommend that Rule 21.5.15 be relocated into Table 4, renumbered, and worded as follows:

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751 C Barr. Section 42A Report, Page 39, Paras 12.9 – 12.10
752 C Barr, Section 42A Report, page 39-40, paragraph 12.13
753 Y Pflüger, EIC, Pages 13 -14, Paras 7.3 – 7.5 and Dr M Read, EIC, Pages 8 – 9, Paras 5.2 – 5.6
754 C Fergusson, EIC, Page 14, Para 65
755 C Barr, Reply Statement, page 23, paragraph 7.4
756 C Barr, Section 42A Report, Page 41, Para 12.19
757 Submissions 610, 613

21.7.2	**Buildings** Any building, including any structure larger than 5m², that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building, are subject to the following: All exterior surfaces* must be coloured in the range of browns, greens or greys, including; 21.7.2.1 Pre-painted steel and all roofs must have a light reflectance value not greater than 20%; and, 21.7.2.2 All other surface** finishes, except for schist, must shall have a light reflectance value of not greater than 30%. 21.7.2.3 In the case of alterations to an existing building not located within a building platform, it does not increase the ground floor area by more than 30% in any ten year period. Except this rule does not apply within the Ski Area Sub-Zones. * Excludes soffits, windows and skylights (but not glass balustrades). ** Includes cladding and built landscaping that cannot be measured by way of light reflectance value but is deemed by the Council to be suitably recessive and have the same effect as achieving a light reflectance value of 30%.	RD Discretion is restricted to: a. external appearance; b. visual prominence from both public places and private locations; c. landscape character; d. visual amenity.

8.3 Rule 21.5.16 – Building Size

795. Rule 21.5.16, as notified read as follows;

21.5.16	**Building size** The maximum ground floor area of any building shall be 500m². Discretion is restricted to all of the following: a. External appearance b. Visual prominence from both public places and private locations c. Landscape character d. Visual amenity e. Privacy, outlook and amenity from adjoining properties.	RD

796. One submission sought that this rule be retained[758] and two submissions sought that the rule be deleted[759].

797. We note that at the hearing on 18 May 2016, Mr Vivian, appearing among others for Woodlot Properties, withdrew submission 501 relating to Rule 21.5.16.

798. The reasons contained in the remaining submission seeking deletion suggested that there were circumstances on large subdivided lots where larger houses could be appropriate and that restricting the size of the houses would have a less acceptable outcome. The submitters considered that each should be judged on its own merit and that restrictions on size were already in place via the defined building platform.

799. In the Section 42A Report, Mr Barr noted that the rule was part of the permitted activity regime for buildings in the Rural Zone and that the purpose of the limit was to provide for the assessment of buildings that may be of a scale that is likely to be prominent. Mr Barr noted that buildings of 1000m^2 were not common and that the rule provided discretion as to whether additional mitigation was required due to the scale of the building.[760]

800. We agree with Mr Barr. Completely building out a 1000m^2 building platform is not an appropriate way to achieve the objectives of the PDP and, in our view, the 500m^2 limit enables appropriately scaled buildings. Proposals involving larger floor plates can still be considered under the discretion for buildings greater than 500m^2.

801. Accordingly, we recommend that the submission seeking the deletion of the rule be rejected and the rule be relocated into Table 4, renumbered and amended to be worded as follows:

21.7.3	**Building size** The ground floor area of any building must not exceed 500m². Except this rule does not apply to buildings specifically provided for within the Ski Area Sub-Zones.	RD Discretion is restricted to: a. external appearance; b. visual prominence from both public places and private locations; c. landscape character; d. visual amenity; e. privacy, outlook and amenity from adjoining properties.

8.4 Rule 21.5.17 – Building Height

802. Rule 21.5.17, as notified limited the height of buildings to 8m. Two submissions sought that rule be amended, one to exclude the rule from applying to passenger lift systems[761] and one to exclude the rule from applying to mining buildings[762]. One submission sought that the rule be retained as notified[763].

758 Submission 600
759 Submission 368, 501
760 C Barr, Section 42A Report, Pages 40-41, Paras 12.15 – 12.18
761 Submission 407
762 Submission 519
763 Submission 600

803. As regards exclusion of passenger lift systems from the rule, we note that this is related to our discussion on the definition of passenger lifts systems in paragraphs 191 – 193 where we recommended that this matter should be addressed in the definitions hearing.

804. That said, in evidence for Mt Cardrona Station Ltd, Mr Brown considered that passenger lift systems should be excluded from the general standards applying to buildings and structures in the same way that farm buildings are exceptions[764], although he did not discuss any of the rules in Table 3 in detail.

805. The submission of NZTM (519) seeking exclusion of mining building from this rule was also framed in the general. Mr Vivian's evidence[765] addressed this submission, opining that mining buildings necessary for the undertaking of mining activities could be treated much the same way as farm buildings, as they would be expected in the landscape where mining occurs.

806. We noted above, in discussing the definition of Passenger Lift Systems, (Section 5.16) Mr Fergusson's understanding that ski tows and machinery were exempt from the definition of building in the Building Act. Other than that evidence, we were not provided with any reasons why passenger lift systems should be excluded from this rule. If Mr Fergusson's understanding is correct, then the pylons of passenger lift systems would not be subject to the rule in any event. In the absence of clear evidence justifying the exclusion of passenger lift systems from the effect of this rule we are not prepared to recommend such an exclusion.

807. Turning to the NZTM submission, we consider that mining building buildings are not in the same category as farm buildings. The policy direction of this zone is to enable farming as the main activity in the zone. The separate provisions for farm buildings recognise the need for such buildings so as to enable the farming activity. However, such buildings are constrained as to frequency in the landscape, location, size, colour and height. In addition, mining, other than for farming purposes, cannot occur without a resource consent. While Mr Vivian may be correct that one would expect buildings to be associated with a mine, without detailed evidence on what those buildings may entail and how any adverse effects of such buildings could be avoided, we are unable to conclude that some separate provision should be made for mining buildings.

808. Accordingly, we recommend that apart from relocation into Table 4, renumbering and minor wording changes, Rule 21.5.17 be retained as notified.

9 TABLE 4 – STANDARDS FOR FARM BUILDINGS

9.1 Rule 21.5.18 – Construction or Extension to Farm Buildings

809. Rule 21.5.18, as notified, set out the permitted activity standards for farm buildings (21.5.18.1 – 21.5.18.7) and provided matters of discretion for a restricted discretionary activity status when the standards were not complied with.

810. One submission opposed farm buildings being permitted activities and sought that provisions of the ODP be rolled over in their current form.[766] We have already addressed that matter in Section 7.4 above and have recommended that submission be rejected. In the Section 42A Report, however, Mr Barr relied on that submission and the evidence of Dr Read that a density of 1 farm building per 25 hectares (Rule 21.5.18.2 as notified) created the risk to the landscape from a proliferation of built form, as the basis for his recommendation that a density for farm

764 J Brown, EIC, Page 24, Paras 2.39 – 2.40

765 C Vivian, EiC, page 21, paragraphs 4.95-4.96

766 Submission 145

buildings of one per 50 hectares was more appropriate[767]. No other evidence was provided on this provision. We recommend that, subject to minor wording changes to make the rule clearer, Rule 12.5.18.2 be adopted as recommended by Mr Barr.

811. There were other submissions on specific aspects of 21.5.18 that we address now.

812. One submission sought that 21.5.18.3 be amended so that containers located on ONFs would be exempt from this rule[768]. Mr Barr did not address this matter directly in the Section 42A Report. Mr Vivian addressed this matter in evidence suggesting that provision for small farm buildings could be made[769], but gave no particular reasons as to how he reached that opinion. Given the policy direction of the PDP contained in Chapters 3 and 6, we consider to exempt containers from this rule would represent an implementation failure. We recommend that submission be rejected.

813. One submission sought that 21.5.18.4 be amended to provide for buildings up to 200m^2 and 5m in height.[770]

814. Mr Barr, in the Section 42A Report, relying on the evidence of Dr Read as to the importance of landscape, considered the proposed rule as notified provided the appropriate balance between providing for farm buildings and ensuring landscape values were maintained. Mr Barr also considered that the rule was not absolute and provided for proposals not meeting the permitted standards to be assessed for potential effects on landscape and visual amenity.

815. We heard no evidence in support of the submission. We agree with and adopt the reasons of Mr Barr. Accordingly, we recommended that the submission be rejected.

816. One submission sought that the permitted elevation for farm buildings be increased from 600 metres above sea level (masl) to 900 masl[771]. In the Section 42A Report, Mr Barr noted that this provision had been brought across from the ODP, acknowledged that there were some farms with areas over 600 masl, but considered that the 600 masl cut-off was appropriate because areas at the higher elevation were visually vulnerable.[772]

817. This is another area where we see that the permitted activity status for farming needs to be balanced against its potential adverse effects on landscape and visual amenity. We consider that the 600 masl cut-off is the most appropriate balance in terms of the rule achieving the objective. Accordingly, we recommend that the submission be rejected.

818. Two submissions opposed the open-ended nature of the matters of discretion that applied to this provision through the inclusion of reference to rural amenity values[773]. We note these submitters opposed other provisions in the standards of this chapter on a similar basis. Jeremy Bell Investment Limited (Submission 784) considered that the matters of discretion were so wide that they effectively made the provision a fully discretionary activity.

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767 C Barr, Section 42A Report, Page 31, Para 10.19
768 Submission 519
769 C Vivian, EIC, Page 21, Para 4.100
770 Submission 384
771 Submission 829
772 C Barr, Section 42A Report, Page 29, Para 10.10
773 Submission 600, 784

819. In the Section 42A Report, Mr Barr considered that the matters of discretion related to the effects on landscape and were consistent with the ODP in this regard. However, Mr Barr went on to compare the matters of control for farm buildings under the ODP with the matters of discretion under the PDP, concluding that the ODP matters of control nullified the controlled activity status. Mr Barr acknowledged that the "scale" and "location" were broad matters, but he remained of the view that they were relevant and should be retained.[774]

820. We heard no evidence in support of these submissions. We also note that the change in approach of the PDP, providing for farm buildings as permitted activities, is accompanied by objectives and policies to protect landscape values. We agree with Mr Barr where, in the Section 42A Report, he observes that the matters of discretion relate to landscape and not other matters such as vehicle access and trip generation, servicing, natural hazards or noise. While the matters of discretion are broad, they are in line with the relevant objectives and policies.

821. Nonetheless, we questioned Mr Barr as to relevance of "location" and "scale" as matters of discretion given that matters of discretion listed in this rule already provide for these matters.

822. In reply, Mr Barr noted the importance of "location" and "scale", observing that they were specifically identified in Policy 21.2.1.2 (as notified) but considered that *"… The matters of discretion would better suit the rural amenity, landscape character, privacy and lighting being considered in the context of the scale and location of the farm building."*[775] Mr Barr, went on to recommend rewording of the matters of discretion so that location and scale are considered in the context of the other assessment matters. We agree and recommend that the wording of the matters of discretion be modified accordingly. Otherwise, we recommend that the submissions of Federated Farmers and JBIL be rejected.

823. Another submission sought that wahi tupuna be added to matters of discretion where farm buildings affect ridgelines and slopes[776].

824. Mr Barr, in the Section 42A Report, considered that this matter was already addressed in Policy 21.2.1.7 and that as it pertained to ridgelines and slopes, it was already included in the matters of discretion[777]. We agree. Accordingly, we recommend that the submission be rejected.

825. Taking account of the amendments recommended above and our overall rewording of the provisions, we recommend that Rule 21.5.18 be located in Table 5, renumbered and worded as follows;

	Table 5- Standards for Farm Buildings The following standards apply to Farm Buildings.	**Non-compliance**
21.8.1	**Construction, Extension or Replacement of a Farm Building** The construction, replacement or extension of a farm building is a permitted activity, subject to the following standards: 21.8.1.1 The landholding the farm building is located within must be greater than 100ha; and	RD Discretion is restricted to: a. **The extent to which the scale and location of the Farm Building is appropriate in terms of:** i. **rural amenity values.** ii. **landscape character.**

774 C Barr, Section 42 A Report, Pages 3-32, Para 10.21 – 10.26
775 C Barr, Reply, Page 15, Para 5.5
776 Submission 810
777 C Barr, Section 42A Report, Page 32, Para 10.27 – 10.28

	Table 5- Standards for Farm Buildings The following standards apply to Farm Buildings.	**Non-compliance**
	21.8.1.2 The density of all buildings on the landholding, inclusive of the proposed building(s) must not exceed one farm building per 50 hectares; and 21.8.1.3 The farm building must not be located within or on an Outstanding Natural Feature (ONF); and 21.8.1.4 If located within the Outstanding Natural Landscape (ONL), the farm building must not exceed 4 metres in height and the ground floor area must not exceed 100m²; and 21.8.1.5 The farm building must not be located at an elevation exceeding 600 masl; and 21.8.1.6 If located within the Rural Character Landscape (RCL), the farm building must not exceed 5m in height and the ground floor area must not exceed 300m²; and 21.8.1.7 Farm buildings must not protrude onto a skyline or above a terrace edge when viewed from adjoining sites, or formed roads within 2km of the location of the proposed building.	iii. privacy, outlook and rural amenity from adjoining properties. iv. visibility, including lighting.

9.2 Rule 21.5.19 – Exterior colours of buildings

826. Rule 21.5.19, as notified, set out the permitted activity standards for exterior colours for farm buildings (21.5.19.1 – 21.5.19.3) and provided matters of discretion to support a restricted discretionary activity status where the standards were not complied with.

827. One submission sought that the rule be retained[778], one submission sought that wording be amended for clarity and that the reflectance value not apply to locally sourced schist[779], and one submission sought removal of visual amenity values from the matters of discretion[780].

828. The submission on this provision from Darby Planning[781] is the same as that made to 21.5.15 which we addressed above (Section 8.15). For the same reasons, we recommend that the submission on provision 21.5.19 be accepted in part.

829. The submission form Federated Farmers[782] seeking the removal of visual amenity values from the matters of discretion is the same as that made to 21.5.15 in regard to rural amenity values, which we addressed above (Section 8.15). For the same reasons, we recommend that the submission on provision 21.5.19 be rejected.

778 Submission 325
779 Submission 608
780 Submission 600
781 Submission 608
782 Submission 600

830. Accordingly, we recommend that 21.5.19 be located in Table 5, renumbered and worded as follows;

21.8.2	Exterior colours of farm buildings: 21.8.2.1 All exterior surfaces, except for schist, must be coloured in the range of browns, greens or greys (except soffits). 21.8.2.2 Pre-painted steel, and all roofs must have a reflectance value not greater than 20%. 21.8.2.3 Surface finishes, except for schist, must have a reflectance value of not greater than 30%.	RD Discretion is restricted to: a. external appearance b. visual prominence from both public places and private locations c. landscape character d. visual amenity.

9.3 Rule 21.5.20 – Building Height

831. This standard set a maximum height of 10m for farm buildings. Two submissions[783] supported this provision. Other than some minor rewording to make the rule clearer, location in Table 5 and renumbering, we recommend it be adopted as notified.

10 TABLE 5 – STANDARDS FOR COMMERCIAL ACTIVITIES

10.1 Rule 21.5.21 – Commercial Recreational Activity

832. We have dealt with this standard in Section 7.15 above.

10.2 Rule 21.5.22 – Home Occupation

833. Rule 21.5.22, as notified set out the permitted activity standards for home occupations and provided for a restricted discretionary activity status for non-compliance with the standards.

834. One submission sought that the provision be retained[784] and one sought that it be amended to ensure that the rule was effects-based and clarified as to its relationship with rules controlling commercial and commercial recreational activities.[785]

835. In the Section 42A Report, Mr Barr considered that the rule did provide clear parameters and certainty.[786] We heard no other evidence on this provision. We agree with Mr Barr, that this rule is clear and note that it specifically applies to home occupations. Accordingly, we recommend that the submission seeking that the rule be amended, be rejected.

836. Accordingly, taking account of the amendments recommended above and our overall rewording of the provisions, we recommend that Rule 21.5.22 be located in Table 6, renumbered and worded as follows;

783 Submissions 325 and 600 (supported by FS1209, opposed by FS1034)
784 Submission 719
785 Submission 806
786 C Barr, Section 42A Report, Page 48, Par 13.36

21.9.2	**Home Occupation** 21.9.2.1 The maximum net floor area of home occupation activities must not exceed 150m²; 21.9.2.2 Goods materials or equipment must not be stored outside a building; 21.9.2.3 All manufacturing, altering, repairing, dismantling or processing of any goods or articles must be carried out within a building.	RD Discretion is restricted to: a. the nature, scale and intensity of the activity in the context of the surrounding rural area. b. visual amenity from neighbouring properties and public places. c. noise, odour and dust. d. the extent to which the activity requires a rural location because of its link to any rural resource in the Rural Zone. e. access safety and transportation effects.

10.3 Rule 21.5.23 – Retail Sales

837. This rule imposed a setback from road boundaries of 30m on buildings in excess of 25m^2 used for retail sales. No submissions were received on this standard. Other than some wording changes for clarification purposes, we recommend the rule be located in Table 6, renumbered and adopted as notified.

10.4 Rule 21.5.24 – Retail Sales

838. As notified, this rule read:

Retail sales where the access is onto a State Highway, with the exception of the activities listed in Table 1.

839. Non-compliance was listed as a non-complying activity.

840. The sole submission[787] on the rule sought its retention.

841. The problem with this rule is that it is not a standard. It appears to us that the intention of the rule is to make any retails sales other than those specifically listed in Table 1 (21.4.14 Roadside stalls and 21.4.15 sales of farm produce) a non-complying activity. That being the case, we recommend the rule be relocated in Table 1 as Rule 21.4.21 to read:

Retail sales where the access is onto a State Highway, with the exception of the activities provided for by Rule 21.4.14 or Rule 21.4.16.
Non-complying activity

11 TABLE 6 – STANDARDS FOR INFORMAL AIRPORTS

842. We have dealt with this in Section 7.23 above.

12 TABLE 7 – STANDARDS FOR SKI AREA ACTIVITIES WITHIN THE SKI AREA SUB ZONE

[787] Submission 719

12.1 Rule 21.5.27 – Construction, relocation, addition or alteration of a building

843. As notified, Rule 21.5.27 read:

21.5.27	Construction, relocation, addition or alteration of a building. Control is reserved to all of the following: a. Location, external appearance and size, colour, visual dominance b. Associated earthworks, access and landscaping c. Provision of water supply, sewage treatment and disposal, electricity and communication services (where necessary) d. Lighting.	C

844. One submission sought to add provisions relating to the exterior colour of all buildings[788]; and one submission sought that the table be renamed "Standards for Ski Area Activities within Ski Area Sub Zones and Tourism Activities within the Cardrona Alpine Resort" and that numerous changes be made to 21.5.27 including adding reference to earthworks infrastructure, snow grooming, lift and tow provisions and particular reference to the Cardrona Alpine Resort.[789]

845. The submission seeking specification of the exterior colour for building stated as the reason for the request that the matters listed are assessment matters not standards. Mr Barr, in the Section 42A Report, acknowledged the ambiguity of the table and recommended it be updated to correct this issue. Mr Brown, in evidence for Mt Cardrona Station Ltd, supported such an amendment[790] and Mr Barr, in reply provided further modification to the Table to clarify activity status[791]. We agree with Mr Brown and Mr Barr that clarification as to the difference between activity status and standards is required. However, we do not think that their recommended amendments fully address the issue.

846. Accordingly, and in line with our recommendation in Section 7.1 above, we recommend that the activities for Ski Area Sub Zones be included in one table (Table 9).

847. Mr Barr, in the Section 42A Report, questioned if the substantive changes sought by Cardrona Alpine Resort Ltd were to be addressed in the Stream 11 hearing due to the extensive nature of changes sought by the submission. For the avoidance of doubt, Mr Barr assessed the amendments to 21.5.27 in a comprehensive manner, concluding that the submission should be rejected[792]. We heard no evidence in support of the amendments to Rule 21.5.27 sought by Cardrona Alpine Resort Ltd. As such, we agree with Mr Barr, for the reasons set out in the Section 42A Report, and recommend that the submission be rejected.

848. Accordingly, we recommend that Rule 21.5.27 be located in Table 9 Activities within the Ski Area Sub Zones, renumbered and worded as follows:

21.11.2	Construction, relocation, addition or alteration of a building. Control is reserved to: a. location, external appearance and size, colour, visual dominance b. associated earthworks, access and landscaping c. provision of water supply, sewage treatment and disposal, electricity and communication services (where necessary)	C

788 Submission 407

789 Submission 615

790 J Brown, EIC, Page 24, Para 2.38

791 C Barr, Reply, Appendix 1, Page 21-21

792 C Barr, Section 42A Report, Pages 63 – 64, Paras 14.43 – 14.51

	d. lighting.	

12.2 Rule 21.5.28 – Ski tows and lifts

849. As notified, Rule 21.5.28 read as follows:

21.5.28	Ski tows and lifts. Control is reserved to all of the following: a. The extent to which the ski tow or lift or building breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes b. Whether the materials and colour to be used are consistent with the rural landscape of which the tow or lift or building will form a part c. Balancing environmental considerations with operational characteristics.	C

850. One submission sought to replace ski tows and lift with passenger lift systems and add provisions relating to the exterior colour of all passenger lift systems[793]. We have already addressed the definition of passenger lift system in paragraphs Section 5.16 above, concluding that it is appropriate to use this term for all such systems, including gondolas, ski tows and lifts. In addition, the submission of Mt Cardrona Station Ltd regarding exterior colour has the same reasoning as we discussed in Section 13.1 above. We adopt that same reasoning here. After hearing more extensive evidence on passenger lift systems, the Stream 11 Panel has recommended the inclusion of an additional matter of control ((c) in the rule set out below). Accordingly, we recommend that Rule 21.5.28 be located in Table 9 as an activity rather an a standard, be renumbered and worded as follows:

21.11.3	Passenger Lift Systems. Control is reserved over: a. the extent to which the passenger lift system breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes; b. whether the materials and colour to be used are consistent with the rural landscape of which the passenger lift system will form a part; c. the extent of any earthworks required to construct the passenger lift system, in terms of the limitations set out in Chapter 25 Earthworks; d. balancing environmental considerations with operational characteristics.	C

12.3 Rule 21.5.29 – Night Lighting

851. As notified, this rule made night lighting a controlled activity in the SASZ. There were no submissions on it. We recommend it be located in Table 9 as an activity rather than a standard, and adopted as notified subject to minor wording changes and renumbering.

12.4 Rule 21.5.30 – Vehicle Testing

852. As notified, this rule provided for vehicle testing facilities at the Waiorau Snow Farm SASZ as a controlled activity There were no submissions on it. We recommend it be located in Table 9 as

[793] Submission 407

an activity rather than a standard, and adopted as notified subject to minor wording changes and renumbering.

12.5 Rule 21.5.31 – Retail activities ancillary to Ski Area Activities

853. As notified, this rule provided for retail activities ancillary to ski area activities as a controlled activity in the SASZ. There were no submissions on it. We recommend it be located in Table 9 as an activity rather than a standard, and adopted as notified subject to minor wording changes and renumbering.

12.6 New Activity for Ski Area Sub Zone Accommodation within Ski Are Sub Zones

854. Two submissions sought to insert a new rule into Table 7 (as notified) to provide Residential and Visitor Accommodation[794].

855. In Section 5.19 above, we set out findings as regards a definition and policy for Ski Area Sub Zone Accommodation. We do not repeat that here. Rather, having established the policy framework, we address here the formulation of an appropriate rule. We understood that Mr Barr and Mr Ferguson[795] were in general agreement as to the substance of the proposed rule. However, in terms of matters that we have not previously addressed, they had differences of opinion in relation to the inclusion in the rule of reference to landscape and ecological values.

856. Mr Ferguson initially recommended inclusion in the matters of discretion of reference to the positive benefits for landscape and ecological values[796]. However, in response to our questions, he made further amendments removing the reference to positive benefits.[797] Mr Barr, in reply, considered that it did not seem appropriate to have landscape and ecological values apply to Ski Area Sub-Zone Accommodation facilities and not to other buildings in the Sub-Zone, which are addressed by the framework in Chapter 33 and which provided for the maintenance of biological diversity[798]. We agree with Mr Barr. The inclusion of reference to ecological matters would be a duplication of provisions requiring assessment. We note that the policy framework for Ski Area Sub-Zones precludes the landscape classification from applying in the Sub-Zone. This is not to say that landscape considerations are unimportant, but, in our view, those considerations should be applied consistently when considering all buildings and structures in the Sub-Zone.

857. In Section 5.19, we noted the need for the inclusion of the 6 month stay period as it applies to Ski Area Sub Zone Accommodation to be part of this rule. Mr Ferguson included this matter as a separate rule[799]. Mr Barr, in reply, recommended the 6 month period be included as part of a single rule and also considered that given that such activities were in an alpine environment, natural hazards should be included as a matter of discretion.

858. In considering all of the above, we recommend that new rule be included in Table 9 to provide for Ski Area Sub Zone Accommodation, numbered and worded as follows:

21.12.7	Ski Area Sub Zone Accommodation	RD

794 Submissions 610, 613
795 Expert Planning Witness for Submission Numbers 610 and 613
796 C Ferguson, EIC, Page 32-33, Para 125
797 C Ferguson, Response to Panel Questions, 27 May 2016, Pages 7 - 8
798 C Barr, Reply, Pages 40 – 41, Para 14.12
799 C Ferguson, Response to Panel Questions, 27 May 2016, Page 8

	Comprising a duration of stay of up to 6 months in any 12 month period and including worker accommodation. Discretion is restricted to: a. scale and intensity and whether these would have adverse effects on amenity, including loss of remoteness or isolation b. location, including whether that because of the scale and intensity the visitor accommodation should be located near the base building area (if any) c. parking d. provision of water supply, sewage treatment and disposal e. cumulative effects f. natural hazards	

12.7 New Rule – Ski Area Sub-Zone Activities

859. As a result of hearings in Stream 11, a new Rule 21.12.8 providing for a no build area in the Remarkables Ski Area Sub-Zone has been recommended by the Stream 11 Panel.

12.8 Standards for Ski Area Sub-Zones

860. As will be clear from above, we concluded that all the provisions listed in notified Table 7 were activities rather than standards. We had no evidence suggesting any specific standard be included for Ski Area Sub-Zone. Thus we recommend the table for such standards be deleted.

13 TABLE 8 – STANDARDS FOR ACTIVITIES WITHIN THE RURAL INDUSTRIAL SUB ZONE

13.1 Rule 21.5.32 – Buildings

861. As notified, Rule 21.5.32 read as follows;

21.5.32	**Buildings** Any building, including any structure larger than 5m2, that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building are subject to the following: All exterior surfaces shall be coloured in the range of browns, greens or greys (except soffits), including; 21.5.32.1 Pre-painted steel and all roofs shall have a reflectance value not greater than 20%; and, 21.5.32.2 All other surface finishes shall have a reflectance value of not greater than 30%. Discretion is restricted to all of the following: • External appearance • Visual prominence from both public places and private locations. • Landscape character • Visual amenity.	RD

862. One submission sought that the activity status be amended to fully discretionary or that the Rural Industrial Sub-Zone be removed from this Stage of the Review[800]. On reviewing the submission, we note that the concern expressed was that 'rural amenity' was not provided in the list of matters of discretion.

863. This submission was addressed by Mr Barr in the Section 42A Report, Appendix 2 where Mr Barr recorded that, *"The matters of discretion are considered to appropriately contemplate 'rural amenity'. The matters of discretion specify 'visual amenity'. Visual amenity would encompass rural amenity."*[801]

864. We heard no evidence in support of the submission. We agree with Mr Barr for the reasons set out in the Section 42A Report. Accordingly, we recommend that the submission be rejected and subject to minor word changes, the rule be adopted as notified as Rule 21.14.1 in Table 11..

13.2 Rule 21.5.33 – Building size

865. As notified this rule set a maximum ground floor of buildings in the Rural Industrial Sub-Zone at 500m^2, with non-compliance a restricted discretionary activity. No submissions were received on this rule.

866. Other than minor wording changes for clarity and renumbering, we recommend this rule be adopted as notified.

13.3 Rule 21.5.34 – Building height

867. As notified, this rule set the maximum building height at 10m in the Sub-Zone. No submissions were received on this rule.

868. Other than minor wording changes for clarity and renumbering, we recommend this rule be adopted as notified.

13.4 Rule 21.5.35 – Setback from Sub-Zone Boundaries

869. As notified, this rule set the setback from the Sub-Zone boundaries at 10m in the Sub-Zone. No submissions were received on this rule.

870. Other than minor wording changes for clarity and renumbering, we recommend this rule be adopted as notified.

13.5 Rule 21.5.36 – Retail Activities

871. As notified, this limited the location and area of space used for retail sales to being within a building, and not exceeding 10% of the building's total floor area. Non-compliance was set as a non-complying activity. No submissions were received on this rule.

872. Other than minor wording changes for clarity and renumbering, we recommend this rule be adopted as notified.

13.6 Rule 21.5.37 – Lighting and Glare

873. As notified, Rule 21.5.37 read as follows;

21.5.37	**Lighting and Glare**	NC

800 Submission 314

801 C Barr, Section 42A Report, Appendix 2, Page 127

	21.5.37.1	All fixed exterior lighting shall be directed away from adjoining sites and roads; and	
	21.5.37.2	No activity on any site 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, provided that this rule shall not apply where it can be demonstrated that the design of adjacent buildings adequately mitigates such effects.	
	21.5.37.3	There shall be no upward light spill.	

874. One submission sought that this provision be relocated to Table 2 – General Standards[802]. At this point, we also note that there was one submission seeking shielding and filtration standards for outdoor lighting generally within the zone with any non-compliance to be classified as a fully discretionary activity[803].

875. Mr Barr considered that shifting the standard to Table 2 – General Standards was appropriate relying on the evidence of Dr Read, *"… that the absence of any lighting controls in the ONF/L is an oversight and is of the opinion that the lighting standards should apply District Wide"*[804]. We agree for the reason set out in Mr Barr's Section 42A Report and recommend that the submission be accepted in part. We also consider that this addresses the submission seeking new lighting standards and accordingly recommended that submission be accepted in part.

876. The submission of QLDC Corporate also sought the following additional wording be added to the standard, *'Lighting shall be directed away from adjacent roads and properties, so as to limit effects on the night sky'.*

877. We agree with Mr Barr that such a standard is too subjective in that the rule itself would limit effects on the night sky and that it would be too difficult to ascertain as a permitted standard. Accordingly, we recommended that that submission be rejected.

878. Consequently, we recommend this rule be located in Table 2 as Rule 21.5.7 with the only text change being the replacement in recommended Rule 21.5.7.3 of "shall" with "must".

14 TABLE 9 – ACTIVITIES AND STANDARDS FOR ACTIVITIES ON THE SURFACE OF LAKES AND RIVERS

879. This table, as notified, contained a mixture of activities and standards. We recommend it be divided into two tables: Table 12 containing the activities on the surface of lakes and rivers, and Table 13 containing the standards for those activities.

14.1 Rule 21.5.38 – Jetboat Race Events

880. As notified, Rule 21.5.38 read as follows:

802 Submission 383

803 Submission 568

804 C Barr, EIC, Page 101, Para 20.8

21.5.38	**Jetboat Race Events** Jetboat Race Events on the Clutha River, between the Lake Outlet boat ramp and the Albert Town road bridge not exceeding 6 race days in any calendar year. Control is reserved to all of the following: a. The date, time, duration and scale of the jetboat race event, including its proximity to other such events, such as to avoid or mitigate adverse effects on residential and recreational activities in the vicinity b. Adequate public notice is given of the holding of the event c. Reasonable levels of public safety are maintained.	C

881. One submission sought that the rule be deleted as it would limit recreational opportunities and activities on the Clutha River[805].

882. Mr Barr, in the Section 42A Report, noted that this rule was effectively brought over from the ODP with the same activity status. The only change was that the limitation of 6 races per year was specified in the rule, rather than in a note[806]. We heard no evidence in support of the submission and we do not consider a 6 race limit unreasonable. Accordingly, we recommend that the submission be rejected and that the only changes be to numbering and structuring, in line with our more general recommendations. Some minor changes to the matters of control are also recommended so they do not read as standards. It would therefore be located in Table 12 as an activity and worded as follows:

21.15.4	**Jetboat Race Events** Jetboat Race Events on the Clutha River, between the Lake Outlet boat ramp and the Albert Town road bridge not exceeding 6 race days in any calendar year. Control is reserved to: a. the date, time, duration and scale of the jetboat race event, including its proximity to other such events, such as to avoid or mitigate adverse effects on residential and recreational activities in the vicinity; b. the adequacy of public notice of the event; c. public safety.	C

14.2 Rule 21.5.39 - Commercial non-motorised boating activities and Rule 21.5.43 – Commercial boating activities

883. As notified, Rule 21.5.39 read as follows:

21.5.39	**Commercial non-motorised boating activities** Discretion is restricted to all of the following: a. Scale and intensity of the activity b. Amenity effects, including loss of privacy, remoteness or isolation c. Congestion and safety, including effects on other commercial operators and recreational users	RD

805 Submission 758

806 C Barr, Section 42A Report, Pages 88 – 89, Paras 17.43 – 17.48

	d. Waste disposal e. Cumulative effects f. Parking, access safety and transportation effects.	

884. One submission sought that the rule be retained[807], one sought that it be deleted[808], two submissions sought that the rule be amended to prohibit non-motorised commercial activities on Lake Hayes[809] and one submission sought that the rule be amended so that the matters of discretion included location[810]. We note that Queenstown Rafting Ltd lodged a number of further submissions opposing many of the submissions on this provision and also seeking that the activity status be made fully discretionary. We find this latter point is beyond the scope of the original submissions, and hence we not have considered that part of those further submissions.

885. Mr Barr, in the Section 42A Report, noted the safety concerns raised in the QRL submission[811], but considered that the provision as notified adequately addressed safety issues and that the restricted discretionary activity status was appropriate. Mr Barr also considered that the addition of 'location' as a matter of discretion was appropriate.[812] Mr Farrell, in evidence for RJL agreed with Mr Barr[813].

886. In evidence for QRL, Mr Boyd (Managing Director of QRL) suggested that restricted discretionary activity status would result in the Council not considering other river and lake users when assessing such applications. He also highlighted the potential impact of accidents on tourism activities.[814]

887. Mr Brown, in his evidence for Kawarau Jet Services Holdings Limited[815] considered safety and congestion an important factor that should considered for any application involving existing and new motorised and non-motorised boating activities[816].

888. In reply, Mr Barr considered that the inclusion of safety in the matters of assessment meant that restricted discretionary status did not unduly impinge on a thorough analysis and application of section 104 and section 5.[817]

889. Considering the evidence of the witnesses we heard, we had difficulty in reaching the conclusion that restricted discretionary activity status was appropriate for commercial non-motorised boating activities (Rule 21.5.39) alongside fully discretionary activity status for commercial motorised boating activities (Rule 21.4.43), particularly where motorised and non-motorised activities may occur on the same stretch of water. It appeared to us that the same activity status should apply to both motorised and non-motorised commercial boating activities.

890. We therefore consider Rule 21.5.43 at this point. As notified, this rule read as follows;

807 Submissions 45, 719
808 Submission 167
809 Submission 11, 684
810 Submission 621
811 Submission 167
812 C Barr, Section 42A Report, Page 84-85, Paras 17.25 – 17.28
813 B Farrell, EIC, Page 27, Paras 125 - 126
814 RV Boyd, EIC, Pages 3- 5, Paras 3.3 – 4.5
815 Submission 307
816 J Brown, EIC, Page 20, Para 2.28
817 C Barr, Reply, Page 30, Para 10.2

21.5.43	**Commercial boating activities** Motorised commercial boating activities. Note: Any person wishing to commence commercial boating activities could require a concession under the QLDC Navigation Safety Bylaw. There is an exclusive concession currently granted to a commercial boating operator on the Shotover River between Edith Cavell Bridge and Tucker Beach until 1 April 2009 with four rights of renewal of five years each.	D

891. One submission sought that the term "motorised commercial boating activities" be deleted from the rule[818] and one submission sought that the rule be amended to separately provide for commercial ferry operations for public transport between the Kawarau River, Frankton Arm, and Queenstown CBD as a controlled activity[819].

892. We were unable to find direct reference in the Section 42A Report to this rule or to the submission from QRL. Rather, the focus of the Section 42A Report remained on the commercial non-motorised boating activities as discussed above.

893. Reading Submission 167 as a whole, the combination of relief resulting from deleting rule 21.5.39 and deleting "*motorised commercial boating activities"* from Rule 21.5.43 would mean that all commercial boating activities (meaning both motorised and non-motorised operations) would become fully discretionary activities. For the reasons discussed above, we agree that it is appropriate that the same activity status apply to motorised and non-motorised boating activities. We have no jurisdiction to consider restricted discretionary status for motorised activities (other than for commercial ferry operations in the areas specified in Submission 806).

894. Accordingly, we recommend that Rule 21.5.39 and Rule 21.4.43 be combined and renumbered, with the following wording;

21.15.9	**Motorised and non-motorised Commercial Boating Activities** Except where otherwise limited by a rule in Table 12. Note: Any person wishing to commence commercial boating activities could require a concession under the QLDC Navigation Safety Bylaw. There is an exclusive concession currently granted to a commercial boating operator on the Shotover River between Edith Cavell Bridge and Tucker Beach until 1 April 2009 with four rights of renewal of five years each.	D

895. In relation to the submission of QPL seeking commercial ferry operations for public transport between the Kawarau River, Frankton Arm, and Queenstown CBD be subject to a separate rule as a controlled activity, this issue has also been raised by RJL. Both QPL and RJL sought related amendments to a number of provisions and we address those matters later in the report in Section 15.4.

818 Submission 167

819 Submission 806

14.3 Rule 21.5.40 – Jetties and Moorings in the Frankton Arm

896. As notified, this rule provided for jetties and moorings in the Frankton Arm as a restricted discretionary activity. No submissions were received on this rule.

897. Other than minor wording changes and renumbering, we recommend this be adopted as notified.

14.4 Rule 21.5.41 and Rule 21.5.42 – Structures and Moorings

898. As notified, Rules 21.5.41 and 21.5.42 read as follows;

21.5.41	**Structures and Moorings** Any structure or mooring that passes across or through the surface of any lake or river or is attached to the bank of any lake and river, other than where fences cross lakes and rivers.	D
21.5.42	**Structures and Moorings** Any structures or mooring that passes across or through the surface of any lake or river or attached to the bank or any lake or river in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying.	NC

899. One submission sought that Rule 21.5.41 be amended to include pipelines for water takes that are permitted in a regional plan and gabion baskets or similar low impact erosion control structures installed for prevention of bank erosion[820].

900. Two submissions sought that Rule 21.5.42 be amended to provide for jetties and other structures for water based public transport on the Kawarau River and Frankton Arm, as a controlled activity[821].

901. In relation to the amendment sought by RJL regarding water take pipelines and erosion controls , we could not find reference to this submission point in the Section 42A Report. Mr Farrell, likewise did not address this matter in evidence for RJL. In reply, Mr Barr recommended amending 21.5.41 to clarify that post and wire fences were in this situation permitted activities, although he provided no discussion of this change or reference to a submission seeking it.

902. Having heard no evidence in support of the amendments for inclusion of water pipeline takes and erosion control devices, we recommend that that submission be rejected.

903. While there may have been an intention that post and wire fences crossing lakes and rivers were a permitted activity, Rule 21.5.41 as notified did not classify those activities in that way. What the rule did do is exclude fences crossing lakes and rivers from the discretionary activity category.. Given the application of (notified) Rule 21.4.1, those fences would therefore be non-complying activities. There is no scope for those activities to be reclassified as permitted. Therefore, we do not agree with Mr Barr's recommended amendment.

904. What we do recommend is a minor, non-substantive change to Rule 21.5.41 to make it clear that it is subject to Rule 21.5.42 (as notified).

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820 Submission 621

821 Submission 621, 806

905. Accordingly, we recommend that Rules 21.5.41 and 21.5.42 be renumbered and worded as follows:

21.15.7	**Structures and Moorings** Subject to Rule 21.15.8, any structure or mooring other than post and wire fences that passes across or through the surface of any lake or river or is attached to the bank of any lake and river.	D
21.15.8	**Structures and Moorings** Any structures or mooring that passes across or through the surface of any lake or river or attached to the bank or any lake or river in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying.	NC

906. Returning to the submissions regarding jetties and other structures for water based public transport on the Kawarau River and Frankton Arm as a controlled activity, we have already addressed these matters at a policy level in Section 5.48 above, where we recommended separating public ferry systems from other commercial boating activities. We also recorded the need for jetties and moorings to be considered in the context of policies related to protection landscape quality and character, and amenity values.

907. Mr Barr, in the Section 42A Report, was opposed to controlled activity status for jetties and other structures and his recommendation was *"that the restricted discretionary activity status is appropriate, as is a discretionary, or non-complying activity status for other areas as identified in the provisions."*[822] Mr Farrell, in evidence for RJL, agreed with Mr Barr as to the restricted discretionary activity status for structures associated with water based public transport in the Frankton Arm[823].

908. We could not identify anywhere in the Section 42A Report or in his Reply Statement where Mr Barr included any recommendations so that the revised text of the PDP would provide for jetties and other structures as restricted discretionary activities. Even if we are wrong on that matter, we do not agree that that is the appropriate activity status. In our view, Policy 21.2.12.8 recommended above goes far enough towards encouraging public ferry systems and beyond that, the rules need to be balanced so that consideration is given to landscape quality and character, and amenity values, that are to be maintained and enhanced under Policies 6.3.29 and 6.3.30.

909. Accordingly, we recommend that the submissions seeking rule amendments to provide for jetties and other structures for water based public transport on the Kawarau River and Frankton Arm as a controlled activity be rejected.

14.5 Rule 21.5.44 – Recreational and commercial boating activities

910. As notified, Rule 21.5.44 read as follows:

21.5.44	**Recreational and commercial boating activities** The use of motorised craft on the following lakes and rivers is prohibited, except where the activities are for emergency search and rescue, hydrological survey, public scientific research,	PR

822 C Barr, Section 42A Report, Page 87, Para 17.36

823 B Farrell, EIC, Page 28, Para 129

	resource management monitoring or water weed control, or for access to adjoining land for farming activities. 21.5.44.1 Hawea River. 21.5.44.2 Commercial boating activities on Lake Hayes. 21.5.44.3 Any tributary of the Dart and Rees rivers (except the Rockburn tributary of the Dart River) or upstream of Muddy Creek on the Rees River. 21.5.44.4 Young River or any tributary of the Young or Wilkin Rivers and any other tributaries of the Makarora River. 21.5.44.5 Dingle Burn and Timaru Creek. 21.5.44.6 The tributaries of the Hunter River. 21.5.44.7 Hunter River during the months of May to October inclusive. 21.5.44.8 Motatapu River. 21.5.44.9 Any tributary of the Matukituki River. 21.5.44.10 Clutha River - More than six jet boat race days per year as allowed by Rule 21.5.38.	

911. Submissions to this rule variously sought that:
   a. 21.5.44 be retained[824]
   b. 21.5.44.1 be amended to provide for recreational jet sprint racing on the Hawea River[825]
   c. 21.5.44.3 be amended to provide for recreational and commercial boating activities on the Beansburn tributary of the Dart River[826]
   d. 21.5.44.7 amend rule to permitted activity status[827]
   e. 21.5.44.10 amend rule to permitted activity status[828].

912. Mr Barr, in the Section 42A Report, addressed the submission of Jet Boat NZ as regards jet sprint racing on the Hawea River, noting that the ODP did provide for such activities 6 days per year on an identified course on the river. However, Mr Barr set out in detail the reasons he considered that the activity status in the PDP should remain as prohibited, as follows;

"a. There is not any 'one approved jet sprint course' on the ODP planning maps. I accept this is not the fault of the submitter, however it illustrates that the rule has not been exercised.

a. The qualifiers in the exemption to the prohibited status are cumbersome and subject to third party approvals from a whitewater group and the Queenstown Harbour Master.

b. There is a jet sprint course constructed and in operation near the Wanaka Airport[53] for these activities that negate the need to manage risks to safety, amenity and nature conservation values as required in the qualifiers in Rule 5.3.3.5(a) through undertaking the activity on the Hawea River.

c. The jet sprint course near Wanaka Airport held a New Zealand Jet Sprint Championship event, however the resource consent was for a one-off event[54]. While these activities require a resource consent the physical works associated with constructing a jet sprint course are already done

824 Submission 688
825 Submission 758
826 Submission 716
827 Submission 758
828 Submission 758

d. The jet sprint course on the Hawea River has not been used for a long time and is disused. The Council's Albert Town Reserve Management Plan 2010[55] noted this and states that the jet sprint course was not compatible with the quiet values of the reserve and adjacent camping areas and, Central Otago Whitewater have expressed an interest in using the disused course for a pond to complement the kayak slalom site. [829]

53. http://www.jetsprint.co.nz/tracks/oxbow-aquatrack-wanaka/ Downloaded 28 February 2016.

54. RM130098 Oxbow Limited. To hold the fifth round of the New Zealand Jet Sprint Championship on the 30 March 2013 and undertake earthworks to construct the jet sprint course

.

55. http://www.qldc.govt.nz//assets/OldImages/Files/Reserve_Management_Plans/Albert_Town_Recreation_Reserve_Mgmt_ Plan_2010.pdf"

913. Mr McSoriley, in evidence for JBNZ, considered that Mr Barr's interpretation of the rules in the ODP was incorrect and that the rules provided for both jet boating runs on the Hawea River itself, as well as jet sprint events on the identified course[830]. Mr McSoriley considered that there was no support for a blanket prohibition on the Hawea River and also set out the reasons for the limited utilisation of jet sprint course and factors that may have led to the PDP discouraging recreational jet boating[831].

914. In reply, Mr Barr considered that it was appropriate to have jet boating runs on the Hawea River as per the ODP Rule 5.3.3.5i (a) (2) despite the cumbersome nature of the provisions in the ODP and recommended amendments to that effect[832]. Having considered the witness's evidence, we agree.

915. We questioned Mr Barr, as to whether the jet sprint course was part of the river, or whether, because it was artificially constructed, it therefore fell under Council's jurisdiction as a land-based activity rather than a surface of water activity. We understood from Mr Barr's evidence in reply that he supported the second interpretation. It followed that any activity on the course would require consideration under the provisions governing noise, commercial recreation activities and temporary activities. Mr Barr provided a copy of a consent from 14 Dec 1999 for a one-off jet sprint event to be held on 3 Jan 2000.

916. We agree with Mr Barr that the jet sprint course is not part of the surface of a lake or river, but that this use should be addressed under other provisions in Plan. We also note that we did not receive any evidence that the activity was lawfully established. In our view, the activity would be most appropriately addressed as a temporary activity.

917. Accordingly we recommend that the submission of JBNZ seeking the reinstatement of the Jet Sprint Course be rejected and recreational jet boat runs on the Hawea be provided for subject to limitations as follows;

829 C Barr, Section 42A Report, Pages 90 – 91, Para 17.52
830 L McSoriley, EIC, Pages 2-3, Para 10 - 12
831 L McSoriley, EIC, Pages 4-5, Paras 14 - 24
832 C Barr, Reply, Page 31, Para 10.6

21.15.3	**Motorised Recreational Boating Activities** Hawea River, motorised recreational boating activities on no more than six (6) days in each year subject to the following conditions: a. at least four (4) days of such activity are to be in the months January to April, November and December b. The Jet Boat Association of New Zealand ("JBANZ") (JBANZ or one of the Otago and Southland Branches as its delegate) administers the activity on each day c. The prior written approval of Central Otago Whitewater Inc is obtained if that organisation is satisfied that none of its member user groups are organising activities on the relevant days; and d. JBANZ gives two (2) calendar months written notice to the Council's Harbour-Master of both the proposed dates and the proposed operating schedule e. The Council's Harbour-Master satisfies himself that none of the regular kayaking, rafting or other whitewater (non-motorised) river user groups or institutions (not members of Central Otago Whitewater Inc) were intending to use the Hawea River on that day, and issues an approved operating schedule f. JBANZ carries out, as its expense, public notification on two occasions 14 and 7 days before the proposed jet boating g. Public notification for the purposes of (f) means a public notice with double-size font heading in both the Otago Daily Times and the Southland Times, and written notices posted at the regular entry points to the Hawea River.	P

918. As regards the submission of Ngai Tahu Tourism Ltd seeking that Rule 21.5.44.3 be amended to provide for recreational and commercial boating activities on the Beansburn tributary of the Dart River, Mr Barr, in the Section 42A Report, considered that the submission did not contain any evaluation of safety effects, or how natural conservation values or amenity values of other recreational users would be impacted[833].

919. Mr Edmonds spoke to the submission of Ngai Tahu Tourism Ltd, noting that the jet boat trip includes a stop at toilet facilities up the Beansburn River for which Ngai Tahu Tourism have a concession and presented maps showing stopping points. Mr Barr, in reply, agreed with Mr Edmonds and included a recommended amendment as part of a section 32AA assessment to provide for the exception of Beansburn tributary of the Dart River[834].

920. We agree that an exception in this case is appropriate in addressing a practical aspect of the existing commercial boating operation. By excluding the Beansburn from the rule, the more general Rule 21.15.9 (as recommended) would apply making the activities described by Mr Edmonds a discretionary activity. Accordingly, we recommend that 21.5.44.3 be renumbered and worded as follows:

833 C Barr, Section 42A Report, Page 91, Para 17.55

834 C Barr, Reply, Appendix 2, Page 12, Rule 21.5.44.3

Any tributary of the Dart and Rees rivers (except the Beansburn and Rockburn tributaries of the Dart River) or upstream of Muddy Creek on the Rees River.

921. The submission of JBNZ sought to amend Rule 21.5.44.7, which prohibited recreational motorised craft on the Hunter River during the months of May to October, so that it would be permitted. Mr Barr in the Section 42A Report, noted that the submission stated that the rule would, *"'prohibit recreational opportunities in certain months which is a permitted activity under the Operative District Plan'".* Mr Barr recorded that the rule is in fact carried over from the ODP and he considered the rule appropriate in terms of navigation and safety considerations and environmental impacts.

922. We heard no evidence from JBNZ in support of the submission that would contradict Mr Barr's evidence. Therefore we recommend that the submission be rejected.

923. As regards the amendment sought by JBNZ to Rule 21.5.44.10 seeking permitted activity status for jet boating racing on the Clutha River (up to 6 race days a year), Mr Barr noted in the Section 42A Report that controlled activity status under Rule 21.5.38 is the same as in the ODP.[835] Mr Barr did not consider the reasons provided by JBNZ to be compelling enough to alter the existing situation.

924. As for our consideration of Rule 21.5.38, JBNZ did not present any evidence in support of the submission that would cause us to take a different view to Mr Barr. We therefore recommend that the submission be rejected.

925. Notwithstanding the recommended acceptance and rejection of submissions set out above, we consider this rule has some inherent difficulties. As we understand the intention of the rule, it is to make it a prohibited activity for motorised craft to use the listed rivers and Lake Hayes (limited to commercial motorised craft). However, the rule also implies that where motorised craft are used for emergency search and rescue, hydrological survey, public scientific research, resource management monitoring or water weed control, or for access to adjoining land for farming activities, then they can use those rivers and Lake Hayes, presumably as a permitted activity.

926. In our view, the PDP would be a more easily understood document if the permitted activities were specified as such, and the prohibited activity rule was drafted so that it did not apply to those activities. For those reasons, we recommend this rule be split into two rules as follows:

21.15.2	**Motorised Recreational and Commercial Boating Activities** The use of motorised craft for the purpose of emergency search and rescue, hydrological survey, public scientific research, resource management monitoring or water weed control, or for access to adjoining land for farming activities.	P
21.15.10	**Motorised Recreational and Commercial Boating Activities** The use of motorised craft on the following lakes and rivers is prohibited except as provided for under Rules 21.15.2 and 21.15.3. 21.15.10.1 Hawea River. 21.15.10.2 Lake Hayes - Commercial boating activities only.	PR

[835] C Barr, Section 42A Report, Page 89, Para 17.47

	21.15.10.3 Any tributary of the Dart and Rees Rivers (except the Beansburn and Rockburn tributaries of the Dart River) or upstream of Muddy Creek on the Rees River. 21.15.10.4 Young River or any tributary of the Young or Wilkin Rivers and any other tributaries of the Makarora River. 21.15.10.5 Dingle Burn and Timaru Creek. 21.15.10.6 The tributaries of the Hunter River. 21.15.10.7 Hunter River during the months of May to October inclusive. 21.15.10.8 Motatapu River. 21.15.10.9 Any tributary of the Matukituki River. 21.15.10.10 Clutha River - More than six jet boat race days per year as allowed by Rule 21.15.4	

14.6 Rule 21.5.45 – Boating Craft used for Accommodation

927. As notified, this rule provided standards applying to the use of craft for overnight accommodation. Non-compliance was a non-complying activity. No submissions were received to this rule.

928. In his Reply Statement, Mr Barr recommended changed wording so as to make it clear that the activity is allowed subject to the standards. In large part we agree with his recommended amendments. We consider such an amendment to be minor and available under Clause 16(2).

929. We recommend the rule be renumbered and adopted with the following wording:

21.16.1	**Boating craft used for Accommodation** Boating craft on the surface of the lakes and rivers may be used for accommodation, provided that: 21.16.1.1 The craft must only be used for overnight recreational accommodation; and 21.16.1.2 The craft must not be used as part of any commercial activity; and 21.16.1.3 All effluent must be contained on board the craft and removed, ensuring that no effluent is discharged into the lake or river.	NC

14.7 Rule 21.5.46 – Jetties in Frankton Arm

930. As notified, Rules 21.5.46 read as follows:

21.5.46	No new jetty within the Frankton Arm identified as the area east of the Outstanding Natural Landscape Line shall: 21.5.46.1 be closer than 200 metres to any existing jetty; 21.5.46.2 exceed 20 metres in length; 21.5.46.3 exceed four berths per jetty, of which at least one berth is available to the public at all times; 21.5.46.4 be constructed further than 200 metres from a property in which at least one of the registered owners of the jetty resides.	NC

931. One submission sought that the standard be amended to exclude jetties associated with water based public transport or amended to provide flexibility for the provision of such jetties[836]. Two other submissions similarly sought that the rule not apply to jetties for public transport linkage on the Kawarau River, the Frankton Arm and Queenstown CBD[837].

932. Submissions to this rule were not directly referenced in the Section 42A Report, Mr Barr noting in Appendix 2 that the matter was addressed under his consideration of Objective 21.2.12 (as notified)[838].

933. Mr Farrell, in evidence for RJL opined that the importance of water based public transport warranted discretionary activity status for associated jetties and structures rather than the non-complying activity status[839]. Mr Farrell did not provide any further reasons for reaching that opinion.

934. We have already addressed the issue of water based public transport infrastructure at a policy level in Section 5.48 above, where we recommended separating public ferry systems from other commercial boating activities and, in particular, recording the need for jetties and moorings to be considered within the context of landscape quality and character, and amenity values all being maintained and enhanced under Policies 6.3.29 and 6.3.30. For the same reasons, we recommend that these submissions be rejected.

935. Mr Barr, in reply did recommend clarification of the rule by inserting a reference to Outstanding Natural Landscape line as shown on the District Plan Maps[840]. We agree that this is a useful clarification. Accordingly, we recommend that Rule 21.5.46 be renumbered and the wording be as follows;

21.16.2	Jetties and Moorings in the Frankton Arm Jetties and moorings in the Frankton Arm, identified as the areas located to the east of the Outstanding Natural Landscape line as shown on District Plan Map No new jetty within the Frankton Arm identified as the area east of the Outstanding Natural Landscape Line shall: 21.16.2.1 Be closer than 200 metres to any existing jetty; 21.16.2.2 Exceed 20 metres in length; 21.16.2.3 Exceed four berths per jetty, of which at least one berth is available to the public at all times; 21.16.2.4 Be constructed further than 200 metres from a property in which at least one of the registered owners of the jetty resides.	NC

14.8 Rule 21.5.47 – Specific Standards

936. As notified, Rule 21.5.47 read as follows;

21.5.47	The following activities are subject to compliance with the following standards:	NC

836 Submission 621
837 Submissions 766, 806
838 C Barr, Section 42A Report, Appendix 2, Page 131
839 B Farrell, EIC, Page 29, Para 135
840 C Barr, Reply, Appendix 1, Page 21-27

	21.5.47.1	Kawarau River, Lower Shotover River downstream of Tucker Beach and Lake Wakatipu within Frankton Arm - Commercial motorised craft shall only operate between the hours of 0800 to 2000.	
	21.5.47.2	Lake Wanaka, Lake Hawea and Lake Wakatipu - Commercial jetski operations shall only be undertaken between the hours of 0800 to 2100 on lakes Wanaka and Hawea and 0800 and 2000 on Lake Wakatipu.	
	21.5.47.3	Dart and Rees Rivers - Commercial motorised craft shall only operate between the hours of 0800 to 1800, except that above the confluence with the Beansburn on the Dart River commercial motorised craft shall only operate between the hours of 1000 to 1700.	
	21.5.47	Dart River – The total number of commercial motorised boating activities shall not exceed 26 trips in any one day. No more than two commercial jet boat operators shall operate upstream of the confluence of the Beansburn, other than for tramper and angler access only.	

937. One submission sought that the rule be amended to clarify that it did not apply to commercial boating operations providing a public transport service[841]. Another submission sought that Rule 21.5.47.1 be amended so as not to provide a disincentive for public transport[842]. A third submission sought that rule 21.5.47.4 be amended to refer to 'one' instead of 'two' commercial jet boat operators[843].

938. Mr Barr, in the Section 42A Report, agreed that the hours of operation specified in Rule 21.5.47.1 could provide a disincentive for public transport and recommended amending the rule to exclude public transport ferries, rather than deleting the rule entirely.[844]

939. We have already addressed public transport ferry activities above. We agree with Mr Barr that the restriction on the hours of operation would be a disincentive that should be removed.

940. In speaking to the submission of Ngai Tahu Tourism Ltd[845] seeking an amendment to Rule 21.5.47.4, to refer to 'one' instead of 'two' commercial jet boat operators, Mr Edmonds explained that Ngai Tahu Tourism Ltd now owned all the jet boat operations on the Dart River.

941. We are concerned that, notwithstanding that Ngai Tahu Tourism Limited may be the only present operator on the Dart River, restricting the number of operators to one would amount to a restriction of trade competition. In the absence of evidence of resource management reasons as to why the standard should be further restricted, we do not recommend it be changed.

841 Submission 806
842 Submission 383
843 Submission 716
844 C Barr, Section 42A Report, Page 87, Para 17.39
845 Submission 716

942. Taking account of all of the above, we recommend that rule 21.5.47 be renumbered and worded as follows:

21.16.3	The following activities are subject to compliance with the following standards: 21.16.3.1 Kawarau River, Lower Shotover River downstream of Tucker Beach and Lake Wakatipu within Frankton Arm - Commercial motorised craft other than public transport ferry activities, may only operate between the hours of 0800 to 2000. 21.16.3.2 Lake Wanaka, Lake Hawea and Lake Wakatipu - Commercial jetski operations must only be undertaken between the hours of 0800 to 2100 on Lakes Wanaka and Hawea and 0800 and 2000 on Lake Wakatipu. 21.16.3.3 Dart and Rees Rivers - Commercial motorised craft must only operate between the hours of 0800 to 1800, except that above the confluence with the Beansburn on the Dart River commercial motorised craft must only operate between the hours of 1000 to 1700. 21.16.3.4 Dart River – The total number of commercial motorised boating activities must not exceed 26 trips in any one day. No more than two commercial jet boat operators may operate upstream of the confluence of the Beansburn, other than for tramper and angler access only.	NC

15 TABLE 10 – CLOSEBURN STATION

943. As notified, this table contained one activity rule and four standards applying solely to Closeburn Station. The only submission[846] on these supported the provisions.

944. We recommend these be split into two tables: Table 14: Closeburn Station – Activities; and Table 15: Closeburn Station – Standards. Other than that, renumbering and a minor grammatical correction to the height standards, we recommend the rules be adopted as notified.

16 NEW STANDARDS SOUGHT

945. The NZFS[847] sought inclusion of a standard requiring compliance with the NZFS Code of Practice SNZ PAS 4509:2003 in relation to water supply and access. We were not able to find any further submissions opposing the relief sought.

946. In the Section 42A Report, Mr Barr supported the request but raised concerns around the reliance on the Code of Practice, which is a document outside the PDP, for a permitted activity status. As there were no development rights attached to dwellings in the Rural Zone, Mr Barr

846 Submission 323
847 Submission 438

did not consider the rule necessary and recommended that the submission be rejected[848]. We note that in Section 5.4 above that we have already dealt with the policy matter of the provision of firefighting water supply and fire service vehicle access within this Chapter and the other rural chapters. We also note that Mr Barr, in the Section 42A Report on Chapter 22, recommended that the specifics of the Code of Practice be incorporated into the wording of a standard[849].

947. We heard evidence from Mr McIntosh, Area Manager Central/North Otago at the NZFS, as to the detail of the Code of Practice and the importance of water supply and access to property in the event of the NZFS attending emergency call outs[850]. We also heard evidence from Ms A McLeod, a planner appearing for NZFS. Ms McLeod had a different view to Mr Barr, considering that a standard should be included. Her reasons included greater certainty and clarity for plan users, consistency with the priority given to fire-fighting water supply in section 14(3) of the RMA and by being *"the most appropriate way to achieve the purpose of the RMA by enabling people and community to provide for their health, safety and well-being by managing a potential adverse effect of relatively low probability but high consequence."*[851]

948. In her evidence, Ms McLeod considered that reference to codes of practice were provided for by the Act and that interpreting the code into the provision as proposed by Mr Barr could lead to the PDP being more restrictive than the code itself[852]. We questioned the NZFS witnesses regarding the detail of the application of the code and proposed standard and activity status during the hearing and also sought additional information on specific questions relating to the treatment of multiple units, separation distances and the suggested 45,000 litre tank size. We received that information on 7 June 2016.

949. Taking into account all the evidence and information we were provided with, we think that reliance on the code of practice in not appropriate in terms of specifying the requirements and that those requirements should be set out in the Plan. We agree that the tank/s size should be 45,000litres and the activity status for non-compliance should be restricted discretionary. In line with our policy recommendation above, we also consider that these provisions be consistently applied across all the rural chapters.

950. Accordingly we recommend the NZFS submission be accepted in part and that the provisions be located in Table 4 (Standards for Structures and Buildings), numbered and worded as follows:

21.7.5	Fire Fighting water and access All new buildings, where there is no reticulated water supply or any reticulated water supply is not sufficient for fire-fighting water supply, must make the following provision for fire-fighting: 21.7.5.1 A water supply of 45,000 litres and any necessary couplings. 21.7.5.2 A hardstand area adjacent to the firefighting water supply	RD Discretion is restricted to: a. The extent to which SNZ PAS 4509: 2008 can be met including the adequacy of the water supply. b. The accessibility of the firefighting water connection point for fire service vehicles.

848 C Barr, Section 42A Report, Pages 99 -100, Paras 20.1 – 20.5
849 C Barr, Chapter 22 Section 42A Report, Page 34, Paras 16.6 – 16.8
850 D McIntosh, EIC, Pages 2 – 5, Paras 19 - 33
851 A McLeod, EIC, Pages 8-9, Para 5.10
852 A McLeod, EIC, Pages 9 – 11, Paras 5.13 – 5.18

		capable of supporting fire service vehicles.	c. Whether and the extent to which the building is assessed as a low fire risk.
	21.7.5.3	Firefighting water connection point within 6m of the hardstand, and 90m of the dwelling.	
	21.7.5.4	Access from the property boundary to the firefighting water connection capable of accommodating and supporting fire service vehicles.	

17 RULE 21.6 – NON-NOTIFICATION OF APPLICATIONS

951. As notified, Rule 21.6 read as follows;

> *21.6 Non-Notification of Applications*
>
> *Any application for resource consent for the following matters shall not require the written consent of other persons and shall not be notified or limited-notified:*
>
> *21.6.1 Controlled activity retail sales of farm and garden produce and handicrafts grown or produced on site (Rule 21.4.14), except where the access is onto a State highway.*
>
> *21.6.2 Controlled activity mineral exploration (Rule 21.4. 31).*
>
> *21.6.3 Controlled activity buildings at Closeburn Station (Rule 21.5.48).*

952. One submission sought that the rule be amended to include a provision that states consent to construct a building will proceed non-notified[853]. The reasons set out in the submission include that, "*Buildings within the rural zone can have limited impact upon the environment and the community. Often buildings are related to the activities that occur onsite. Given the limited impact that buildings have on the rural environment and communities it is appropriate that consent for any building proceed non-notified*."[854]

953. In the Section 42A Report, Mr Barr considered that it was important that all buildings had the potential to be processed on a notified or limited notified basis and recommended that the submission be rejected[855]. We heard no evidence in support of the submission.

954. We agree with Mr Barr that buildings should have the potential to be processed as notified or limited notified. Any decision as regards buildings in the Rural Zone is needs to be subject of a separate assessment as to effects and potentially affected parties. In appropriate cases, applications will proceed on a non-notified basis.

955. Accordingly, we recommend that submission be rejected and that apart from numbering, the provisions remain as notified.

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853 Submission 701

854 Submission 701, Page 3, Para 23

855 C Barr, Section 42A Report, Page 92, Para 18.4

18 SUMMARY OF CONCLUSIONS ON RULES

956. We have set out in in full in Appendix 1 the rules we recommend the Council adopt. For all the reasons set out above, we are satisfied that these rules are the most effective and efficient means of implementing the policies so as to achieve the objectives of Chapter 21, and those in the Strategic Directions chapters. Where we have recommended rules not be included, that is because, as our reasons above show, we do not consider them to be efficient or effective.

19 21.7 – ASSESSMENT MATTERS (LANDSCAPE)

19.1 21.7.1 Outstanding Natural Features and Outstanding Natural Landscapes

957. As notified Clauses 21.7.1 and 21.7.1.1 – 21.7.1.2 read as follows;

> *21.7.1 Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL).*
>
> *These assessment matters shall be considered with regard to the following principles because, in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations within the zone:*
>
> *21.7.1.1 The assessment matters are to be stringently applied to the effect that successful applications will be exceptional cases.*
>
> *21.7.1.2 Existing vegetation that:*
>
> *a. was either planted after, or, self-seeded and less than 1 metre in height at 28 September 2002; and,*
>
> *b. obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:*
>
> *i. as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and*
>
> *ii. as part of the permitted baseline.*

958. Submissions on these provisions sought that the introductory note be deleted entirely[856], or that the wording in the introductory note be variously amended to remove the wording *"the applicable activities are inappropriate in almost all locations within the zone:"*[857]; or to refer only to the Wakatipu Basin[858]; that the provision be amended to take into account the locational constraints of infrastructure[859]; that the assessment criteria be amended to accord with existing case law[860]; and that 21.7.1.1[861] and 21.7.1.2[862] be deleted.

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856 Submissions 179, 421
857 Submission 355, 608, 693, 702
858 Submission 519
859 Submission 433
860 Submission 806
861 Submissions 179, 191, 249, 355, 421, 598, 621, 624, 693, 702, 781
862 Submission 249

959. In the Section 42A Report, Mr Barr provided a table that set out in detail the comparison between the assessment criteria under the ODP and PDP[863] and recommended that 21.7.1 and 21.7.1.1 be amended in response to the submissions and should be worded as follows:

> *19.1.1.1 ~~21~~.7.1 Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL).*
>
> *These assessment matters shall be considered with regard to the following principles because, in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations within the Wakatipu Basin, and inappropriate in many locations throughout the District wide Outstanding Natural Landscapes:*
>
> *~~19.1.1.2~~ 21.7.1.1 ~~The assessment matters are to be stringently applied to the effect that successful applications will be exceptional cases.~~*

960. Mr Barr's reasoning supporting the amendments, was to clarify that the assessment criteria were not a 'test', and to remove the word exceptional which has connotations to section 104D of the RMA given it is discretionary activities that the assessment is generally applied to[864].

961. In evidence for Darby Planning, Mr Ferguson considered the wording of the assessment criteria as notified predetermined that activities were inappropriate in almost all locations, and that this was itself inappropriate and unnecessary[865].

962. Mr Vivian, in evidence for NZTM agreed with Mr Barr's recommendation as to referencing that activities are inappropriate in almost all locations within the Wakatipu Basin and noted the Environment Court decision from which the assessment criteria was derived (C180/99). However, Mr Vivian considered that the term Wakatipu Basin was not adequately defined and recommended additional wording for clarification purposes.[866]

963. Mr Haworth, in evidence for UCES on wider assessment criteria matters, referred to the assessment criteria as a 'test'[867]. We questioned Ms Lucas as to her tabled evidence for UCES as to what the meaning of 'test' was in the context of her evidence. Ms Lucas' response was that *"A "test", that is, in application of the assessment matter, "shall be satisfied" that".*

964. Mr Barr, in reply, made some changes to the recommended assessment criteria in light of the submissions and evidence noted above, but considered that some of the wording changes added little value or would potentially weaken the assessment required[868]. Also in reply, Mr Barr detailed his view that a test was appropriately located in the objective and policies and that assessment matters provide guidance in considering specified environment effects[869].

965. In the Section 42A Report, Mr Barr did not support the amendment sought by QAC for the inclusion of locational constraints within the assessment criteria on the basis that it was the

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863 C Barr, Section 42A Report, Page 110, Table 1, Issue 12: Landscape Assessment Matters: cross referencing with PDP Landscape Policy and ODP assessment matters

864 C Barr, Section 42A Report, Page 98, Para 19.21

865 C Ferguson, EIC, Page 15, Para 66

866 C Vivian, EIC, Page 22, Paras 4.102 – 4.106

867 J Haworth, EIC, Page12, Para 88

868 C Barr, Reply, Pages 31-32, Para 11.1

869 C Barr, Reply, Pages 32, Para 11.4

place of policies or higher order planning documents to direct consideration of any such constraints and amendments to the strategic directions chapter had been recommended[870].

966. In evidence for QAC, Ms O'Sullivan took a different view, considering *"that the Assessment Matters, as drafted, may inappropriately constrain the development, operation and upgrade of infrastructure and utilities that have a genuine operational and/or locational requirement to be located ONLs, ONFs or RCLs. I also consider the complex cross referencing between the Chapter 6 Landscapes, Chapter 21 Rural and Chapter 30 Energy and Utilities will give rise to inefficiencies and confusion in interpretation"*[871]. To address these issues Ms O'Sullivan recommended new assessment criteria, narrowing the assessment to regional significant infrastructure with the assessment criteria be worded as follows;

21.7.3.4 For the construction, operation and replacement of regionally significant infrastructure and for additions, alterations, and upgrades to regionally significant infrastructure, in addition to the assessment matters at 21.7.1, 21.7.2, 21.7.3.2 and 21.7.3.3, whether the proposed development:

a. Is required to provide for the health, safety or wellbeing of the community; and

b. Is subject to locational or functional requirements that necessitate a particular siting and reduce the ability of the development to avoid adverse effects; and

c. Avoids, remedies or mitigates adverse effects on surrounding environments to the extent practicable in accordance with Objective 30.2.7 and Policies 30.2.7.1 – 30.2.7.4 (as applicable).

967. We agree with Mr Barr that the assessment criteria are for landscape assessment and the policies are the place where consideration by decision-makers as to policy direction on locational constraints of infrastructure should be found. Earlier in this decision we addressed the inclusion of infrastructure into this chapter[872]. For the reasons we set out there, and because we doubt that Ms O'Sullivan's suggestion is within the scope of the QAC submission, we recommend that the submission of QAC be rejected.

968. The wording of the first paragraph of 21.7.1 along with 21.7.1.1 are derived from (notified) policy 6.3.1.3. The issue as to inappropriateness and stringency of application were also canvassed before the Hearing Stream 1B in hearing submissions on Policy 6.3.1.3.. We refer to and adopt the reasoning of that Panel[873]. That Panel has recommended that (revised) Policy 6.3.11 read:

Recognise that subdivision and development is inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes are reasonably difficult to see from beyond the boundary of the site the subject of application.

969. In considering all of the above, we agree in part with Mr Barr that the objectives and policies need to link through to the assessment criteria. However, to our minds, the recommendations

870 C Barr, Section 42A Report, Pages 97 – 98, Para 19.20
871 K O'Sullivan, EIC, Page5, Para 3.4
872 Section 5
873 Report 3, Recommendations on Chapters 3, 4 and 6, Section 10.6

to establish that connection do not go far enough. Accordingly, we recommend that there be direct reference to the policies from Chapters 3 and 6 included within the assessment criteria description. In addition, we agree with Mr Barr as the assessment criteria are not tests and accordingly recommend that the submission of UCES be rejected.

970. Given the recommended wording of Policy 6.3.11, we recommend that the introductory paragraph and 21.7.1.1 be reworded consistent with that policy.

971. We heard no evidence from Willowridge Developments Limited[874] in relation to its submission seeking the deletion of Rule 21.7.1.2. Mr Barr did not particularly discuss the submission, nor recommend any changes to the provision. We understand the provision has been taken directly from the ODP (Section 5.4.2.2(1)). Without any evidence as to why the provision should be deleted or changed, we recommend it remain unaltered.

972. Accordingly we recommend that the introductory part of 21.7.1 be numbered and worded as follows:

21.21 Assessment Matters (Landscapes)

21.21.1 Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL).

The assessment matters set out below are derived from Policies 3.3.30, 6.3.10 and 6.3.12 to 6.3.18 inclusive Applications shall be considered with regard to the following assessment matters.

21.20.1.1 In applying the assessment matters, the Council will work from the presumption that in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations and that successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes are reasonably difficult to see from beyond the boundary of the site the subject of application.

21.20.1.2 Existing vegetation that:

a. was either planted after, or, self-seeded and less than 1 metre in height at 28 September 2002; and

b. obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:

i. as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and

ii. as part of the permitted baseline.

874 Submission 249

19.2 Assessment Matters 21.7.1.3 to 21.7.1.6 Inclusive

973. The only submission on these assessment matters supported 21.7.1.5[875]. We recommend those matters be adopted as notified, subject to renumbering.

19.3 Section 21.7.2 Rural Landscape Classification (RCL) and 21.7.2.1 – 21.7.2.2

974. As notified Rule 21.7.2 and 21.7.2.1 – 21.7.2.2 read as follows;

> *21.7.2 Rural Landscape Classification (RLC)*
> *These assessment matters shall be considered with regard to the following principles because in the Rural Landscapes the applicable activities are inappropriate in many locations:*
>
> *21.7.2.1 The assessment matters shall be stringently applied to the effect that successful applications are, on balance, consistent with the criteria.*
>
> *21.7.2.2 Existing vegetation that:*
>
> *a. was either planted after, or, self seeded and less than 1 metre in height at 28 September 2002; and,*
>
> *b. obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:*
>
> *i. as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and*
>
> *ii. as part of the permitted baseline.*

975. Submissions on these provisions variously sought that the introductory note be deleted entirely[876], that the wording in the introductory note be amended to remove the wording *"the applicable activities are inappropriate in almost all locations within the zone:"*[877], that the current assessment criteria in 21.7.2 be deleted and replaced with a set of assessment matters that better reflect and provide for the "Other Rural Landscape (ORL) category of landscapes[878], that 21.7.2 be amended to provide for cultural and historic values[879], and that 21.7.2.1[880] and 21.7.1.2[881] be deleted.

976. In the Section 42A Report, Mr Barr disagreed with the request for the inclusion of the ORL category of landscape criteria which the submitters were seeking to transfer from the ODP. Relying on Dr Read's evidence that the ORL has only been applied in two circumstances, Mr Barr considered that the ORL criteria were too lenient on development and would not maintain amenity values, quality of the environment or finite characteristics of natural physical

875 Submission 719
876 Submissions 179, 251, 781
877 Submission 608
878 Submission 345, 456
879 Submission 798
880 Submissions 179, 191, 421, 781
881 Submission 251

resources[882]. We agree for reasons set out in Mr Barr's Section 42A Report. We also note that it has already been determined by the Stream 1B Hearing Panel that there are only two landscape categories (ONL/ONR and RCL) and that is reflected in our recommendations on this Chapter. Accordingly, we recommend that Submissions 345 and 456 be rejected.

977. In the Section 42A Report, Mr Barr recommended that 21.7.2 and 21.7.2.1 be amended in response to the submissions and should be worded as follows:

21.7.2 Rural Landscape Classification (RLC)

These assessment matters shall be considered with regard to the following principles because in the Rural Landscapes the applicable activities are unsuitable in many locations:

~~*21.7.2.1 The assessment matters shall be stringently applied to the effect that successful applications are, on balance, consistent with the criteria.*~~

978. Mr Barr did not alter his opinion in his Reply Statement.

979. We note that before addressing the detail of this provision, a consequential change is required to refer to Rural Character Landscapes (RCL) consistent with the recommendations of the Stream 1B Hearing Panel. In addition, the reference in the introductory sentence to "Rural Landscapes" should be changed to "Rural Character Landscapes" so as to make it clear that these assessment criteria do not apply in ONLs or on ONFs.

980. As in the discussion on 21.7.1 above, we consider the introductory remarks should refer the relevant policies from Chapters 3 and 6. For those reasons, and taking into account Mr Barr's recommendations, we recommend that 21.7.2 and 21.7.2.1 be renumbered and worded as follows :

21.7.2 Rural Character Landscape (RCL)
The assessment matters below have been derived from Policies 3.3.32, 6.3.10 and 6.3.19 to 6.3.29 inclusive. Applications shall be considered with regard to the following assessment matters because in the Rural Character Landscapes the applicable activities are unsuitable in many locations:

~~21.7.2.1The assessment matters shall be stringently applied to the effect that successful applications are, on balance, consistent with the criteria.~~

19.4 Assessment Matters 21.7.2.2 and 21.7.2.3

981. There were no submissions on these assessment matters and, accordingly, we recommend they be adopted as notified subject to renumbering.

19.5 Assessment Matters 21.7.2.4, 21.2.2.5 and 21.7.2.7

982. As notified Rule 21.7.2.4, 21.7.2.5 and 21.7.2.7 read as follows;

21.7.2.4 Effects on visual amenity:

Whether the development will result in a loss of the visual amenity of the Rural Landscape, having regard to whether and the extent to which:

882 C Barr, Section 42A report, Page 98, Para 9.24

a. *the visual prominence of the proposed development from any public places will reduce the visual amenity of the Rural Landscape. In the case of proposed development which is visible from unformed legal roads, regard shall be had to the frequency and intensity of the present use and, the practicalities and likelihood of potential use of these unformed legal roads as access*

b. *the proposed development is likely to be visually prominent such that it detracts from private views*

c. *any screening or other mitigation by any proposed method such as earthworks and/or new planting will detract from or obstruct views of the Rural Landscape from both public and private locations*

d. *the proposed development is enclosed by any confining elements of topography and/or vegetation and the ability of these elements to reduce visibility from public and private locations*

e. *any proposed roads, boundaries and associated planting, lighting, earthworks and landscaping will reduce visual amenity, with particular regard to elements which are inconsistent with the existing natural topography and patterns*

f. *boundaries follow, wherever reasonably possible and practicable, the natural lines of the landscape or landscape units.*

21.7.2.5 Design and density of development:

In considering the appropriateness of the design and density of the proposed development, whether and to what extent:

a. *opportunity has been taken to aggregate built development to utilise common access ways including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise)*

b. *there is merit in clustering the proposed building(s) or building platform(s) having regard to the overall density and intensity of the proposed development and whether this would exceed the ability of the landscape to absorb change*

c. *development, including access, is located within the parts of the site where they will be least visible from public and private locations*

d. *development, including access, is located in the parts of the site where they will have the least impact on landscape character.*

21.7.2.7 Cumulative effects of development on the landscape:
Taking into account whether and to what extent any existing, consented or permitted development (including unimplemented but existing resource consent or zoning) has degraded landscape quality, character, and visual amenity values. The Council shall be satisfied;

a. *the proposed development will not further degrade landscape quality, character and visual amenity values, with particular regard to situations that would result in a loss of valued quality, character and openness due to the prevalence of residential or non-farming activity within the Rural Landscape*

b. *where in the case resource consent may be granted to the proposed development but it represents a threshold to which the landscape could absorb any further development, whether any further cumulative adverse effects would be avoided by way of imposing a covenant, consent notice or other legal instrument that maintains open space.*

983. Submissions on these provisions variously sought that;
   a. 21.7.4.2 (b) be deleted[883]
   b. 21.7.2.5 (b) be incorporated into the ODP assessment matters[884]
   c. 21.7.2.5 (c) be deleted[885]
   d. 21.7.2.7 be deleted[886]

984. In the Section 42A Report, having addressed the majority of the submissions in relation to 21.7.2, Mr Barr did not specifically address these submissions, but recommended that the assessment matters be retained as notified[887].

985. Mr Brown and Mr Farrell, in evidence for the submitters, made recommendations to amend the assessment criteria in 21.7.2.4, 21.7.2.5 and 21.7.2.7. Mr Brown and Mr Farrell also made recommendations to amend other assessment criteria in 21.7.2[888]. In summary, Mr Brown and Mr Farrell recommended amendments to reflect RMA language, rephrase from negative to positive language, and remove repetition[889].

986. In reply, Mr Barr considered that the amendments to these provisions added little value or potentially weakened the assessment required[890] and hence remained of the view that the provisions as notified should be retained. We agree.

987. In addition, the amendments recommend by Mr Brown and Mr Farrell in some instances go beyond the relief sought. Accordingly, we recommend that the submissions be rejected.

988. We have already the UECS submission seeking the retaining of the ODP provisions. We do not repeat that here and recommend that submission on this provision be rejected.

19.6 Assessment Matter 21.7.2.6

989. There were no submissions in relation to this matter. We recommend it be adopted as notified, subject to renumbering.

883 Submissions 513, 515, 522, 531, 532, 534, 535, 537
884 Submission 145
885 Submission 513, 515, 522, 531, 532, 534, 535, 537
886 Submission 513, 515, 522, 531, 532, 534, 535, 537
887 C Barr, Section 42A Report, Page 99, Para 19.25
888 J Brown, EIC, Attachment B, Pages 35-37 and Mr B Farrell, EIC, Pages 30-32, Para 138
889 J Brown, EIC, Page 15, Para 2.22 and Mr B Farrell, EIC, Page29, Para 137
890 C Barr, Reply, Pages 31-32, Para 11.1

19.7 21.7.3 Other factors and positive effects, applicable in all the landscape categories (ONF, ONL and RLC)

990. One submission[891] supported this entire section. No submissions were lodged specifically in relation to 21.7.3.1. We therefore recommend that 21.7.3.1 be adopted as notified, subject to renumbering and amending the title to refer to Rural Character Landscapes.

19.8 Assessment Matter 21.7.3.2

991. As notified, 21.7.3.2 read as follows:

> *Other than where the proposed development is a subdivision and/or residential activity, whether the proposed development, including any buildings and the activity itself, are consistent with rural activities or the rural resource and would maintain or enhance the quality and character of the landscape.*

992. One submission sought that this provision be amended to enable utility structures in landscapes where there is a functional or technical requirement[892].

993. We addressed this matter in above in discussing the provisions sought by QAC in 21.7.1. We heard no evidence in relation to this submission. We recommend that the submission be rejected.

19.9 Assessment Matter 21.7.3.3

994. As notified, this criterion set out the matters to be taken into account in considering positive effects. Two submissions[893] sought the retention of this matter, and one[894] supported it subject to inclusion of an additional clause to enable the consideration of the positive effects of services provided by utilities.

995. We heard no evidence in support of the amendment sought by PowerNet Limited. We agree with Mr Barr's comments[895] made in relation to the QAC submission discussed above. Assessment criteria are a means of assessing applications against policies in the Plan. The amendment sought by the submitter should be located in the policies, particularly those in Chapter 6. Consequently, we recommend this submission be rejected, and 21.7.3.3 be adopted as notified, subject to renumbering.

20 SUMMARY REGARDING ASSESSMENT MATTERS

996. We have included our recommended set of assessment matters in Appendix 1. We are satisfied that application of these assessment matters on resource consent applications will implement the policies in the Strategic Direction Chapters and those of Chapter 21.

21 SUBMISSIONS ON DEFINITIONS NOT OTHERWISE DEALT WITH

997. Several submissions relating to definitions were set down to be heard that were relevant to this chapter that have not been dealt with in the discussion above. In each case we received no evidence in support of the submission therefore we do not recommend any changes to the relevant definitions, which were as follows:

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891 Submission 378, opposed by FS1049, FS1095 and FS1282

892 Submission 251, supported by FS1097 and FS1121

893 Submissions 355 and 806

894 Submission 251, supported by FS1097, opposed by FS1320

895 C Barr, Section 42A Report, page 97, paragraph 19.20

a. Factory farming[896];
b. Farming activity[897];
c. Farm building[898];
d. Forestry[899];
e. Holding[900];
f. Informal airport[901];
g. Rural industrial activity[902];
h. Rural selling place.[903]

896 Submission 805
897 Submissions 243 and 805
898 Submissions 600 and 805
899 Submission 600
900 Submission 600
901 Submissions 220, 296, 433 and 600
902 Submission 252
903 Submission 600

21 RURAL

QUEENSTOWN LAKES DISTRICT COUNCIL

21.1 Zone Purpose

There are four rural zones in the District. The Rural Zone is the most extensive of these. The Gibbston Valley is recognised as a special character area for viticulture production and the management of this area is provided for in Chapter 23: Gibbston Character Zone. Opportunities for rural living activities are provided for in the Rural-Residential and Rural Lifestyle Zones (Chapter 22).

The purpose of the Rural Zone is to enable farming activities and provide for appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity.

A wide range of productive activities occur in the Rural Zone and because the majority of the District's distinctive landscapes comprising open spaces, lakes and rivers with high visual quality and cultural value are located in the Rural Zone, there also exists a wide range of living, recreation, commercial and tourism activities and the desire for further opportunities for these activities.

Ski Area Sub-Zones are located within the Rural Zone. These Sub-Zones recognise the contribution tourism infrastructure makes to the economic and recreational values of the District. The purpose of the Ski Area Sub-Zones is to enable the continued development of Ski Areas as year round destinations for ski area, tourism and recreational activities within the identified Sub-Zones where the effects of the development are cumulatively minor.

In addition, the Rural Industrial Sub-Zone includes established industrial activities that are based on rural resources or support farming and rural productive activities.

A substantial proportion of the Outstanding Natural Landscapes of the district comprises private land managed in traditional pastoral farming systems. Rural land values tend to be driven by the high landscape and amenity values in the district. The long term sustainability of pastoral farming will depend upon farmers being able to achieve economic returns from utilising the natural and physical resources of their properties. For this reason, it is important to acknowledge the potential for a range of alternative uses of rural properties that utilise the qualities that make them so valuable.

The Rural Zone is divided into two areas. The first being the area for Outstanding Natural Landscapes and Outstanding Natural Features. The second area being the Rural Character Landscape. These areas give effect to Chapter 3 – Strategic Direction: Objectives 3.2.5.1 and 3.2.5.2, and the policies in Chapters 3 and 6 that implement those objectives.

21.2 Objectives and Policies

21.2.1 Objective - A range of land uses, including farming and established activities, are enabled while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values.

Policies

21.2.1.1 Enable farming activities while protecting, maintaining and enhancing the values of indigenous biodiversity, ecosystem services, recreational values, the landscape and surface of lakes and rivers and their margins.

21.2.1.2 Allow Farm Buildings associated with landholdings of 100 hectares or more in area while managing effects of the location, scale and colour of the buildings on landscape values.

21.2.1.3 Require buildings to be set back a minimum distance from internal boundaries and road boundaries in order to mitigate potential adverse effects on landscape character, visual amenity, outlook from neighbouring properties and to avoid adverse effects on established and anticipated activities.

21.2.1.4 Minimise the dust, visual, noise and odour effects of activities by requiring them to locate a greater distance from formed roads, neighbouring properties, waterbodies and zones that are likely to contain residential and commercial activity.

21.2.1.5 Have regard to the location and direction of lights so they do not cause glare to other properties, roads, public places or views of the night sky.

21.2.1.6 Avoid adverse cumulative impacts on ecosystem services and nature conservation values.

21.2.1.7 Have regard to the spiritual beliefs, cultural traditions and practices of Tangata whenua.

21.2.1.8 Have regard to fire risk from vegetation and the potential risk to people and buildings, when assessing subdivision and development in the Rural Zone.

21.2.1.9 Provide adequate firefighting water and fire service vehicle access to ensure an efficient and effective emergency response.

21.2.1.10 Commercial activities in the Rural Zone should have a genuine link with the rural land or water resource, farming, horticulture or viticulture activities, or recreation activities associated with resources located within the Rural Zone.

21.2.1.11 Provide for the establishment of commercial, retail and industrial activities only where these would protect, maintain or enhance rural character, amenity values and landscape values.

21.2.1.12 Encourage production forestry to be consistent with topography and vegetation patterns, to locate outside of the Outstanding Natural Features and Landscapes and outside of significant natural areas, and ensure production forestry does not degrade the landscape character or visual amenity values of the Rural Character Landscape.

21.2.1.13 Ensure forestry harvesting avoids adverse effects with regards to siltation and erosion and sites are rehabilitated to minimise runoff, erosion and effects on landscape values.

21.2.1.14 Limit exotic forestry to species that do not have potential to spread and naturalise.

21.2.1.15 Ensure traffic from new commercial activities does not diminish rural amenity or affect the safe and efficient operation of the roading and trail network, or access to public places.

21.2.1.16 Provide for a range of activities that support the vitality, use and enjoyment of the Queenstown Trail and Upper Clutha Tracks networks on the basis that landscape and rural amenity is protected, maintained or enhanced and established activities are not compromised.

21.2.2 Objective - The life supporting capacity of soils is sustained.

Policies

21.2.2.1 Allow for the establishment of a range of activities that utilise the soil resource in a sustainable manner.

21.2.2.2 Maintain the productive potential and soil resource of Rural Zoned land and encourage land management practices and activities that benefit soil and vegetation cover.

21.2.2.3 Protect the soil resource by controlling activities including earthworks, indigenous vegetation clearance and prohibit the planting and establishment of identified wilding exotic trees with the potential to spread and naturalise.

21.2.3 Objective - The life supporting capacity of water is safeguarded through the integrated management of the effects of activities.

21.2.3.1 In conjunction with the Otago Regional Council, regional plans and strategies:

a. encourage activities that use water efficiently, thereby conserving water quality and quantity;

b. discourage activities that adversely affect the potable quality and life supporting capacity of water and associated ecosystems.

21.2.4 Objective - Situations where sensitive activities conflict with existing and anticipated activities are managed to minimise conflict between incompatible land uses.

Policies

21.2.4.1 New activities must recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas.

21.2.4.2 Control the location and type of non-farming activities in the Rural Zone, so as to minimise conflict between permitted and established activities and those that may not be compatible with such activities.

21.2.5 Objective - Mineral extraction opportunities are provided for on the basis the location, scale and effects would not degrade amenity, water, wetlands, landscape and indigenous biodiversity values.

Policies

21.2.5.1 Have regard to the importance and economic value of locally mined high-quality gravel, rock and other minerals including gold and tungsten.

21.2.5.2 Provide for prospecting and small scale mineral exploration and recreational gold mining as activities with limited environmental impact.

21.2.5.3 Ensure that during and following the conclusion of mineral extractive activities, sites are progressively rehabilitated in a planned and co-ordinated manner, to enable the establishment of a land use appropriate to the area.

21.2.5.4 Ensure potentially significant adverse effects of extractive activities (including mineral exploration) are avoided, or remedied particularly where those activities have potential to degrade landscape quality, character and visual amenity, indigenous biodiversity, lakes and rivers, potable water quality and the life supporting capacity of water.

21.2.5.5 Avoid or mitigate the potential for other land uses, including development of other resources above, or in close proximity to mineral deposits, to adversely affect the extraction of known mineral deposits.

21.2.5.6 Encourage use of environmental compensation as a means to address unavoidable residual adverse effects from mineral extraction.

21.2.6 Objective - The future growth, development and consolidation of Ski Areas Activities within identified Ski Area Sub-Zones, is provided for, while adverse effects on the environment are avoided, remedied or mitigated.

Policies

21.2.6.1 Identify Ski Area Sub-Zones and encourage Ski Area Activities and complementary tourism activities to locate and consolidate within the Sub-Zones.

21.2.6.2 Control the visual impact of roads, buildings and infrastructure associated with Ski Area Activities.

21.2.6.3 Provide for the continuation of existing vehicle testing facilities within the Waiorau Snow Farm Ski Area Sub-Zone on the basis that the landscape and indigenous biodiversity values are not further degraded.

21.2.6.4 Provide for appropriate alternative (non-road) means of transport to and within Ski Area Sub-Zones, by way of passenger lift systems and ancillary structures and facilities.

21.2.6.5 Provide for Ski Area Sub-Zone Accommodation activities within Ski Area Sub-Zones, which are complementary to outdoor recreation activities within the Ski Area Sub-Zone, that can realise landscape and conservation benefits and that avoid, remedy or mitigate adverse effects on the environment.

21.2.7 Objective - An area that excludes activities which are sensitive to aircraft noise, is retained within an airport's Outer Control Boundary, to act as a buffer between airports and Activities Sensitive to Aircraft Noise.

Policies

21.2.7.1 Prohibit all new activities sensitive to aircraft noise on Rural Zoned land within the Outer Control Boundary at Queenstown Airport and Wanaka Airport to avoid adverse effects arising from aircraft operations on future activities sensitive to aircraft noise.

21.2.7.2 Identify and maintain areas containing activities that are not sensitive to aircraft noise, within an airport's outer control boundary, to act as a buffer between the airport and activities sensitive to aircraft noise.

21.2.7.3 Retain open space within the outer control boundary of airports in order to provide a buffer, particularly for safety and noise purposes, between the airport and other activities.

21.2.7.4 Require as necessary mechanical ventilation for any alterations or additions to Critical Listening Environment within any existing buildings containing an Activity Sensitive to Aircraft Noise within the Queenstown Airport Outer Control Boundary and require sound insulation and mechanical ventilation for any alterations or additions to Critical Listening Environment within any existing buildings containing an Activity Sensitive to Aircraft Noise within the Queenstown Airport Air Noise Boundary.

21.2.8 Objective - Subdivision, use and development in areas that are unsuitable due to identified constraints not addressed by other provisions of this Plan, is avoided, or the effects of those constraints are remedied or mitigated.

Policies

21.2.8.1 Prevent subdivision and development within the building restriction areas identified on the District Plan maps, in particular:

a. in the Glenorchy area, protect the heritage value of the visually sensitive Bible Face landform from building and development and to maintain the rural backdrop that the Bible Face provides to the Glenorchy Township;

b. in Ferry Hill, within the building line restriction identified on the planning maps.

21.2.9 Objective - Provision for diversification of farming and other rural activities that protect landscape and natural resource values and maintains the character of rural landscapes.

	21.2.9.1	Encourage revenue producing activities that can support the long-term sustainability of the rural areas of the district and that maintain or enhance landscape values and rural amenity.
	21.2.9.2	Ensure that revenue producing activities utilise natural and physical resources (including existing buildings) in a way that maintains and enhances landscape quality, character, rural amenity, and natural resources
	21.2.9.3	Provide for the establishment of activities such as tourism, commercial recreation or visitor accommodation located within farms where these enable landscape values and indigenous biodiversity to be sustained in the longer term.

21.2.10 Objective – Commercial Recreation in the Rural Zone is of a nature and scale that is commensurate to the amenity values of the location.

Policies	21.2.10.1	The group size of commercial recreation activities will be managed so as to be consistent with the level of amenity anticipated in the surrounding environment.
	21.2.10.2	To manage the adverse effects of commercial recreation activities so as not to degrade rural quality or character or visual amenities and landscape values.
	21.2.10.3	To avoid, remedy or mitigate any adverse effects commercial activities may have on the range of recreational activities available in the District and the quality of the experience of the people partaking of these opportunities.
	21.2.10.4	To ensure the scale and location of buildings, noise and lighting associated with commercial recreation activities are consistent with the level of amenity existing and anticipated in the surrounding environment.

21.2.11 Objective - The location, scale and intensity of informal airports is managed to maintain amenity values while protecting informal airports from incompatible land uses.

Policies	21.2.11.1	Ensure informal airports are located, operated and managed so as to maintain the surrounding rural amenity.
	21.2.11.2	Protect rural amenity values, and amenity of other zones from the adverse effects that can arise from informal airports.
	21.2.11.3	Protect lawfully established and anticipated permitted informal airports from the establishment of incompatible activities in the immediate vicinity.

21.2.12 Objective - The natural character of lakes and rivers and their margins is protected, maintained or enhanced, while providing for appropriate activities on the surface of lakes and rivers, including recreation, commercial recreation and public transport.

Policies

21.2.12.1 Have regard to statutory obligations, wāhi Tūpuna and the spiritual beliefs, and cultural traditions of tangata whenua where activities are undertaken on the surface of lakes and rivers and their margins.

21.2.12.2 Enable people to have access to a wide range of recreational experiences on the lakes and rivers, based on the identified characteristics and environmental limits of the various parts of each lake and river.

21.2.12.3 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.

21.2.12.4 Have regard to the whitewater values of the District's rivers and, in particular, the values of parts of the Kawarau, Nevis and Shotover Rivers as three of the few remaining major unmodified whitewater rivers in New Zealand, and to support measures to protect this characteristic of rivers.

21.2.12.5 Protect, maintain or enhance the natural character and nature conservation values of lakes, rivers and their margins from inappropriate activities with particular regard to nesting and spawning areas, the intrinsic value of ecosystem services and areas of indigenous fauna habitat and recreational values.

21.2.12.6 Recognise and provide for the maintenance and enhancement of public access to and enjoyment of the margins of the lakes and rivers.

21.2.12.7 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.

21.2.12.8 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.

21.2.12.9 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.

21.2.12.10 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.

21.2.13 Objective - Rural industrial activities and infrastructure within the Rural Industrial Sub-Zones will support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.

Policies

21.2.13.1 Provide for rural industrial activities and buildings within established nodes of industrial development while protecting, maintaining and enhancing landscape and amenity values.

21.2.13.2 Provide for limited retail and administrative activities within the Rural Industrial Sub-Zone on the basis it is directly associated with and ancillary to the Rural Industrial Activity on the site.

21.3 Other Provisions and Rules

21.3.1 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 and Rural Character
25	Earthworks	26	Historic Heritage	27	Subdivision
28	Natural Hazards	29	Transport	30	Energy and Utilities
31	Signs	32	Protected Trees	33	Indigenous Vegetation
34	Wilding Exotic Trees	35	Temporary Activities and Relocated Buildings	36	Noise
37	Designations		Planning Maps		

21.3.2 Interpreting and Applying the Rules

21.3.2.1 A permitted activity must comply with all the rules listed in the Activity and Standards tables, and any relevant district wide rules.

21.3.2.2 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.

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

21.3.2.4 Development and building activities are undertaken in accordance with the conditions of resource subdivision consent and may be subject to monitoring by the Council.

21.3.3.5 The existence of a farm building either permitted or approved by resource consent under Rule 21.4.2 or Table 5 – Standards for Farm Buildings shall not be considered the permitted baseline for residential or other non-farming activity development within the Rural Zone.

21.3.3.6 The Ski Area and Rural Industrial Sub-Zones, being Sub-Zones of the Rural Zone, require that all rules applicable to the Rural Zone apply unless stated to the contrary.

21.3.2.7 Building platforms identified on a site's computer freehold register shall have been registered as part of a resource consent approval by the Council.

21.3.2.8 The surface and bed of lakes and rivers are zoned Rural, unless otherwise stated.

21.3.2.9 Internal alterations to buildings including the replacement of joinery is permitted.

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

P	Permitted	C	Controlled	RD	Restricted Discretionary
D	Discretionary	NC	Non-Complying	PR	Prohibited

21.3.3 Advice Notes

21.3.3.1 Compliance with any of the following standards, in particular the permitted standards, does not absolve any commitment to the conditions of any relevant resource consent, consent notice or covenant registered on the computer freehold register of any property.

21.3.3.2 In addition to any rules for mining, the Otago Regional Plan: Water, also has rules related to suction dredge mining.

21.3.3.3 Applications for building consent for permitted activities shall include information to demonstrate compliance with the following standards, and any conditions of the applicable resource consent conditions.

21.4 Rules - Activities

All activities, including any listed permitted activities shall be subject to the rules and standards contained in Tables 1 to 15.

Table 1 – Activities Generally

Table 2 – Standards Applying Generally in the Zone

Table 3 – Standards for Farm Activities (additional to those in Table 2)

Table 4 – Standards for Structures and Buildings (other than Farm Buildings) (additional to those in Table 2)

Table 5 – Standards for Farm Buildings (additional to those in Table 2)

Table 6 – Standards for Commercial Activities (additional to those in Table 2)

Table 7– Standards for Informal Airports (additional to those in Table 2)

Table 8 – Standards for Mining and Extraction Activities (additional to those in Table 2)

Table 9 – Activities in the Ski Area Sub-Zone (additional to those listed in Table 1)

Table 10 - Activities in Rural Industrial Sub-Zone (additional to those listed in Table 1)

Table 11 – Standards for Rural Industrial Sub-Zone

Table 12– Activities on the Surface of Lakes and Rivers

Table 13 – Standards for Activities on the Surface of Lakes and Rivers

Table 14 – Closeburn Station Activities

Table 15 – Closeburn Station: Standards for Buildings and Structures

	Table 1 - Activities - Rural Zone	Activity Status
	Farming Activities	
21.4.1	Farming Activity that complies with the standards in Table 2 and Table 3.	P
21.4.2	Construction of or addition to farm buildings that comply with the standards in Table 5.	P
21.4.3	Factory Farming limited to factory farming of pigs or poultry that complies with the standards in Table 2 and Table 3.	P
21.4.4	Factory Farming animals other than pigs or poultry.	NC
	Residential Activities	
21.4.5	One residential unit, which includes a single residential flat for each residential unit and any other accessory buildings, within any building platform approved by resource consent.	P
21.4.6	The construction and exterior alteration of buildings located within a building platform approved by resource consent, or registered on the applicable computer freehold register, subject to compliance with the standards in Table 2 and Table 4.	P
21.4.7	The exterior alteration of any lawfully established building where there is not an approved building platform on the site, subject to compliance with the standards in Table 2 and Table 4.	P

	Table 1 - Activities - Rural Zone	Activity Status
21.4.8	Domestic Livestock.	P
21.4.9	The use of land or buildings for residential activity except as provided for in any other rule.	D
21.4.10	The identification of a building platform not less than 70m^2 and not greater than 1000m^2.	D
21.4.11	The construction of any building including the physical activity associated with buildings including roading, access, lighting, landscaping and earthworks, not provided for by any other rule.	D
	Commercial Activities	
21.4.12	Home Occupation that complies with the standards in Table 6.	P
21.4.13	Commercial recreational activities that comply with the standards in Table 6.	P
21.4.14	Roadside stalls that meet the standards in Table 6.	P
21.4.15		
21.4.16	Retail sales of farm and garden produce and wine grown, reared or produced on-site or handicrafts produced on the site and that comply with the standards in Table 6, not undertaken through a roadside stall under Rule 21.4.14. Control is reserved to: a. the location of the activity and buildings; b. vehicle crossing location, car parking; c. rural amenity and landscape character.	C
21.4.17	Commercial activities ancillary to and located on the same site as commercial recreational or recreational activities.	D
21.4.18	Cafes and restaurants located in a winery complex within a vineyard.	D
21.4.19	Visitor Accommodation outside of a Ski Area Sub-Zone.	D
21.4.20	Forestry Activities within the Rural Character Landscapes.	D
21.4.21	Retail Sales Retail sales where the access is onto a State Highway, with the exception of the activities provided for by Rule 21.4.14 or Rule 21.4.16.	NC
	Other Activities	
21.4.22	Recreation and/or Recreational Activity.	P
21.4.23	Informal Airports that comply with Table 7.	P

	Table 1 - Activities - Rural Zone	Activity Status
21.4.24	Passenger Lift Systems not located within a Ski Area Sub-Zone Discretion is restricted to: a. the impact on landscape values from any alignment, earthworks, design and surface treatment, including measures to mitigate landscape effects including visual quality and amenity values; b. the route alignment and the whether any system or access breaks the line and form of skylines, ridges, hills and prominent slopes; c. earthworks associated with construction of the Passenger Lift System; d. the materials used, colours, lighting and light reflectance; e. geotechnical matters; f. ecological values and any proposed ecological mitigation works.; g. balancing environmental considerations with operational requirements of Ski Area Activities; h. the positive effects arising from providing alternative non-vehicular access and linking Ski Area Sub-Zones to the roading network.	RD
21.4.25	Ski Area Activities not located within a Ski Area Sub-Zone, with the exception of: a. non-commercial skiing which is permitted as recreation activity under Rule 21.4.22; b. commercial heli skiing not located within a Ski Area Sub-Zone is a commercial recreation activity and Rule 21.4.13 applies; c. Passenger Lift Systems to which Rule 21.4.24 applies.	NC
21.4.26	Any building within a Building Restriction Area identified on the Planning Maps.	NC
	Activities within the Outer Control Boundary at Queenstown Airport and Wanaka Airport	
21.4.27	New Building Platforms and Activities Sensitive to Aircraft Noise within the Outer Control Boundary - Wanaka Airport On any site located within the Outer Control Boundary, any new activity sensitive to aircraft noise or new building platform to be used for an activity sensitive to aircraft noise (except an activity sensitive to aircraft noise located on a building platform approved before 20 October 2010).	PR
21.4.28	Activities Sensitive to Aircraft Noise within the Outer Control Boundary - Queenstown Airport On any site located within the Outer Control Boundary, which includes the Air Noise Boundary, as indicated on the District Plan Maps, any new Activity Sensitive to Aircraft Noise.	PR
	Mining Activities	
21.4.29	The following mining and extraction activities that comply with the standards in Table 8 are permitted: a. mineral prospecting; b. mining by means of hand-held, non-motorised equipment and suction dredging, where the total motive power of any dredge does not exceed 10 horsepower (7.5 kilowatt); and c. the mining of aggregate for farming activities provided the total volume does not exceed 1000m^3 in any one year.	P

	Table 1 - Activities - Rural Zone	Activity Status
21.4.30	Mineral exploration that does not involve more than $20m^3$ in volume in any one hectare Control is reserved to: a. the adverse effects on landscape, nature conservation values and water quality; b. ensuring rehabilitation of the site is completed that ensures: i. the long-term stability of the site; ii. that the landforms or vegetation on finished areas are visually integrated into the landscape; iii. water quality is maintained; iv. that the land is returned to its original productive capacity; c. that the land is rehabilitated to indigenous vegetation where the pre-existing land cover immediately prior to the exploration, comprised indigenous vegetation as determined utilising Section 33.3.3 of Chapter 33.	C
21.4.31	Any mining activity or mineral prospecting other than provided for in Rules 21.4.29 and 21.4.30.	D
	Industrial Activities outside the Rural Industrial Sub-Zone	
21.4.32	Industrial Activities directly associated with wineries and underground cellars within a vineyard.	D
21.4.33	Industrial Activities outside the Rural Industrial Sub-Zone other than those provided for by Rule 21.4.32.	NC
	Default Activity Status When Not Listed	
21.4.34	Any activity not otherwise provided for in Tables 1, 9, 10, 12 or 14.	NC

21.5 Rules - General Standards

Table 2	Table 2 - Standards Applying Generally in the Zone. The following standards apply to any of the activities described in Tables 1, 9, 10, 12 and 14 in addition to the specific standards in Tables 3- 8, 11, 13 and 15 unless otherwise stated.	Non- compliance Status
21.5.1	Setback from Internal Boundaries The setback of any building from internal boundaries shall be 15m. Except this rule shall not apply within the Rural Industrial Sub-Zone. Refer to Table 11.	RD Discretion is restricted to: a. rural amenity and landscape character; b. privacy, outlook and amenity from adjoining properties.
21.5.2	Setback from Roads The setback of any building from a road boundary shall be 20m, except, the minimum setback of any building from State Highway 6 between Lake Hayes and the Shotover River shall be 50m. The minimum setback of any building for other sections of State Highway 6 where the speed limit is 70 km/hr or greater shall be 40m.	RD Discretion is restricted to: a. rural Amenity and landscape character; b. open space; c. the adverse effects on the proposed activity from noise, glare and vibration from the established road.
21.5.3	Setback from Neighbours of Buildings Housing Animals The setback from internal boundaries for any building housing animals shall be 30m.	RD Discretion is restricted to: a. odour; b. noise; c. dust; d. vehicle movements.
21.5.4	Setback of buildings from Water bodies The minimum setback of any building from the bed of a wetland, river or lake shall be 20m.	RD Discretion is restricted to: a. indigenous biodiversity values; b. visual amenity values; c. landscape and natural character; d. open space; e. whether the waterbody is subject to flooding or natural hazards and any mitigation to manage the adverse effects of the location of the building.

Table 2	Table 2 - Standards Applying Generally in the Zone. The following standards apply to any of the activities described in Tables 1, 9, 10, 12 and 14 in addition to the specific standards in Tables 3- 8, 11, 13 and 15 unless otherwise stated.	Non- compliance Status
21.5.5	Airport Noise – Wanaka Airport Alterations or additions to existing buildings, or construction of a building on a building platform approved before 20 October 2010, that contain an Activity Sensitive to Aircraft Noise and are within the Outer Control Boundary, must be designed to achieve an internal design sound level of 40 dB Ldn, based on the 2036 noise contours, at the same time as meeting the ventilation requirements in Rule 36.6.2, Chapter 36. Compliance can either be demonstrated by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the internal design sound level, or by installation of mechanical ventilation to achieve the requirements in Rule 36.6.2, Chapter 36.	NC
21.5.6	Airport Noise – Alteration or Addition to Existing Buildings (excluding any alterations of additions to any non-critical listening environment) within the Queenstown Airport Noise Boundaries a. Within the Queenstown Airport Air Noise Boundary (ANB) - Alterations and additions to existing buildings containing an Activity Sensitive to Aircraft Noise must be designed to achieve an Indoor Design Sound Level of 40 dB Ldn, within any Critical Listening Environment, based on the 2037 Noise Contours. Compliance must be demonstrated by either adhering to the sound insulation requirements in Rule 36.6.1 of Chapter 36 and installation of mechanical ventilation to achieve the requirements in Rule 36.6.2 of Chapter 36, or by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the Indoor Design Sound Level with the windows open. b. Between the Queenstown Airport Outer Control Boundary and the ANB – Alterations and additions to existing buildings containing an Activity Sensitive to Aircraft Noise must be designed to achieve an Indoor Design Sound Level of 40 dB Ldn within any Critical Listening Environment, based on the 2037 Noise Contours. Compliance must be demonstrated by either installation of mechanical ventilation to achieve the requirements in Rule 36.6.2 of Chapter 36 or by submitting a certificate to Council from a person suitably qualified in acoustics stating that the proposed construction will achieve the Indoor Design Sound Level with the windows open. Standards (a) and (b) exclude any alterations or additions to any non-critical listening environment.	NC
21.5.7	Lighting and Glare 21.5.7.1 All fixed exterior lighting must be directed away from adjoining sites and roads; and 21.5.7.2 No activity on any site will 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, provided that this rule shall not apply where it can be demonstrated that the design of adjacent buildings adequately mitigates such effects. 21.5.7.3 There must be no upward light spill.	NC

21.6 Rule - Standards for Farm Activities

	Table 3 – Standards for Farm Activities. The following standards apply to Farm Activities.	Non-Compliance Status
21.6.1	Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing) All effluent holding tanks, effluent treatment and effluent storage ponds, must be located at least 300 metres from any formed road or adjoining property.	RD Discretion is restricted to: a. odour; b. visual prominence; c. landscape character; d. effects on surrounding properties.
21.6.2	Factory Farming (excluding the boarding of animals) Factory farming (excluding the boarding of animals) must be located at least 2 kilometres from a Residential, Rural Residential, Rural Lifestyle, Town Centre, Local Shopping Centre Zone, Millbrook Resort Zone, Waterfall Park Zone or Jacks Point Zone.	D
21.6.3	Factory Farming of Pigs 21.6.3.1 The number of housed pigs must not exceed 50 sows or 500 pigs of mixed ages; 21.6.3.2 Housed pigs must not be located closer than 500m from a property boundary; 21.6.3.4 The number of outdoor pigs must not exceed 100 pigs and their progeny up to weaner stage; 21.6.3.5 Outdoor sows must be ringed at all times; and/or 21.6.3.6 The stocking rate of outdoor pigs must not exceed 15 pigs per hectare, excluding progeny up to weaner stage.	NC
21.6.4	Factory farming of poultry 21.6.4.1 The number of birds must not exceed 10,000 birds. 21.6.4.2 Birds must be housed at least 300m from a site boundary.	NC

21.7 Rules - Standards for Buildings

	Table 4 – Standards for Structures and Buildings The following standards apply to structures and buildings, other than Farm Buildings.	Non-Compliance Status
21.7.1	Structures Any structure which is greater than 5 metres in length, and between 1 metre and 2 metres in height must be located a minimum distance of 10 metres from a road boundary, except for: 21.7.1.1 Post and rail, post and wire and post and mesh fences, including deer fences; 21.7.1.2 Any structure associated with farming activities as defined in this plan.	RD Discretion is restricted to: a. effects on landscape character, views and amenity, particularly from public roads; b. the materials used, including their colour, reflectivity and permeability; c. whether the structure will be consistent with traditional rural elements.
21.7.2	Buildings Any building, including any structure larger than 5m^2, that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building, are subject to the following: All exterior surfaces* must be coloured in the range of browns, greens or greys, including; 21.7.2.1 Pre-painted steel and all roofs must have a light reflectance value not greater than 20%; and 21.7.2.2 All other surface ** finishes except for schist, must have a light reflectance value of not greater than 30%. 21.7.2.3 In the case of alterations to an existing building not located within a building platform, it does not increase the ground floor area by more than 30% in any ten year period. Except this rule does not apply within the Ski Area Sub-Zones. * Excludes soffits, windows and skylights (but not glass balustrades). ** Includes cladding and built landscaping that cannot be measured by way of light reflectance value but is deemed by the Council to be suitably recessive and have the same effect as achieving a light reflectance value of 30%.	RD Discretion is restricted to: a. external appearance; b. visual prominence from both public places and private locations; c. landscape character; d. visual amenity.

	Table 4 – Standards for Structures and Buildings The following standards apply to structures and buildings, other than Farm Buildings.	Non-Compliance Status
21.7.3	Building size The ground floor area of any building must not exceed 500m^2. Except this rule does not apply to buildings specifically provided for within the Ski Area Sub-Zones.	RD Discretion is restricted to: a. external appearance; b. visual prominence from both public places and private locations; c. landscape character; d. visual amenity; e. privacy, outlook and amenity from adjoining properties.
21.7.4	Building Height The maximum height shall be 8m.	RD Discretion is restricted to: a. rural amenity and landscape character; b. privacy, outlook and amenity from adjoining properties; c. visual prominence from both public places and private locations.
21.7.5	Fire Fighting water and access All new buildings, where there is no reticulated water supply or any reticulated water supply is not sufficient for fire-fighting water supply, must make the following provision for fire-fighting: 21.7.5.1 A water supply of 45,000 litres and any necessary couplings. 21.7.5.2 A hardstand area adjacent to the firefighting water supply capable of supporting fire service vehicles. 21.7.5.3 Firefighting water connection point within 6m of the hardstand, and 90m of the dwelling. 21.7.5.4 Access from the property boundary to the firefighting water connection capable of accommodating and supporting fire service vehicles.	RD Discretion is restricted to: a. the extent to which SNZ PAS 4509: 2008 can be met including the adequacy of the water supply; b. the accessibility of the firefighting water connection point for fire service vehicles; c. whether and the extent to which the building is assessed as a low fire risk.

21.8 Rules - Standards for Farm Buildings

	Table 5 - Standards for Farm Buildings The following standards apply to Farm Buildings.	Non-compliance Status
21.8.1	Construction, Extension or Replacement of a Farm Building The construction, replacement or extension of a farm building is a permitted activity subject to the following standards: 21.8.1.1 The landholding the farm building is located within must be greater than 100ha; and 21.8.1.2 The density of all buildings on the landholding, inclusive of the proposed building(s) must not exceed one farm building per 50 hectares; and 21.8.1.3 The farm building must not be located within or on an Outstanding Natural Feature (ONF); and 21.8.1.4 If located within the Outstanding Natural Landscape (ONL) the farm building must not exceed 4 metres in height and the ground floor area must not exceed 100m^2; and 21.8.1.5 The farm building must not be located at an elevation exceeding 600 masl; and 21.8.1.6 If located within the Rural Character Landscape (RCL), the farm building must not exceed 5m in height and the ground floor area must not exceed 300m^2; and 21.8.1.7 Farm buildings must not protrude onto a skyline or above a terrace edge when viewed from adjoining sites, or formed roads within 2km of the location of the proposed building.	RD Discretion is restricted to: a. the extent to which the scale and location of the Farm Building is appropriate in terms of: i. rural amenity values; ii. landscape character; iii. privacy, outlook and rural amenity from adjoining properties; iv. visibility, including lighting.
21.8.2	Exterior colours of farm buildings 21.8.2.1 All exterior surfaces, except for schist, must be coloured in the range of browns, greens or greys (except soffits). 21.8.2.2 Pre-painted steel, and all roofs must have a reflectance value not greater than 20%. 21.8.2.3 Surface finishes, except for schist, must have a reflectance value of not greater than 30%.	RD Discretion is restricted to: a. external appearance; b. visual prominence from both public places and private locations; c. landscape character.; d. visual amenity.

	Table 5 - Standards for Farm Buildings The following standards apply to Farm Buildings.	Non-compliance Status
21.8.3	Building Height The height of any farm building must not exceed 10m.	RD Discretion is restricted to: a. rural amenity values; b. landscape character; c. privacy, outlook and amenity from adjoining properties.
21.8.4	Dairy Farming (Milking Herds, Dry Grazing and Calf Rearing) All milking sheds or buildings used to house, or feed milking stock must be located at least 300 metres from any adjoining property, lake, river or formed road.	D

21.9 Rules - Standards for Commercial Activities

	Table 6 - Standards for Commercial Activities	Non-compliance Status
21.9.1	Commercial recreational activities must be undertaken on land, outdoors and must not involve more than 12 persons in any one group.	D
21.9.2	Home Occupation 21.9.2.1 The maximum net floor area of home occupation activities must not exceed 150m^2. 21.9.2.2 Goods materials or equipment must not be stored outside a building. 21.9.2.3 All manufacturing, altering, repairing, dismantling or processing of any goods or articles must be carried out within a building.	RD Discretion is restricted to: a. the nature, scale and intensity of the activity in the context of the surrounding rural area; b. visual amenity from neighbouring properties and public places; c. noise, odour and dust; d. the extent to which the activity requires a rural location because of its link to any rural resource in the Rural Zone; e. access safety and transportation effects.

	Table 6 - Standards for Commercial Activities	Non-compliance Status
21.9.3	Roadside Stalls 21.9.3.1 The ground floor area of the roadside stall must not exceed 5m^2; 21.9.3.2 The height must not exceed 2m^2; 21.9.3.3 The minimum sight distance from the roadside stall access must be at least 200m; 21.9.3.4 The roadside stall must not be located on legal road reserve.	D
21.9.4	Retail Sales Buildings that have a gross floor area that is greater than 25m^2 to be used for retail sales identified in Table 1 must be setback from road boundaries by at least 30m.	RD Discretion is restricted to: a. landscape character and visual amenity; b. access safety and transportation effects; c. on-site parking.

21.10 Rules - Standards for Informal Airports

	Table 7 - Standards for Informal Airports	Non-compliance Status
21.10.1	Informal Airports Located on Public Conservation and Crown Pastoral Land Informal airports that comply with the following standards shall be permitted activities: 21.10.1.1 Informal airports located on Public Conservation Land where the operator of the aircraft is operating in accordance with a Concession issued pursuant to Section 17 of the Conservation Act 1987. 21.10.1.2 Informal airports located on Crown Pastoral Land where the operator of the aircraft is operating in accordance with a Recreation Permit issued pursuant to Section 66A of the Land Act 1948. 21.10.1.3 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities, or the Department of Conservation or its agents. 21.10.1.4 In relation to Rules 21.10.1.1 and 21.10.1.2, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit or approved building platform not located on the same site.	D

	Table 7 - Standards for Informal Airports	Non-compliance Status
21.10.2	Informal Airports Located on other Rural Zoned Land Informal Airports that comply with the following standards shall be permitted activities: 21.10.2.1 Informal airports on any site that do not exceed a frequency of use of 2 flights* per day; 21.10.2.2 Informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities; 21.10.2.3 In relation to point Rule 21.10.2.1, the informal airport shall be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit of building platform not located on the same site. * note for the purposes of this Rule a flight includes two aircraft movements i.e. an arrival and departure.	D

21.11 Rules - Standards for Mining

	Table 8 – Standards for Mining and Extraction Activities	non-compliance Status
21.11.1	21.11.1.1 The activity will not be undertaken on an Outstanding Natural Feature. 21.11.1.2 The activity will not be undertaken in the bed of a lake or river.	NC

21.12 Rules - Ski Area and Sub-Zone

	Table 9 - Activities in the Ski Area Sub-Zone Additional to those activities listed in Table 1.	Activity Status
21.12.1	Ski Area Activities	P
21.12.2	Construction, relocation, addition or alteration of a building Control is reserved to: a. location, external appearance and size, colour, visual dominance; b. associated earthworks, access and landscaping; c. provision of water supply, sewage treatment and disposal, electricity and communication services (where necessary); d. lighting.	C

	Table 9 - Activities in the Ski Area Sub-Zone Additional to those activities listed in Table 1.	Activity Status
21.12.3	Passenger Lift Systems Control is reserved to: a. the extent to which the passenger lift system breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes; b. whether the materials and colour to be used are consistent with the rural landscape of which passenger lift system will form a part; c. the extent of any earthworks required to construct the passenger lift system, in terms of the limitations set out in Chapter 25 Earthworks; d. balancing environmental considerations with operational characteristics.	C
21.12.4	Night lighting Control is reserved to: a. hours of operation; b. duration and intensity; c. impact on surrounding properties.	C
21.12.5	Vehicle Testing In the Waiorau Snow Farm Ski Area Activity Sub-Zone; the construction of access ways and tracks associated with the testing of vehicles, their parts and accessories. Control is reserved to: a. gravel and silt run off; b. stormwater, erosion and siltation; c. the sprawl of tracks and the extent to which earthworks modify the landform; d. stability of over-steepened embankments.	C
21.12.6	Retail activities ancillary to Ski Area Activities Control is reserved to: a. location; b. hours of operation with regard to consistency with ski-area activities; c. amenity effects, including loss of remoteness or isolation; d. traffic congestion, access and safety; e. waste disposal; f. cumulative effects.	C

	Table 9 - Activities in the Ski Area Sub-Zone Additional to those activities listed in Table 1.	Activity Status
21.12.7	Ski Area Sub-Zone Accommodation Comprising a duration of stay of up to 6 months in any 12-month period and including worker accommodation. Discretion is restricted to: a. scale and intensity and whether these would have adverse effects on amenity, including loss of remoteness or isolation; b. location, including whether that because of the scale and intensity the visitor accommodation should be located near the base building area (if any); c. parking; d. provision of water supply, sewage treatment and disposal; e. cumulative effects; f. natural hazards.	RD
21.12.8	Earthworks, buildings and infrastructure within the No Building and Earthworks Line in the Remarkables Ski Area Sub-Zone	PR

21.13 Rules - Activities in Rural Industrial Sub-Zone

	Table 10 – Activities in Rural Industrial Sub-Zone Additional to those activities listed in Table 1.	Activity Status
21.13.1	Retail activities within the Rural Industrial Sub-Zone that involve the sale of goods produced, processed or manufactured on site or ancillary to Rural Industrial activities that comply with Table 11.	P
21.13.2	Administrative offices ancillary to and located on the same site as Rural Industrial activities being undertaken within the Rural Industrial Sub-Zone that comply with Table 11.	P
21.13.3	Rural Industrial Activities within a Rural Industrial Sub-Zone that comply with Table 11.	P
21.13.4	Buildings for Rural Industrial Activities within the Rural Industrial Sub-Zone that comply with Table 11.	P

21.14 Rules - Standards for Activities within Rural Industrial Sub-Zone

	Table 11 – Standards for activities within the Rural Industrial Sub Zone These Standards apply to activities listed in Table 1 and Table 10.	Non-Compliance Status
21.14.1	Buildings Any building, including any structure larger than 5m², that is new, relocated, altered, reclad or repainted, including containers intended to, or that remain on site for more than six months, and the alteration to any lawfully established building are subject to the following: All exterior surface must be coloured in the range of browns, greens or greys (except soffits), including; 21.15.1.1 Pre-painted steel and all roofs must have a reflectance value not greater than 20%; and, 21.15.1.2 All other surface finishes must have a reflectance value of not greater than 30%.	RD Discretion is restricted to: a. external appearance; b. visual prominence from both public places and private locations; c. landscape character.
21.14.2	Building size The ground floor area of any building must not exceed 500m².	RD Discretion is restricted to: a. external appearance; b. visual prominence from both public places and private locations; c. visual amenity; d. privacy, outlook and amenity from adjoining properties.
21.14.3	Building Height The height for of any industrial building must not exceed 10m.	RD Discretion is restricted to: a. rural amenity and landscape character; b. privacy, outlook and amenity from adjoining properties.

	Table 11 – Standards for activities within the Rural Industrial Sub Zone These Standards apply to activities listed in Table 1 and Table 10.	Non-Compliance Status
21.14.4	Setback from Sub-Zone Boundaries The minimum setback of any building within the Rural Industrial Sub-Zone shall be 10m from the Sub-Zone boundaries.	RD Discretion is restricted to: a. the requirement for landscaping to act as a buffer between the Rural Industrial Sub-Zone and neighbouring properties and whether there is adequate room for landscaping within the reduced setback; b. rural amenity and landscape character; c. Privacy, outlook and amenity from adjoining properties.
21.14.5	Retail Activities Retail activities including the display of items for sale must be undertaken within a building and must not exceed 10% of the building's total floor area.	NC

21.15 Rules - Activities on the Surface of Lakes and Rivers

	Table 12 - Activities on the Surface of Lakes and Rivers	Activity Status
21.15.1	Activities on the surface of lakes and river not otherwise controlled or restricted by rules in Table 14.	P
21.15.2	Motorised Recreational and Commercial Boating Activities The use of motorised craft for the purpose of emergency search and rescue, hydrological survey, public scientific research, resource management monitoring or water weed control, or for access to adjoining land for farming activities.	P

	Table 12 - Activities on the Surface of Lakes and Rivers	Activity Status
21.15.3	Motorised Recreational Boating Activities Hawea River, motorised recreational boating activities on no more than six (6) days in each year subject to the following conditions: a. at least four (4) days of such activity are to be in the months January to April, November and December; b. the Jet Boat Association of New Zealand ("JBANZ") (JBANZ or one of the Otago and Southland Branches as its delegate) administers the activity on each day; c. the prior written approval of Central Otago Whitewater Inc is obtained if that organisation is satisfied that none of its member user groups are organising activities on the relevant days; and d. JBANZ gives two (2) calendar months written notice to the Council's Harbour-Master of both the proposed dates and the proposed operating schedule; e. the Council's Harbour-Master satisfies himself that none of the regular kayaking, rafting or other whitewater (non-motorised) river user groups or institutions (not members of Central Otago Whitewater Inc) were intending to use the Hawea River on that day, and issues an approved operating schedule; f. JBANZ carries out, as its expense, public notification on two occasions 14 and 7 days before the proposed jet boating; g. public notification for the purposes of (f) means a public notice with double-size font heading in both the Otago Daily Times and the Southland Times, and written notices posted at the regular entry points to the Hawea River.	P
21.15.4	Jetboat Race Events Jetboat Race Events on the Clutha River, between the Lake Outlet boat ramp and the Albert Town road bridge not exceeding 6 race days in any calendar year. Control is reserved to: a. the date, time, duration and scale of the jetboat race event, including its proximity to other such events, such as to avoid or mitigate adverse effects on residential and recreational activities in the vicinity; b. the adequacy of public notice of the event; c. public safety.	C
21.15.5		

	Table 12 - Activities on the Surface of Lakes and Rivers	Activity Status
21.15.6	Jetties and Moorings in the Frankton Arm Jetties and moorings in the Frankton Arm, identified as the area located to the east of the Outstanding Natural Landscape line as shown on the District Plan Maps. Discretion is restricted to: a. whether they are dominant or obtrusive elements in the shore scape or lake view, particularly when viewed from any public place, including whether they are situated in natural bays and not headlands; b. whether the structure causes an impediment to craft manoeuvring and using shore waters. c. the degree to which the structure will diminish the recreational experience of people using public areas around the shoreline; d. the effects associated with congestion and clutter around the shoreline. Including whether the structure contributes to an adverse cumulative effect; e. whether the structure will be used by a number and range of people and craft, including the general public; f. the degree to which the structure would be compatible with landscape and amenity values, including colour, materials, design.	RD
21.15.7	Structures and Moorings Subject to Rule 21.15.8 any structure or mooring that passes across or through the surface of any lake or river or is attached to the bank of any lake and river, other than where fences cross lakes and rivers.	D
21.15.8	Structures and Moorings Any structures or mooring that passes across or through the surface of any lake or river or attached to the bank or any lake or river in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying.	NC
21.15.9	Motorised and non-motorised Commercial Boating Activities Except where otherwise limited by a rule in Table 12. Note: Any person wishing to commence commercial boating activities could require a concession under the QLDC Navigation Safety Bylaw. There is an exclusive concession currently granted to a commercial boating operator on the Shotover River between Edith Cavell Bridge and Tucker Beach until 1 April 2009 with four rights of renewal of five years each.	D

	Table 12 - Activities on the Surface of Lakes and Rivers	Activity Status
21.15.10	Motorised Recreational and Commercial Boating Activities The use of motorised craft on the following lakes and rivers is prohibited except as provided for under Rules 21.15.2 or 21.15.3. 21.15.10.1 Hawea River. 21.15.10.2 Lake Hayes - Commercial boating activities only. 21.15.10.3 Any tributary of the Dart and Rees rivers (except the Beansburn and Rockburn tributaries of the Dart River) or upstream of Muddy Creek on the Rees River. 21.15.10.4 Young River or any tributary of the Young or Wilkin Rivers and any other tributaries of the Makarora River. 21.15.10.5 Dingle Burn and Timaru Creek. 21.15.10.6 The tributaries of the Hunter River. 21.15.10.7 Hunter River during the months of May to October inclusive. 21.15.10.8 Motatapu River. 21.15.10.9 Any tributary of the Matukituki River. 21.15.10.10 Clutha River - More than six jet boat race days per year as allowed by Rule 21.15.4.	PR

21.16 Rules - Standards for Surface of Lakes and Rivers

	Table 13 - Standards for Surface of Lakes and Rivers These Standards apply to the Activities listed in Table 12.	Non-Compliance Status
21.16.1	Boating craft used for Accommodation Boating craft on the surface of the lakes and rivers may be used for accommodation, providing that: 21.16.1.1 The craft must only be used for overnight recreational accommodation; and 21.16.1.2 The craft must not be used as part of any commercial activity; and 21.16.1.3 All effluent must be contained on board the craft and removed ensuring that no effluent is discharged into the lake or river.	NC

	Table 13 - Standards for Surface of Lakes and Rivers These Standards apply to the Activities listed in Table 12.	Non-Compliance Status
21.16.2	Jetties and Moorings in the Frankton Arm Jetties and moorings in the Frankton Arm, identified as the area located to the east of the Outstanding Natural Landscape line as shown on the District Plan Maps. No new jetty within the Frankton Arm identified as the area east of the Outstanding Natural Landscape Line shall: 21.16.2.1 Be closer than 200 metres to any existing jetty; 21.16.2.2 Exceed 20 metres in length; 21.16.2.3 Exceed four berths per jetty, of which at least one berth is available to the public at all times; 21.16.2.4 Be constructed further than 200 metres from a property in which at least one of the registered owners of the jetty resides.	NC
21.16.3	The following activities are subject to compliance with the following standards: 21.16.3.1 Kawarau River, Lower Shotover River downstream of Tucker Beach and Lake Wakatipu within Frankton Arm - Commercial motorised craft, other than public transport ferry activities, may only operate between the hours of 0800 to 2000. 21.16.3.2 Lake Wanaka, Lake Hawea and Lake Wakatipu - Commercial jetski operations must only be undertaken between the hours of 0800 to 2100 on Lakes Wanaka and Hawea and 0800 and 2000 on Lake Wakatipu. 21.16.3.3 Dart and Rees Rivers - Commercial motorised craft must only operate between the hours of 0800 to 1800, except that above the confluence with the Beansburn on the Dart River commercial motorised craft must only operate between the hours of 1000 to 1700. 21.16.3.4 Dart River – The total number of commercial motorised boating activities must not exceed 26 trips in any one day. No more than two commercial jet boat operators may operate upstream of the confluence of the Beansburn, other than for tramper and angler access only.	NC

21.17 Rules - Closeburn Station Activities

	Table 14 - Closeburn Station: Activities	Activity
21.17.1	The construction of a single residential unit and any accessory building(s) within lots 1 to 6, 8 to 21 DP 26634 located at Closeburn Station. Control is reserved to: a. external appearances and landscaping, with regard to conditions 2.2(a), (b), (e) and (f) of resource consent RM950829; b. associated earthworks, lighting, access and landscaping; c. provision of water supply, sewage treatment and disposal, electricity and telecommunications services.	C

21.18 Rules - Closeburn Station Standards

	Table 15 - Closeburn Station: Standards for Buildings and Structures	Non-compliance Status
21.18.1	Setback from Internal Boundaries 21.18.1.1 The minimum setback from internal boundaries for buildings within lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station shall be 2 metres. 21.18.1.2 There shall be no minimum setback from internal boundaries within lots 7 and 22 to 27 DP300573 at Closeburn Station.	D
21.18.2	Building Height 21.18.2.1 The maximum height of any building, other than accessory buildings, within Lots 1 and 6 and 8 to 21 DP 26634 at Closeburn Station shall be 7m. 21.18.2.2 The maximum height of any accessory building within Lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station shall be 5m. 21.18.2.4 The maximum height of any building within Lot 23 DP 300573 at Closeburn Station shall be 5.5m. 21.18.2.5 The maximum height of any building within Lot 24 DP 300573 at Closeburn Station shall be 5m.	NC

	Table 15 - Closeburn Station: Standards for Buildings and Structures	Non-compliance Status
21.18.3	Residential Density In the Rural Zone at Closeburn Station, there shall be no more than one residential unit per allotment (being lots 1-27 DP 26634); excluding the large rural lots (being lots 100 and 101 DP 26634) held in common ownership.	NC
21.18.4	Building Coverage In lots 1-27 at Closeburn Station, the maximum residential building coverage of all activities on any site shall be 35%.	NC

21.19

21.20 Rules Non-Notification of Applications

Any application for resource consent for the following matters shall not require the written approval of other persons and shall not be notified or limited-notified:

21.20.1 Controlled activity retail sales of farm and garden produce and handicrafts grown or produced on site (Rule 21.4.16), except where the access is onto a State highway.

21.20.2 Controlled activity mineral exploration (Rule 21.4.30).

21.20.3 Controlled activity buildings at Closeburn Station (Rule 21.17.1).

21.21 Assessment Matters (Landscape)

21.21.1 Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL).

The assessment matters set out below are derived from Policies 3.3.30, 6.3.10 and 6.3.12 to 6.3.18 inclusive. Applications shall be considered with regard to the following assessment matters:

21.21.1.1 In applying the assessment matters, the Council will work from the presumption that in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations and that successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes are reasonably difficult to see from beyond the boundary of the site the subject of application.

21.21.1.2 Existing vegetation that:

a. was either planted after, or, self-seeded and less than 1 metre in height at 28 September 2002; and,

b. obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:

i. as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and

ii. as part of the permitted baseline.

21.21.1.3 Effects on landscape quality and character

In considering whether the proposed development will maintain or enhance the quality and character of Outstanding Natural Features and Landscapes, the Council shall be satisfied of the extent to which the proposed development will affect landscape quality and character, taking into account the following elements:

a. physical attributes:

i. geological, topographical, geographic elements in the context of whether these formative processes have a profound influence on landscape character;

ii. vegetation (exotic and indigenous);

iii. the presence of waterbodies including lakes, rivers, streams, wetlands.

b. visual attributes:

    i. legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;

    ii. aesthetic values including memorability and naturalness;

    iii. transient values including values at certain times of the day or year;

    iv. human influence and management – settlements, land management patterns, buildings, roads.

c. Appreciation and cultural attributes:

    i. Whether the elements identified in (a) and (b) are shared and recognised;

    ii. Cultural and spiritual values for tangata whenua;

    iii. Historical and heritage associations.

    The Council acknowledges that Tangata Whenua beliefs and values for a specific location may not be known without input from iwi.

d. In the context of (a) to (c) above, the degree to which the proposed development will affect the existing landscape quality and character, including whether the proposed development accords with or degrades landscape quality and character, and to what degree.

e. any proposed new boundaries will not give rise to artificial or unnatural lines (such as planting and fence lines) or otherwise degrade the landscape character.

21.21.1.4 Effects on visual amenity

In considering whether the potential visibility of the proposed development will maintain and enhance visual amenity, values the Council shall be satisfied that:

a. the extent to which the proposed development will not be visible or will be reasonably difficult to see when viewed from public roads and other public places. In the case of proposed development in the vicinity of unformed legal roads, the Council shall also consider present use and the practicalities and likelihood of potential use of unformed legal roads for vehicular and/or pedestrian, cycling, equestrian and other means of access;

b. the proposed development will not be visually prominent such that it detracts from public or private views of and within Outstanding Natural Features and Landscapes;

c. the proposal will be appropriately screened or hidden from view by elements that are in keeping with the character of the landscape;

d. the proposed development will not reduce the visual amenity values of the wider landscape (not just the immediate landscape);

e. structures will not be located where they will break the line and form of any ridges, hills and slopes;

f. any roads, access, lighting, earthworks and landscaping will not reduce the visual amenity of the landscape.

21.21.1.5 Design and density of Development

In considering the appropriateness of the design and density of the proposed development, whether and to what extent:

a. opportunity has been taken to aggregate built development to utilise common access ways including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);

b. there is merit in clustering the proposed building(s) or building platform(s) within areas that are least sensitive to change;

c. development, including access, is located within the parts of the site where it would be least visible from public and private locations;

d. development, including access, is located in the parts of the site where it has the least impact on landscape character.

21.21.1.6 Cumulative effects of subdivision and development on the landscape

Taking into account whether and to what extent existing, consented or permitted development (including unimplemented but existing resource consent or zoning) may already have degraded:

a. the landscape quality or character; or,

b. the visual amenity values of the landscape.

The Council shall be satisfied the proposed development, in combination with these factors will not further adversely affect the landscape quality, character, or visual amenity values.

21.21.2 Rural Character Landscape (RCL)

The assessment matters below have been derived from Policies 3.3.32, 6.3.10 and 6.3.19 to 6.3.29 inclusive. Applications shall be considered with regard to the following assessment matters because in the Rural Character Landscapes the applicable activities are unsuitable in many locations.

21.21.2.1 Existing vegetation that:

a. was either planted after, or, self seeded and less than 1 metre in height at 28 September 2002; and,

b. obstructs or substantially interferes with views of the proposed development from roads or other public places, shall not be considered:

i. as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and

ii. as part of the permitted baseline.

21.21.2.2 Effects on landscape quality and character:

The following shall be taken into account:

a. where the site is adjacent to an Outstanding Natural Feature or Landscape, whether and the extent to which the proposed development will adversely affect the quality and character of the adjacent Outstanding Natural Feature or Landscape;

b. whether and the extent to which the scale and nature of the proposed development will degrade the quality and character of the surrounding Rural Character Landscape;

c. whether the design and any landscaping would be compatible with or would enhance the quality and character of the Rural Character Landscape.

21.21.2.3 Effects on visual amenity:

Whether the development will result in a loss of the visual amenity of the Rural Character Landscape, having regard to whether and the extent to which:

a. the visual prominence of the proposed development from any public places will reduce the visual amenity of the Rural Character Landscape. In the case of proposed development which is visible from unformed legal roads, regard shall be had to the frequency and intensity of the present use and, the practicalities and likelihood of potential use of these unformed legal roads as access;

b. the proposed development is likely to be visually prominent such that it detracts from private views;

c. any screening or other mitigation by any proposed method such as earthworks and/or new planting will detract from or obstruct views of the Rural Character Landscape from both public and private locations;

d. the proposed development is enclosed by any confining elements of topography and/or vegetation and the ability of these elements to reduce visibility from public and private locations;

e. any proposed roads, boundaries and associated planting, lighting, earthworks and landscaping will reduce visual amenity, with particular regard to elements which are inconsistent with the existing natural topography and patterns;

f. boundaries follow, wherever reasonably possible and practicable, the natural lines of the landscape or landscape units.

21.21.2.4 Design and density of development:

In considering the appropriateness of the design and density of the proposed development, whether and to what extent:

a. opportunity has been taken to aggregate built development to utilise common access ways including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);

b. there is merit in clustering the proposed building(s) or building platform(s) having regard to the overall density and intensity of the proposed development and whether this would exceed the ability of the landscape to absorb change;

c. development, including access, is located within the parts of the site where they will be least visible from public and private locations;

d. development, including access, is located in the parts of the site where they will have the least impact on landscape character.

21.21.2.5 Tangata Whenua, biodiversity and geological values:

a. whether and to what extent the proposed development will degrade Tangata Whenua values including Töpuni or nohoanga, indigenous biodiversity, geological or geomorphological values or features and, the positive effects any proposed or existing protection or regeneration of these values or features will have.

The Council acknowledges that Tangata Whenua beliefs and values for a specific location may not be known without input from iwi.

21.21.2.6 Cumulative effects of development on the landscape:

Taking into account whether and to what extent any existing, consented or permitted development (including unimplemented but existing resource consent or zoning) has degraded landscape quality, character, and visual amenity values. The Council shall be satisfied;

a. the proposed development will not further degrade landscape quality, character and visual amenity values, with particular regard to situations that would result in a loss of valued quality, character and openness due to the prevalence of residential or non-farming activity within the Rural Landscape.

b. where in the case resource consent may be granted to the proposed development but it represents a threshold to which the landscape could absorb any further development, whether any further cumulative adverse effects would be avoided by way of imposing a covenant, consent notice or other legal instrument that maintains open space.

21.21.3 Other factors and positive effects, applicable in all the landscape categories (ONF, ONL and RCL)

21.21.3.1 In the case of a proposed residential activity or specific development, whether a specific building design, rather than nominating a building platform, helps demonstrate whether the proposed development is appropriate.

21.21.3.2 Other than where the proposed development is a subdivision and/or residential activity, whether the proposed development, including any buildings and the activity itself, are consistent with rural activities or the rural resource and would maintain or enhance the quality and character of the landscape.

21.21.3.3 In considering whether there are any positive effects in relation to the proposed development, or remedying or mitigating the continuing adverse effects of past subdivision or development, the Council shall take the following matters into account:

a. whether the proposed subdivision or development provides an opportunity to protect the landscape from further development and may include open space covenants or esplanade reserves;

b. whether the proposed subdivision or development would enhance the character of the landscape, or protects and enhances indigenous biodiversity values, in particular the habitat of any threatened species, or land environment identified as chronically or acutely threatened on the Land Environments New Zealand (LENZ) threatened environment status;

c. any positive effects including environmental compensation, easements for public access such as walking, cycling or bridleways or access to lakes, rivers or conservation areas;

d. any opportunities to retire marginal farming land and revert it to indigenous vegetation;

e. where adverse effects cannot be avoided, mitigated or remedied, the merits of any compensation;

f. whether the proposed development assists in retaining the land use in low intensity farming where that activity maintains the valued landscape character.

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 8

Report and Recommendations of Independent Commissioners Regarding
Chapter 30, Chapter 35 and Chapter 36

Commissioners
Denis Nugent (Chair)
Calum MacLeod
Mark St Clair

CONTENTS

PART A: INTRODUCTORY MATTERS

1. PRELIMINARY

1.1. Terminology in this Report

1. Throughout this report, we use the following abbreviations:

Act	Resource Management Act 1991 as it was prior to the enactment of the Resource Legislation Amendment Act 2017, unless otherwise stated
Aurora	Aurora Energy Limited
Clause 16(2)	Clause 16(2) of the First Schedule to the Act
Council	Queenstown Lakes District Council
House Movers	House Movers Section of New Zealand Heavy Haulage Association (Inc), Jones Contracting Queenstown Ltd, King House Removals Ltd, Fulton Hogan Heavy Haulage Ltd, Transit Homes Ltd, Patterson Contracting Otago Ltd and Scobies Transport Ltd
Jacks Point Group	Jack's Point Residential No.2 Ltd, Jack's Point Village Holdings Ltd, Jack's Point Developments Ltd, Jack's Point Land Ltd, Jack's Point Land No. 2 Ltd, Jack's Point Management Ltd, Henley Downs Land Holdings Ltd, Henley Downs Farm Holdings Ltd, Coneburn Preserve Holdings Ltd, Willow Pond Farm Ltd and Jacks Point Residents and Owners Association
NZECP 34:2001	New Zealand Electrical Code of Practice for Electrical Safe Distances 2001
NESETA 2009	Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009
NESTF 2008	Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008
NESTF 2016	Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016
NPSET 2008	National Policy Statement for Electricity Transmission 2008
NPSFWM 2014	National Policy Statement for Freshwater Management 2014
NPSREG 2011	National Policy Statement for Renewable Electricity Generation 2011
NPSUDC 2016	National Policy Statement on Urban Development Capacity 2016
NZTA	New Zealand Transport Agency

ODP	The Operative District Plan for the Queenstown Lakes District as at the date of this report
PDP	Stage 1 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015
Proposed RPS	The Proposed Regional Policy Statement for the Otago Region Decisions Version dated 1 October 2016, unless otherwise stated
QAC	Queenstown Airport Corporation Ltd
QPL	Queenstown Park Ltd
RPL	Remarkables Park Ltd
RPS	The Operative Regional Policy Statement for the Otago Region dated October 1998
Telecommunication Companies	Vodafone New Zealand Ltd, Spark New Zealand Trading Ltd, Two Degrees Mobile Limited and Chorus New Zealand Ltd
Transpower	Transpower New Zealand Limited

1.2. Topics Considered

2. The subject matter of the Stream 5 hearing was Chapters 30, 35 and 36 of the PDP (Hearing Stream 5). Each of these are District Wide chapters.

3. Chapter 30 deals with energy and utilities. In terms of energy, it is concerned both with the generation of electricity and encouraging energy efficiency. The provisions relating to utilities recognise that they are essential to the servicing and functioning of the District, but also seek to achieve a balance between the competing effects of utilities and other land uses.

4. Chapter 35 deals with temporary activities and relocated buildings. The provisions recognise that these activities can occur in any zone subject to appropriate controls on adverse effects.

5. Chapter 36 is concerned with noise. The general purpose of the chapter is to manage noise effects from activities throughout the District.

1.3. Hearing Arrangements

6. The hearings were held in Queenstown on 12th, 13th and 15th September 2016, and in Wanaka on 14th September 2016. The Council's written reply, in the form of legal submissions and evidence, was received on 23rd September 2016.

7. Parties heard from on Stream 5 matters were:

Council

- Sarah Scott and Katherine Hockly (Counsel)
- Kimberley Banks (author of the Section 42A Report on Chapter 35)
- Craig Barr (author of the Section 42A Report on Chapter 30)
- Dr Stephen Chiles

- Ruth Evans (author of the Section 42A Report on Chapter 36)

QAC[1]
- Rebecca Wolt (Counsel)
- Christopher Day
- Kirsty O'Sullivan
- Scott Roberts

Jet Boating New Zealand[2]
- Eddie McKenzie

Jacks Point Group[3]
- Maree Baker-Galloway (Counsel)
- Chris Ferguson

Michael Farrier[4]

NZTA[5]
- Anthony MacColl

Real Journeys Limited[6] **and Te Anau Developments Limited**[7]
- Fiona Black

Aurora Energy Limited[8]
- Bridget Irving (Counsel)
- Joanne Dowd
- Stephen Sullivan

John Walker[9]

House Movers[10]
- Stuart Ryan (Counsel)
- Graham Scobie

QPL[11] **and RPL**[12]
- Brian Fitzpatrick

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1 Submission 433
2 Submission 758
3 Submission 762 and Further Submissions 1275 and 1277
4 Submission 752
5 Submission 719
6 Submission 621 and Further Submission 1341
7 Submission 607 and Further Submission 1342
8 Submission 635
9 Submission 292
10 Submission 496
11 Submission 806 and Further Submission 1097
12 Further Submission 1117

Vodafone New Zealand Ltd[13], Spark New Zealand Trading Ltd[14] and Chorus New Zealand Ltd[15]

- Matthew McCallum-Clarke
- Graeme McCarrison
- Colin Clune

Totally Tourism Ltd[16] and Skyline Enterprises Ltd[17]

- Sean Dent

Transpower[18]

- Ainsley McLeod
- Andrew Renton

8. In addition, a statement of evidence lodged by Megan Justice on behalf of PowerNet Ltd[19] was tabled. Mr David Cooper lodged a statement of evidence on behalf of Federated Farmers of New Zealand[20]and tabled a summary of his evidence. Finally, a letter from Rob Owen of the New Zealand Defence Force[21] dated 8 September 2016 was tabled.

9. Neither Ms Justice, Mr Cooper nor Mr Owen appeared at the hearing in relation to these documents. While we have considered these statements of evidence, our inability to question the witnesses limited the weight we could put on the evidence.

1.4. Procedural Steps and Issues

10. The hearing of Stream 5 proceeded on the basis of the pre-hearing general directions made in the Panel's Minutes summarised in Report 1[22].

11. Specific to the Stream 5 hearing, Counsel for Lake Hayes Cellar Limited (LHC)[23] lodged a Memorandum dated 23 August 2016 seeking clarification as to whether the submissions points of LHC on Chapter 36 would be heard or deferred consistent with the Chair's Minute of 17 June 2016. By way of a Minute dated 24 August 2016, the Chair confirmed the deferment of LHC's submission to the mapping hearings.

12. The Chair issued a Minute on 26 August 2016 confirming that the submissions lodged by Mr Manners-Wood[24] were not relevant to Chapter 36 and, consequently, that he would not be heard in Stream 5.

13. By way of a Memorandum dated 30 August 2016, counsel for the Council sought that one full day be allocated for the Council opening on 12 September 2016. Provision was duly made for the Council to have that amount of hearing time.

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13 Submission 179 and Further Submission 1208
14 Submission 191 and Further Submission 1253
15 Submission 781 and Further Submission 1106
16 Submission 571
17 Submission 574
18 Submission 805
19 Submission 251 and Further Submission 1259
20 Submission 600 and Further Submission 1132
21 Submission 1365
22 Report 1, Section 1.5
23 Submission 767
24 Submissions 213 and 220

14. Counsel for Aurora Energy Limited filed a Memorandum on 1 September 2016 seeking leave to file its evidence by 12pm on 9 September 2016, 5 working days after the time specified in the notice of hearing. The Chair replied by way of a Minute dated 1 September 2016 refusing the full extension sought, but granting an extension to 10am on 5 September 2016 (1 working day).

15. On 16 September 2016, Counsel for Transpower filed a Memorandum suggesting a proposed controlled activity rule to apply to activities adjacent to Transpower's Frankton Substation. This was in response to questions put to Transpower's witnesses in the hearing.

16. In response to the Transpower Memorandum, the Panel received a Memorandum filed by Counsel for PR and MM Arnott suggesting that there was no jurisdiction for the Panel to consider the rule proposed by Transpower.

17. The Chair responded to both of these memoranda in a Minute dated 20 September 2016. The Chair reviewed the original submission of Transpower and concluded the new proposed rule was within the scope of the original submission.

18. The Hearing Panel issued a Minute dated 28 September 2016 seeking clarification from the Council of the formulation 1-2 used in notified Table 5 in Rule 36.6.3 and whether that was a typographical error consistent with the error identified by the Council in notified Table 5 in Rule 36.7. Counsel for the Council replied by Memorandum on 28 September 2016 that it was a similar typographical error and expressed the opinion that the correction of it would fall within the category of minor correction under clause 16(2) of the First Schedule to the Act.

19. On 24 May 2017 we issued a Minute requiring caucusing between Mr Barr and Mr McCallum-Clark to provide the Panel with advice on ensuring the rules proposed by the Council and Telecommunications Companies were consistent with the NESTF 2016.

20. On 25 September 2017 we received a Joint Witness Statement[25] from Mr Barr and Mr McCallum-Clark recording their agreement on amendments necessary to a number of rules to ensure consistency with the NESTF 2016. This also recorded one area of disagreement in relation to the height of poles in the Rural Character Landscapes in the Rural Zone.

21. Mr Barr and Mr McCallum-Clark agreed there was scope within the submissions from the Telecommunication Companies[26] for the amendments they proposed so as to ensure consistency of the PDP with NESTF 2016. We accept the agreed amendments for the reasons set out in the Joint Witness Statement and incorporate the recommended changes into our recommendations without further discussion. We discuss the one area of disagreement when discussing notified Rule 30.4.14 below.

1.5. Statutory Considerations

22. The Hearing Panel's Report 1 contains a general discussion of the statutory framework within which submissions and further submissions on the PDP have to be considered, including matters that have to be taken into account, and the weight to be given to those matters. We

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25 Joint Witness Statement of Craig Barr and Matthew McCallum-Clark – Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016 – Energy and Utilities Chapter (30), dated 25 September 2017

26 Submissions 179, 191, 421 and 781

have had regard to that report when approaching our consideration of submissions and further submissions on the matters before us.

23. Some of the matters identified in Report 1 are either irrelevant or only have limited relevance to the objectives, policies and other provisions we had to consider. The NPSFWM 2014 is in this category. The NPSET 2008, the NPSREG 2011 and the NPSUDC 2016 do, however, have more relevance to the matters before us. We discuss those further below.

24. The section 42A reports on the matters before us drew our attention to objectives and policies in the RPS and proposed RPS the reporting officers considered relevant. To the extent necessary, we discuss those in the context of the particular provisions in the three Chapters.

25. The NPSET 2008 sets out objectives and policies which recognise the national benefits of the electricity transmission network, manage the environmental effects of that network, and manage the adverse effects of other activities on the transmission network. The network in owned and operated by Transpower. In this District, the network consists of a transmission line from Cromwell generally following the Kawarau River before crossing through Shotover Country and Frankton Flats to Transpower's Frankton substation, which also forms part of the network.

26. Relevant to the application of the NPSET 2008 are the NESET 2009. These set standards to give effect to certain policies in the NPSET 2008.

27. The NPSGEG 2011 sets out objectives and policies to enable the sustainable management of renewable electricity generation under the Act.

28. The NPSFWM 2014 sets out objectives and policies in relation to the quality and quantity of freshwater. Objective C seeks the integrated management of land uses and freshwater, and Objective D seeks the involvement of iwi and hapu in the management of freshwater. To the extent that these are relevant, we have taken this NPS into account.

29. The NPSUDC 2016 is relevant to the extent that it requires that local authorities satisfy themselves that adequate infrastructure is available to support short and medium term urban development capacity.

30. Finally, the NESTF 2008 applied at the time of the hearing. These standards defined the activity status of various telecommunication facilities and applied conditions on telecommunication facilities and activities. After the completion of the hearing, these Standards were replaced with the NESTF 2016. The NESTF 2016 sets out standards for various telecommunication facilities and provides that those facilities are permitted activities if the standards are complied with. Where the standards are not complied with, the activity status in the district plan comes into play. Where items of significance, or landscapes and habitats of significance, are affected, the district plan rules apply in place of the NES standards. Under s.44A of the Act, if there are any conflicts between the rules in the PDP and the NESTF 2016, the PDP may be amended without following the Schedule 1 process. Thus, if we find any such conflict, we will recommend amendments to the PDP to remove the conflict, whether or not submissions sought such amendments.

31. The tests posed in section 32 form a key part of our review of the objectives, policies, and other provisions we have considered. We refer to and adopt the discussion of section 32 in the Hearing Panel's Report 3. In particular, for the same reasons as are set out in Report 3, we

have incorporated our evaluation of changes we have recommended into the report that follows, rather than provide a separate evaluation of how the requirements of section 32AA are met.

PART B: CHAPTER 30 - ENERGY AND UTILITIES

2. PRELIMINARY

2.1. General Submissions

32. Several submissions require consideration before discussing the provisions in the chapter and the submissions on those provisions. Kain Froud[27] supported the chapter generally. As we are recommending changes to the chapter, we recommend his submission be accepted in part.

33. Maggie Lawton[28] sought that the Council consider introducing an organic waste collection so as to reduce the amount of waste going into landfills. Although this has some relationship to this chapter, in that the rules of the chapter provide for waste management facilities, we do not consider it is a matter that falls within the Council's resource management functions. Rather it is a matter better dealt with under the Council's Local Government Act functions. On that basis, we recommend this submission be rejected.

34. David Pickard[29] has sought a general policy to discourage light pollution throughout the District. This issue has been dealt with in relation to other chapters. The Hearing Panel, differently constituted, that heard Stream 1B has recommended a new policy in chapter 4 that reads:

Ensure lighting standards for urban development avoid unnecessary adverse effects on views of the night sky.[30]

35. The same Panel has also recommended that Policy 6.3.5 read:

Ensure the location and direction of lights does not cause excessive glare and avoids unnecessary degradation of views of the night sky and of landscape character, including the sense of remoteness where it is an important part of that character.

36. We consider that these policies give effect to the relief sought by Mr Pickard, but as they are in a different part of the PDP, we recommend his submission be accepted in part.

37. The Telecom Companies[31] sought that Chapter 30 be amended to provide a framework that supports utilities and manages the adverse effects of activities. This was conditionally supported by Te Anau Developments Limited[32]. As the overall effect of our recommendations on the submissions on this chapter, in our view, do provide such a framework, we recommend this submission be accepted. The conditional nature of the further submission means it should only be accepted in part.

38. Te Ao Marama Inc[33] sought that those aspects of Chapter 30 which affected freshwater quality and quantity should give effect to the NPSFWM 2014, particularly Objective D and Policy D-1. We have taken those provisions into account in coming to our conclusions on this chapter. We recommend the submission therefore be accepted in part.

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27 Submission 19
28 Submission 165
29 Submission 424
30 Policy 4.2.2.10
31 Submissions179.15, 191.13 and 781.14
32 Further Submission FS1342.9
33 Submission 817

39. Te Anau Developments Ltd[34] and Cardrona Alpine Resort Ltd[35] sought amendments to the chapter to make special provision to ensure that the development, operation, maintenance and upgrading of energy, utilities and infrastructure related to tourism activities are specifically enabled. Ms Black appeared in support of these submissions. Her evidence focussed on the utility requirements of isolated locations, such as Walter Peak Station and Cardrona Alpine Resort and how specific policies and rules could be amended to assist those requirements. We have taken these matters into account in our consideration of the objectives, policies and rules and consequently recommend that the submissions be accepted in part.

2.2. Aurora Submission[36]

40. While this submission sought a number of amendments to the objectives, policies and rules in Chapter 30, one aspect of the submission, contained in 8 submission points, has an overall goal of having provisions inserted into the PDP to protect certain lines of the Aurora network from the effects of other land uses. In our view, it is more appropriate to consider this matter at the outset rather than a piecemeal approach policy by policy or rule by rule. Further submissions were lodged opposing this aspect of the submission by Federated Farmers[37] and Transpower[38].

41. Aurora also appeared in respect of this overall objective in Hearing Streams 1 and 4 (each with Hearing Panels differently constituted from this Panel). While our recommendations are based on the submissions and evidence we heard in respect of this submission, we have also had the benefit of reviewing the reports and recommendations of those other hearing panels. In addition, Ms Dowd attached to her evidence copies of the evidence presented to the Stream 1 Hearing Panel, and the evidence and written answers she provided to questions set by the Stream 4 Hearing Panel.

42. The Aurora submission sought corridor protection for what it described as its strategic electricity distribution assets, namely -

a. All 33kV and 66kV sub-transmission and distribution overhead lines and underground cables;
b. 11kV overhead line to Glenorchy;
c. 11kV overhead line between the Cardrona Substation up to the ski fields;
d. 11kV overhead line to Treble Cone; and
e. 11kV overhead line to Makarora.

43. The components of the submission are:

Submission Point	Amendment Sought (Summarised)
.1	Insert definition of Critical Electricity Line
.3	Insert definition of Electricity Distribution
.4	Insert definition of Electricity Distribution Line Corridor
.51	Amend Policy 30.2.6.4 to include reference to Critical Electricity Line Corridor
.61	Amend Rule 30.4.10 to include reference to Critical Electricity Line Corridor

34 Submission 607.38, supported by FS1097.561
35 Submission 615.36, supported by FS1105.36 and FS1137.37
36 Submission 635
37 Further submission 1132
38 Further submission 1301

.70	Insert new Rule requiring all buildings (as defined in PDP) plus some other structures and defined tree planting within 10m, and all earthworks over underground cables or within 20m, of the centreline of a Critical Electricity Line Corridor to obtain consent as a restricted discretionary activity
.71	Include a reference in all zones to the new rule sought in point 70
.86	Amend the Planning Maps to show the relevant portions of the Aurora network

44. Thus, the submission sought protection of the lines listed above by, in essence, requiring that all buildings and specified earthworks and tree planting within specified distances of "Critical Electricity Lines" be restricted discretionary activities. We note also, that submission point 42 sought that all subdivision within 32m of the centreline of Critical Electricity Line Corridors be a restricted discretionary activity. That submission point is dealt with in Report 7 – Subdivision.

45. We understood, from both Ms Dowd's evidence[39] and answers to our questions, that the essential purpose was to enable Aurora to be notified of building, planting, earthworks or subdivision activity within the vicinity of these lines so it could ensure landowners or those undertaking works complied with the NZECP 34:2001.

46. In her submissions on behalf of Aurora, Ms Irving submitted that Aurora's distribution network must be recognised in the PDP to implement the RPS[40]. In response to our questioning, Ms Irving submitted that the proposed RPS should be given more weight than the RPS.

47. The evidence of Ms Dowd, Delta Utility Services Limited[41] Network Policy Manager, dealt in large part with areas of disagreement she had with the rules proposed by Mr Barr in his Section 42A Report. Her conclusion was that the corridor protection measures sought would promote the sustainable management of natural and physical resources and assist Aurora in delivering a robust and reliable power distribution network to the District[42]. In her Summary of Evidence Ms Dowd explained that, while under the NZECP 34:2001 Aurora should be notified if a building is within the minimum safe distances, that does not always occur.

48. Mr Sullivan presented a group of photographs showing instances of buildings or trees located within the distances required by NZECP 34:2001. Unfortunately, no location information was provided with the photographs. However, our knowledge of the area enabled us to identify four photographs as being of commercial buildings in Brownston Street, Wanaka and the date on one of the photographs indicated they were taken in 2008. It was also apparent that several of the photographs related to properties in Central Otago District.

49. Neither Ms Dowd nor Mr Sullivan were able to assist with indicating the actual extent of the problem in Queenstown Lakes District.

50. In his Section 42A report, Mr Barr accepted the approach sought by Aurora, but did not propose its implementation in a manner consistent with that sought by Aurora. In his reply

39 Joanne Dowd, EiC, paragraph 13

40 Legal submissions, paragraph 12.

41 We understand that Delta Utility Services Ltd, a sister company to Aurora, maintains and manages the Aurora network

42 Joanne Dowd, EiC, paragraph 69

statement, Mr Barr in large part reaffirmed this view. His differences with Aurora at that point related to the setback distances to be applied in the rule.

51. Two further submissions were lodged on Aurora's submission. That by Transpower was concerned that terminology used in any rule be distinct from that used in the NPSET 2008 and NESET 2009. Ms McLeod, when appearing for Transpower, suggested that distribution line was a better term than sub-transmission line. She also noted that the restrictions sought by Aurora were greater than those applied in respect of the National Grid. Mr Renton, also appearing for Transpower, suggested to us that there had been no demonstration of need for the yard and corridor widths Aurora sought given the nature of the lines used on the Aurora network as compared to those on the National Grid.

52. The further submission lodged by Federated Farmers opposed Aurora's submission in large part. Federated Farmers agreed that there could be a definition of Electricity Distribution, and that an advisory note could be included in the PDP noting that compliance with NZECP 34:2001 is mandatory for buildings, earthworks and when using machinery in close proximity to the electricity distribution network. However, Federated Farmers considered it inappropriate for the PDP to police the NZECP 34:2001 when dealing with local lines. Mr Cooper, Senior Policy analyst at Federated Farmers, tabled evidence in support of this further submission, but was not able to appear due to medical reasons[43].

53. In considering this issue, we start by analysing what is actually being sought by Aurora. Aurora has a number of lines passing over, or under in the case of cabled portions, private land. Some of these lines are located within road reserve. We were not provided with a breakdown of the proportions within each category, nor how much was on public reserve land. Ms Dowd did advise us that the network Aurora was seeking these provisions apply to amounts to 263 kilometres of overhead lines and 9 kilometres of underground lines[44]. We received no information as to whether the underground lines referred to were within road reserves or within private property.

54. As we read the rule proposed, the corridor setback requirements would apply whether or not the relevant line was on road reserve, other reserve, or private land. Thus, owners and occupiers of land adjoining a road reserve or other site which contained a line would be affected by the rules to extent that part of their land lay within the 10m, 20m or 32m restriction area. Neither Ms Dowd nor Mr Barr undertook any analysis of how many properties would be affected by the proposed rules.

55. Aurora's position was that the restrictions are imposed by the NZECP 34:2001 so no additional burden is being imposed on the land owner. However, that is not entirely correct. The obligation to obtain a resource consent imposes a financial cost on the applicant, even if only for the Council's processing fees. If Ms Dowd is correct that the process would enable input by Aurora on such proposals[45], the expectation must be that such applications would be notified in some form. Our understanding is that the costs to the applicant could be substantial just to commence such a process. Unless the Council's fees cover 100% of the processing costs, the Council will also have a financial cost imposed.

56. The purpose of the provisions Aurora propose are, as was explained to us by Ms Dowd and Mr Sullivan, to protect the network from activities that could lead to power outages, and to ensure

43 Explained in an email to the Hearing Panel on 13 September 2016

44 Joanne Dowd, Summary of Evidence, paragraph 3.7

45 Joanne Dowd, Evidence in Chief, paragraph 13

access remains available for ongoing maintenance. We understood there also to be an element of public safety by ensuring people could not come within such a distance that electricity would arc from the lines on them. These are not matters which come within the definition of reverse sensitivity, which appeared to be the justification Ms Dowd[46] and Mr Barr[47] had for their conclusions that some provision should be made. Our understanding is that a reverse sensitivity effect arises when a new activity seeks changes to an existing activity by reason of its adverse effects.

57. Ms Irving confirmed that Aurora is a requiring authority. She advised that Aurora steered away from using its requiring authority powers to protect its infrastructure as it would trigger the Public Works Act and landowners could seek acquisition or some other compensation. We took from this answer that a subsidiary purpose of the Aurora submission was to have controls in place to protect its infrastructure that, under s.85 of the Act, would not create any liability for compensation.

58. The purpose of the PDP is to assist the Council in carrying out its functions in order to achieve the purpose of the Act[48]. The Act recognises that there are certain infrastructure activities, often, as in this case, undertaken by private companies, that are important for the wellbeing of the community by providing, in Part 8, the ability of those infrastructure providers to become requiring authorities and to impose their own mechanisms in a district plan to protect their infrastructure. Neither Ms Dowd nor Mr Barr addressed this option in coming to their conclusions. Nor did they address whether it should be the Council's function to, as Federated Farmers put it, police the NZECP 34:2001 for Aurora. It is not within the Council's functions to administer NZECP 34:2001.

59. We were referred to the proposed RPS as supporting Aurora's submission. The relevant policy[49] appears to be 4.4.5:

Protect electricity distribution infrastructure by all of the following:

a. Recognising the functional needs of electricity distribution activities;
b. Restricting the establishment of activities that may result in reverse sensitivity effects;
c. Avoiding, remedying or mitigating adverse effects from other activities on the functional needs of that infrastructure;
d. Protecting existing distribution corridors for infrastructure needs, now and for the future.

60. The implementation method for district plans is Method 4.1, with no further specificity. We understand that both the policy and Method 4.1 are under appeal. Thus we cannot be certain of the final wording or either. This goes to the weight that can be given these provisions. However, we do not see that Policy 4.4.5 could not be given affect to by the relevant territorial authority recommending that a notice of requirement lodged by Aurora be confirmed. It is not apparent that the policy direction intended by the proposed RPS is that the only method of implementation is that district councils implement rules so as to enable Aurora to be aware of activities that may breach NZECP 34:2001.

61. On this last point, we are not certain that the objective, policy and rule framework proposed by Aurora achieves the outcome of increasing its awareness of such activities. The discretion

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46 Joanne Dowd, Evidence in Chief, paragraph 48

47 Section 42A Report, paragraph 8.7

48 Section 72

49 As the hearing predated the ORC releasing its decisions on the proposed RPS, Ms Irving's submissions referred to the notified version.

as to notification lies with the Council[50]. More certainty would be provided to Aurora by the application of s.176(1)(b) if the provisions were included in the PDP by way of a notice of requirement. In addition, any person requiring the approval of Aurora under that section would not be subject to the regulatory charges required for a resource consent. Thus, that method is more efficient for both Aurora and the landowners involved.

62. There is also a question as to whether the proposed rule provides any benefit to an applicant. While it is clearly within the powers of the Council to grant consent to a restricted discretionary activity, it appears that the provisions of NZECP 34:2001[51] are such that holding such a consent would not necessarily allow the relevant work to proceed.

63. Finally, we have a concern that if the Council were to accede to Aurora's request, it would be imposing restrictions on a large number of landowners who may not have been aware that Aurora's submission could directly affect their use of their land. While the proposed objectives, policies and rules were clearly summarised, the extent of the land which could be affected by such provisions was not explicitly set out in the summary[52]. The summary refers to the maps attached to the submission, but those maps are not of such a scale as to clearly show every site potentially affected. As we noted above, affected land includes land adjoining land on which lines are located as well as land on which they are located. We understood that no attempt was made by Aurora to advise potentially affected landowners of the submission. One of the benefits of the notice of requirement method is that each affected landowner is directly notified.

64. Having considered the proposed provisions in terms of s.32AA, we conclude there is a practical alternative method available to Aurora which is both more effective and more efficient than the provisions proposed in the submission. We are also not satisfied that the Council has any need to ensure that NZECP 34:2001 is complied with – it is not one of its functions.

65. Thus, we recommend that those parts of Aurora's submission seeking the inclusion of objectives, policies and rules directed to imposing resource consent requirements within set distances of Aurora's lines or cables should be rejected.

66. We do, however, consider that Aurora's concerns can be addressed by improving the information in the PDP. Section 30.3.2.3 advises readers that NZECP 34:2001 is applicable. We consider that, if this was supplemented by showing the relevant overhead lines portion of the Aurora network, as shown in Annexure 2 to Submission 635, on the Planning Maps, landowners would have increased awareness of their obligations. When we raised this option with Ms Irving at the hearing she conceded this would go some way achieving Aurora's goal, but that it would prefer rules.

67. We will deal with other parts of Aurora's submission in discussion of the detailed PDP provisions below.

2.3. Section 30.1 - Purpose

68. This section notes the strategic importance of energy and utilities. Subsection 30.1.1 explains the value of energy, and section 30.1.2 sets out the value of utilities.

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50 Section 95A, or s.95E if limited notification.

51 The Introduction to the Code states: "*Compliance with this Code is mandatory*."

52 See Submission Point 635.86 summarised on pages 1332 and 1333 of the summary

69. Section 30.1 was supported by one submitter[53] and a second submitter sought an amendment to refer to electricity transmission[54]. We agree with Mr Barr that there is no need to amend this opening sentence. Electricity transmission clearly falls within the term "essential infrastructure".

70. A number of submitters sought amendments to section 30.1.1 to emphasise aspects of design that could enhance energy efficiency[55]. We are of the view that these suggested amendments add little to what is essentially an explanatory section. We do not recommend any changes to section 30.1.1.

71. One submission[56] supported section 30.1.2 as notified. Transpower[57] and PowerNet Ltd[58] each sought non-substantive amendments to the wording of this section. We agree with the further submissions by Contact Energy Ltd that the amendments proposed are, respectively, too specific or add nothing to the section. Mr Barr recommended a minor grammatical amendment to the discussion of reverse sensitivity effects. We agree with that amendment and recommend it be made as a minor change in accordance with Clause 16(2).

3. SECTION 30.2 - OBJECTIVES AND POLICIES

3.1. Objective 30.2.1 and Policies 30.2.1.1 and 30.2.1.2

72. As notified, these read:

> *30.2.1 The benefits of the District's renewable and non-renewable energy resources and the electricity generation facilities that utilise such resources are recognised as locally, regionally and nationally important in the sustainable management of the District's resources.*
>
> *30.2.1.1 Recognise the national, regional and local benefits of the District's renewable and non-renewable electricity generation activities.*
>
> *30.2.1.2 Enable the operation, maintenance, repowering, upgrade of existing non-renewable electricity generation activities and development of new ones where adverse effects can be avoided, remedied or mitigated.*

73. There were no submissions on this objective and the ensuing policies. In his Section 42A Report Mr Barr raised concerns that the objective and Policy 30.2.1.2 were problematic as they indicated non-renewable energy resources and generation were equally as important as renewable energy resources and generation, when the former were non-complying activities and the latter discretionary. He rightly conceded that there was no jurisdiction available to correct that inconsistency. That is a matter the Council would have to deal with by way of variation.

74. We have two concerns with the objective as notified. Firstly, similar to Mr Barr's concern, we consider the objective inappropriately focusses on the benefits of utilising non-renewable

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53 Submission 238.117. Nine further submissions opposed submission 238 but did not appear to oppose this specific point.

54 Submission 805.69, supported by FS1159.5 and opposed by FS1132.65

55 Submissions 115.6, 230.6, 238.11, 383.59, 238.118

56 Submission 719.147, supported by FS1186.8

57 Submission 805.70, supported by FS1211.32 and opposed by FS1186.11

58 Submission 251.11, supported by FS1097.89, opposed by FS1186.1 and FS1132.16

energy resources in the District when there is no evidence that such resources exist in the District, and if such resources did exist, the utilisation of them could be inconsistent with the Strategic objectives and policies in Chapters 3 and 6.

75. Our second concern is more one of style. As written, this is not an objective as it does not express an environmental outcome. We consider that this can be remedied as a minor grammatical change in accordance with Clause 16(2) of the First Schedule.

76. We recommend the Council reconsider this objective and the associated policies taking into account the concerns we and Mr Barr have expressed and institute a variation to replace them with more appropriate objective(s) and policies. In the meantime, we recommend the Council make a minor change under Clause 16(2) to objective 30.2.1 so that it reads:

The sustainable management of the District's resources benefits from the District's renewable and non-renewable energy resources and the electricity generation facilities that utilise them.

3.2. Objective 30.2.2 and Policies 30.2.2.1 and 30.2.2.2

77. As notified, these read:

30.2.2 Recognise that the use and development of renewable energy resources have the following benefits:

- *Maintain or enhance electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions*
- *Maintain or enhance the security of electricity supply at local, regional and national levels by diversifying the type and/or location of electricity generation*
- *Assist in meeting international climate change obligations*
- *Reduce reliance on imported fuels for the purpose of generating electricity*
- *Help with community resilience through development of local energy resources and networks.*

30.2.2.1 Enable the development, operation, maintenance, repowering and upgrading of new and existing renewable electricity generation activities, (including small and community scale), in a manner that:

- *Recognises the need to locate renewable electricity generation activities where the renewable electricity resources are available*
- *Recognises logistical and technical practicalities associated with renewable electricity generation activities*
- *Provides for research and exploratory-scale investigations into existing and emerging renewable electricity generation technologies and methods.*

30.2.2.2 Enable new technologies using renewable energy resources to be investigated and established in the district.

78. Again, there were no submissions on this objective or the ensuing policies, and again Mr Barr expressed concerns with them in his Section 42A report. We agree with Mr Barr that they could be improved by including reference to the need to achieve the higher order Strategic Direction objectives and policies in Chapters 3 and 6. We note in particular that Policy 30.2.2.1 appears to be contrary to a number of policies in Chapters 3 and 6, such as 3.3.25, 3.3.30, 3.3.32-35 inclusive, 6.3.15, 6.3.1, 6.3.18, 6.3.24, 6.3.25.

79. We also have concerns that the introductory section of Objective 30.2.2 is again focused on recognising something, rather than expressing an environmental outcome. We are satisfied that can be corrected as a minor grammatical change under Clause 16(2).

80. We recommend the Council reconsider this objective and the ensuing policies to ensure they are consistent with, and give effect to both the NPSREG and the Strategic Objectives and Policies in Chapters 3, 5 and 6. In the interim, we recommend Objective 30.2.2 be rephrased utilising Clause 16(2) to read:

The use and development of renewable energy resources achieves the following:

a. It maintains or enhances electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;
b. It maintains or enhances the security of electricity supply at local, regional and national levels by diversifying the type and/or location of electricity generation;
c. It assists in meeting international climate change obligations;
d. It reduces reliance on imported fuels for the purpose of generating electricity;
e. It helps with community resilience through development of local energy resources and networks.

3.3. Objective 30.2.3 and Policies

81. As notified these read:

Objective ***Energy resources are developed and electricity is generated, in a manner that minimises adverse effects on the environment.***

30.2.3.1 *Promote the incorporation of Small and Community-Scale Distributed Electricity Generation structures and associated buildings (whether temporary or permanent) as a means to improve efficiency and reduce energy demands.*

30.2.3.2 *Ensure the visual effects of Wind Electricity Generation do not exceed the capacity of an area to absorb change or significantly detract from landscape and visual amenity values.*

30.2.3.3 *Promote Biomass Electricity Generation in proximity to available fuel sources that minimise external effects on the surrounding road network and the amenity values of neighbours.*

30.2.3.4 *Assess the effects of Renewable Electricity Generation proposals, other than Small and Community Scale, on a case-by-case basis, with regards to:*

- *landscape values and areas with significant indigenous flora or fauna*
- *recreation and cultural values, including relationships with tangata whenua*
- *amenity values*
- *The extent of public benefit and outcomes of location specific cost-benefit analysis.*

30.2.3.5 *Existing energy facilities, associated infrastructure and undeveloped energy resources are protected from incompatible subdivision, land use and development.*

30.2.3.6 *To compensate for adverse effects, consideration shall be given to any offset measures and/or environmental compensation including those which benefit the local environment and community affected.*

30.2.3.7 Consider non-renewable energy resources including standby power generation and Stand Alone Power systems where adverse effects can be mitigated.

82. The objective[59] and Policy 30.2.3.7[60] received submissions in support. The only submissions seeking to amend the provisions were those by the DoC in respect of Policy 30.2.3.4[61] and Policy 30.2.3.6[62]. The amendment sought to Policy 30.2.3.4 sought that the first bullet point reference "significant habitat" for indigenous fauna, consistent with the wording in section 6(c) of the Act. The amendment sought to Policy 30.2.3.6 was to make it consistent with the approach taken by the DoC on Chapter 33.

83. Mr Barr agreed with the DoC's proposed amendment to Policy 30.2.4, and we agree that such wording is necessary for consistency and because, although indigenous fauna are natural resources, the PDP can only control the habitat of such fauna, not the fauna themselves. Mr Barr also recommended deleting "on a case by case basis" from this policy, although did not provide reasons. We are satisfied that the words are unnecessary in the policy, as assessment is always taken on a case by case basis. We recommend the words be removed as a minor correction under Clause 16(2).

84. Although Mr Barr recommended a minor amendment to Policy 30.2.3.6 in response to the DoC's submission, he did not discuss the reasoning for this in his Section 42A report. In our view, the policy as notified encompasses the possibility of environmental compensation being used to compensate for a wider range of effects than just effects on indigenous biodiversity (which the DoC submission was focussed on). The inclusion of the reference to biodiversity offsets, as recommended by Mr Barr, does, in our view, link this policy to the provisions in Chapter 33 (which apply in addition to this Chapter where energy resources are to be developed). In addition, we have changed the term shall to must for clarity purposes. We consider that change to be a minor grammatical change under Clause 16(2).

85. Consequently, we recommend that Policies 30.2.3.4 and 30.2.3.6 read as follows:

30.2.3.4 Assess the effects of Renewable Electricity Generation proposals, other than Small and Community Scale with regards to:

- *a. landscape values and areas of significant indigenous flora or significant habitats of indigenous fauna;*
- *b. recreation and cultural values, including relationships with tangata whenua*
- *c. amenity values;*
- *d. The extent of public benefit and outcomes of location specific cost-benefit analysis.*

30.2.3.6 To compensate for adverse effects, consideration must be given to any offset measures (including biodiversity offsets) and/or environmental compensation including those which benefit the local environment and community affected.

3.4. Objective 30.2.4 and Policies

86. As notified, these read:

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59 Submission 580
60 Submission 635
61 Submission 373.16
62 Submission 373.17

Objective ***Site layout and building design takes into consideration energy efficiency and conservation.***

30.2.4.1 *Encourage energy efficiency and conservation practices, including use of energy efficient materials and renewable energy in development.*

30.2.4.2 *Encourage subdivision and development to be designed so that buildings can utilise energy efficiency and conservation measures, including by orientation to the sun and through other natural elements, to assist in reducing energy consumption.*

30.2.4.3 *Encourage Small and Community-Scale Distributed Electricity Generation and Solar Water Heating structures within new or altered buildings.*

30.2.4.4 *Encourage building design which achieves a Homestar™ certification rating of 6 or more for residential buildings, or a Green Star rating of at least 4 stars for commercial buildings.*

30.2.4.5 *Transport networks should be designed so that the number, length and need for vehicle trips is minimised, and reliance on private motor vehicles is reduced, to assist in reducing energy consumption.*

30.2.4.6 *Control the location of buildings and outdoor living areas to reduce impediments to access to sunlight.*

87. The submissions on these ranged from support[63] to support with amendments. NZTA[64] sought to extend the effect of the objective to include the location of land use development, and to amend Policy 30.2.4.5 to achieve integration of land use and transport planning. QPL[65] sought to widen the ambit of Policy 30.2.4.5 to give emphasis to public transport, including water taxis and QPL's gondola proposal. Submitter 126 sought that amendments be made so that the location of trees were controlled to avoid shading neighbouring properties.

88. In his Section 42A Report, Mr Barr recommended no changes to this objective and the ensuing policies. In his reply statement, he responded to our questioning during the hearing by recommending a minor change to the objective to make it clear that it was both subdivision layout and site layout that should take into account energy efficiency and conservation.

89. We agree with Mr Barr that the minor word changes to the objective clarifies the outcome sought, and that the outcome was previously implicit given the wording of Policy 30.2.4.2. We do not consider any of the amendments sought by submitters are necessary. The changes sought to the objective would not assist the Council in achieving its functions under the Act. The changes sought to Policy 30.2.4.5 would be more appropriately dealt with in the Transportation Chapter of the PDP. None of them would give effect to the objective.

90. Consequently, the only amendment we recommend is to Objective 30.2.4 so that it reads:

Subdivision layout, site layout and building design takes into consideration energy efficiency and conservation.

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63 Submission 290

64 Submission 719 supported by FS1186 and FS1097

65 Submission 806

3.5. Objective 30.2.5 and Policies

91. As notified these read:

> ***Objective*** ***Co-ordinate the provision of utilities as necessary to support the growth and development of the District.***
>
> *30.2.5.1* *Essential utilities are provided to service new development prior to buildings being occupied, and activities commencing.*
>
> *30.2.5.2* *Ensure the efficient management of solid waste by:*
> - *encouraging methods of waste minimisation and reduction such as re-use and recycling*
> - *providing landfill sites with the capacity to cater for the present and future disposal of solid waste*
> - *assessing trends in solid waste*
> - *identifying solid waste sites for future needs*
> - *consideration of technologies or methods to improve operational efficiency and sustainability (including the potential use of landfill gas as an energy source)*
> - *providing for the appropriate re-use of decommissioned landfill sites.*
>
> *30.2.5.3* *Recognise the future needs of utilities and ensure their provision in conjunction with the provider.*
>
> *30.2.5.4* *Assess the priorities for servicing established urban areas, which are developed but are not reticulated.*
>
> *30.2.5.5* *Ensure reticulation of those areas identified for urban expansion or redevelopment is achievable, and that a reticulation system be implemented prior to subdivision.*
>
> *30.2.5.6* *Encourage low impact design techniques which may reduce demands on local utilities.*

92. Although six submitters supported the objective[66], each of them sought amendments to it. As notified, the objective read as if it were a policy – it proposed an action rather than an outcome. The amendment proposed by the Telecommunication Companies[67] overcame that problem and was largely supported by Mr Barr in his Section 42A Report. The amendments proposed by PowerNet[68] and Transpower[69] suffered from proposing an alternative action rather than an outcome. Mr Barr's recommended changes were supported by Mr McCallum-Clark[70].

93. We agree with Mr Barr's wording, which achieves the outcome sought by the Telecommunication Companies – a clear outcome that the ensuing policies can give effect to. We recommend objective 30.2.5 read:

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66 Submissions 179, 191 and 781 (each supported by FS1097), Submission 251 (supported by FS 1186 and FS1097), Submission 805 (supported by FS1186), and Submission 421

67 Submissions 179, 191, 421 and 781

68 Submission 251

69 Submission 805

70 Mathew McCallum-Clark, EiC, paragraph 19

30.2.5 The growth and development of the District is supported by utilities that are able to operate effectively and efficiently.

94. The only amendment[71] sought to Policy 30.2.5.1 was the deletion of the word "essential" at the commencement of the policy, on the basis that essential utilities were not defined, and the objective applies to all utilities. Mr Barr also suggested the deletion of "and activities commencing" from the end of the policy. However, he provided no reasoning for this and we can find no basis for such a change in the submissions. We accept that the word "essential" should be deleted from the policy, but otherwise leave it unchanged.

95. Submissions 179, 191 and 781 supported Policy 30.2.5.3 and sought that it be retained unaltered. Two submissions[72] sought amendments to this policy. The amendment sought by Submission 805, which sought the inclusion of statements about protecting utility corridors, was opposed by FS1159 on the basis that it could lead to the policy only applying to utilities that had specified corridors. FS1186 supported submission 805 but sought a different policy wording.

96. Mr Barr did not recommend any amendments to this policy. Ms McLeod considered that the amendments sought by Transpower were no longer necessary, subject to Policy 30.2.6.4 being amended[73]. We agree with Mr Barr's approach. The policy does not need additional wording of the type sought by submitters to implement the objective.

97. Mr Barr recommended the deletion of Policy 30.2.5.4[74], but we are unable to find any submissions seeking its deletion, although Mr McCallum-Clark appeared to support this course of action[75]. We are also unable to find any reasons in the Section 42A Report for the deletion. Having considered the policy, we can see that it may not be directed to implementing the objective, but is more an internal matter for utility providers, including the Council in that role. We agree with Mr Barr that it should be deleted, but consider, that in the absence of submissions seeking its deletion, that can only be achieved by the Council initiating a variation to that end.

98. The Telecommunication Companies[76] sought the inclusion of an additional policy to identify the positive contribution utilities make to the cultural, social and economic wellbeing of society. Mr Barr recommended acceptance of this submission, with an amendment to the introductory words[77]. We agree that the policy proposed (Reply Version) identifies the benefits of utilities to society within the context of managing the effects of utilities on the environment. However, we consider that this policy is misplaced under Objective 30.2.5. We consider it is more directed to implementing Objective 30.2.6 and we recommend it be located as Policy 30.2.6.3 (with subsequent policies being renumbered).

99. In summary, we recommend the rewording of Objective 30.2.5 as set out above, and other than the deletion of "Essential" from Policy 30.2.5.1, we recommend no changes to the policies under Objective 30.2.5.

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71 By submissions 179, 191 and 781

72 Submissions 635 and 805

73 Ainsley McLeod, EiC, paragraph 32(a)

74 Section 42A Report, Appendix 1

75 Matthew McCallum-Clark, EiC, paragraph 19

76 Submissions 179, 191 and 781, supported by FS1121

77 The amendment was included in the Reply Version.

3.6. Objective 30.2.6 and Policies

100. As notified these read:

Objective ***The establishment, efficient use and maintenance of utilities necessary for the well-being of the community.***

30.2.6.1 *Recognise the need for maintenance or upgrading of a utility to ensure its on-going viability and efficiency.*

30.2.6.2 *Consider long term options and economic costs and strategic needs when considering alternative locations, sites or methods for the establishment or alteration of a utility.*

30.2.6.3 *Encourage the co-location of facilities where operationally and technically feasible.*

30.2.6.4 *Provide for the sustainable, secure and efficient use and development of the electricity transmission network, including within the transmission line corridor, and to protect activities from the adverse effects of the electricity transmission network, including by:*

- *Controlling the proximity of buildings, structures and vegetation to existing transmission corridors*
- *Discouraging sensitive activities from locating within or near to the electricity transmission National Grid Yard to minimise potential reverse sensitivity effects on the transmission network*
- *Managing subdivision within or near to electricity transmission corridors to achieve the outcomes of this policy to facilitate good amenity and urban design outcomes*
- *Not compromising the operation or maintenance options or, to the extent practicable, the carrying out of routine and planned upgrade works.*

30.2.6.5 *Recognise the presence and function of established network utilities, and their locational and operational requirements, by managing land use, development and/or subdivision in locations which could compromise their safe and efficient operation.*

101. One submission supported this objective[78], while five sought various amendments[79]. The amendments generally sought that the objective identify that the continued operation and maintenance of utilities supported or enabled community well-being. Mr Barr supported these in a general sense in his Section 42A Report and recommended a hybrid of the versions sought by the submitters. Mr McCallum-Clark supported Mr Barr's recommended amendments[80].

102. The concern we have with Mr Barr's proposed wording is that it is unclear what the outcome relates to – community well-being, or the establishment, operation and maintenance of utilities to support community well-being. Given the policies designed to implement the objective, we consider it must be the latter outcome that is sought. To achieve this, we recommend that the objective be rephrased to read:

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78 Submission 600

79 Submissions 179, 191 (supported by FS1121), 421, 781 and 805 (supported by FS1186)

80 Matthew McCallum-Clark, EiC, paragraph 19

30.2.6 The establishment, continued operation and maintenance of utilities supports the well-being of the community.

103. Two submissions supported Policy 30.2.6.1[81], one submission sought its amendment[82], three submissions sought its replacement[83], and one sought its deletion[84]. The amendments sought recognition of regionally significant infrastructure, and provision that maintenance and upgrading was cognisant of environmental constraints. Mr Barr proposed an amendment to include reference to regionally significant infrastructure. In Ms McLeod's view, the amendments sought by Transpower were unnecessary if amended Policy 30.2.6.4 was accepted[85].

104. This Chapter sits under the Strategic Directions Chapters (3, 4, 5 and 6). The objectives and policies contained within those chapters emphasise the importance of protecting outstanding natural landscapes and features from more than minor adverse effects on key values, and the importance of retaining rural character in other rural areas, and seeking high amenity values in urban areas. Objectives and policies in this chapter are to be read as achieving those strategic outcomes. In addition, in proposing this wording, we have had regard to Policy 4.3.3 of the proposed RPS. The submissions of the Telecommunication Companies seek changes which come closest to reflecting those outcomes. We also note that we generally do not consider policies which merely require recognition of something to be an effective means of implementing an objective. For those reasons, we recommend that Policy 30.2.6.1 read:

30.2.6.1 Provide for the maintenance or upgrading of utilities, including regionally significant infrastructure, to ensure its on-going viability and efficiency, subject to managing adverse effects on the environment consistent with the objectives and policies in Chapters 3, 4, 5 and 6.

105. A submission by the Council[86] sought the correction of a typographical error in Policy 30.2.6.2 by replacing the word "options" with "operational". Federated Farmers[87] sought that the economic costs of activities adversely effected be included in the policy. Transpower[88] sought the replacement of this policy with one the submitter contended would better give effect to the NPSET 2008.

106. Mr Barr accepted the amendment proposed by Transpower in his Section 42A report, and in her evidence Ms McLeod supported him for the reasons set out in the Transpower submission[89]. In his reply version, Mr Barr recommended some grammatical changes to avoid repetition and tense changes. Subject to a further minor grammatical change, we accept the amendments to this policy for the reasons given by Ms McLeod. We recommend the policy read:

30.2.6.2 When considering the effects of proposed utility developments, consideration must be given to alternatives, and also to how adverse effects

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81 Submissions 251 (supported by FS1186) and 635
82 Submission 805, opposed by FS1186
83 Submissions 179, 191 and 781, opposed by FS1132 and FS1097
84 Submission 421
85 Ainsley McLeod, EiC, paragraph 32(b)
86 Submission 383
87 Submission 600, supported by FS1209, opposed by FS1121 and FS1034
88 Submission 805, opposed by FS1186
89 Ainsley McLeod, EiC, paragraph 32(c)

will be managed through the route, site and method selection process, while taking into account the locational, technical and operational requirements of the utility and the benefits associated with the utility.

107. In paragraph 97 we recommended that a policy proposed under Objective 30.2.5 be located under this policy. We recommend the inserted policy read:

30.2.6.3 Ensure that the adverse effects of utilities on the environment are managed while taking into account the positive social, economic, cultural and environmental benefits that utilities provide, including:

a. enabling enhancement of the quality of life and standard of living for people and communities;
b. providing for public health and safety;
c. enabling the functioning of businesses;
d. enabling economic growth;
e. enabling growth and development;
f. protecting and enhancing the environment;
g. enabling the transportation of freight, goods, people;
h. enabling interaction and communication.

108. The only submissions[90] on Policy 30.2.6.3 sought that it be retained. We recommend that be remain unaltered save for renumbering to 30.2.6.4.

109. One submission[91] sought that policy 30.2.6.4 be retained. Three submissions sought its amendment. Federated Farmers[92] supported the policy subject to it being confined to referencing the National Grid. Transpower[93], while supporting the intent of the policy, sought its replacement with an objective and policy aiming to avoid the establishment of activities that could adversely affect the National Grid. Aurora's submission[94] sought amendments consistent with its overall approach of obtaining provisions in the PDP to protect its network.

110. Mr Barr recommended some changes to this policy and its relocation under a new objective proposed by Transpower. Ms McLeod[95] recognised that Mr Barr's amendments went some way to achieving the goal of Transpower's submission, but recommended further changes, particularly to give effect to the NPSET 2008, and having regard to policies in the proposed RPS (notified version). In his reply statement, Mr Barr largely agreed with the policy wording of Ms McLeod as being the most effective way of implementing the proposed Transpower objective (see below – new Objective 30.2.8), subject to an additional clause to support a setback rule protecting the Frankton Substation. This was in response to the description of the potential for electrical hazards around the Frankton Substation described to us by Mr Renton[96].

111. We have set out above the reasons we do not accept Aurora's submission in respect of protecting its network.

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90 Submissions, 179, 191, 421 and 781
91 Submission 251
92 Submission 600, supported by FS1209, opposed by FS1034 and FS1159
93 Submission 805, opposed by FS1132
94 Submission 635, opposed by FS1132 and FS1301
95 Ainsley McLeod, EiC, paragraph 32(e)
96 Andrew Renton, EiC, paragraphs 55-77

112. In addition to ensuring the PDP gives effect to the NPSET 2008, we have had regard to Policies 4.3.2, 4.3.4, 4.4.4 and 4.4.5 in the proposed RPS in concluding that the policy wording proposed by Mr Barr in his reply statement is appropriate, and that it be moved from under Objective 30.2.6 and located in association with an objective specifically oriented to the National Grid.

113. Three submissions[97] supported Policy 30.2.6.5 as notified. Transpower's submission[98] sought its amendment. Four submissions[99] sought the creation of two policies out of this policy.

114. Ms McLeod[100] advised in her evidence that she did not consider the amendments sought by Transpower were necessary if the proposed new policies 30.2.6.2 and 30.2.6.4 (albeit moved) were accepted. Mr Barr did not recommend any change to Policy 30.2.6.5.

115. The Telecommunication Companies' submission split the policy into two parts, as set out below

Enable the functioning and enhancement of established network utilities, and their operational and upgrade requirements.

Manage land use, development and/or subdivision and their effects in locations which could compromise their safe and efficient operation of utilities.

116. The first part has essentially been provided for in our recommended Policy 30.2.6.1 set out above. We consider that, with some grammatical changes, the second part better expresses the point of notified Policy 30.2.6.5. As we read it, the policy is focused on managing other activities so as to minimising the potential for those other activities to compromise the operation of utilities. The Telecommunication Companies' submission almost captures that. We recommend the policy read:

30.2.6.5 *Manage land use, development and/or subdivision and their effects in locations which could compromise the safe and efficient operation of utilities.*

117. Mr Barr recommended the inclusion of an additional policy under this objective to provide a policy basis for the rules he considered should be included to satisfy Aurora's submission regarding its distribution network. Given our conclusions above that the Aurora proposal should be rejected, we do not recommend the inclusion of this additional policy.

3.7. Objective 30.2.7 and Policies

118. As notified these read:

Objective ***Avoid, remedy or mitigate the adverse effects of utilities on surrounding environments, particularly those in or on land of high landscape value, and within special character areas.***

30.2.7.1 *Reduce adverse effects associated with utilities by:*

- *Avoiding or mitigating their location on sensitive sites, including heritage and special character areas, Outstanding Natural Landscapes and Outstanding Natural Features, and skylines and ridgelines*

97 Submissions 251 (supported by FS186), 635 and 719 (supported by FS1186)

98 Submission 805, supported by FS1186 and opposed by FS1132

99 Submissions 179 (opposed by FS1132), 191 (opposed by FS1132), 421 and 781

100 Ainsley McLeod, EiC, paragraph 32(f)

- *Encouraging co-location or multiple use of network utilities where this is efficient and practicable in order to avoid, remedy or mitigate adverse effects on the environment*
- *Ensuring that redundant utilities are removed*
- *Using landscaping and or colours and finishes to reduce visual effects*
- *Integrating utilities with the surrounding environment; whether that is a rural environment or existing built form.*

30.2.7.2 Require the undergrounding of services in new areas of development where technically feasible.

30.2.7.3 Encourage the replacement of existing overhead services with underground reticulation or the upgrading of existing overhead services where technically feasible.

30.2.7.4 Take account of economic and operational needs in assessing the location and external appearance of utilities.

119. Three submissions supported this objective[101], while four sought amendments to the objective[102]. The submissions seeking amendments sought primarily to include the words "where practicable" and to define the landscape areas and special character areas referred to as being defined in the PDP. In addition, the four Telecommunication Companies[103] sought the inclusion of an additional policy to read:

Recognise that in some cases it might not be possible for utilities to avoid outstanding natural landscapes, outstanding natural features or identified special character areas and in those situations greater flexibility as to the way that adverse effects are managed may be appropriate.

120. Mr Barr dealt with this matter in some detail in his Section 42A Report[104]. He also noted that PowerNet[105] sought amendments to Policy 30.2.7.1 to reflect that it may be difficult for utility providers to reduce the visual effects of their assets. Mr McCallum-Clark explained in his evidence[106] that the requested amendments provide an approach of focussing on the values and attributes of a sensitive environment and referred to provisions in other plans in Canterbury and the Bay of Plenty. He retained this view when he appeared before us[107].

121. We have a number of concerns with Objective 30.2.7, both as notified and as recommended by Mr Barr. As has been noted in other Hearing Reports, we do not consider that adding "avoid, remedy or mitigate" to an objective or policy provides any guidance for decision-makers or other plan users. We also agree with the submitters that, if this objective is solely directed to areas of "high landscape value" then the objective should be clear that it is

101 Submissions 635, 781 and 806

102 Submissions 179 (supported by FS1097), 191 (supported by FS1097), 421, 719 (supported by FS1160) and 805 (opposed by FS1186)

103 Submissions 179, 191, 421 and 781

104 Section 42A Hearing Report: Chapter 30 Energy and Utilities, Issue 4, pp 37-38

105 Submission 251, supported by FS1186 and FS1097

106 Matthew McCallum-Clark, EiC, paragraphs 20-23

107 Matthew McCallum-Clark, Opening Statement and Summary of Evidence, 15 September 2017, paragraph 6

referring to the areas identified in the PDP as ONLs or ONFs. As notified, Policy 30.2.7.1 clarified that it was ONLs and ONFs that were being referred to.

122. The Hearing Panel for Stream 1B has recommended the following policies:

> *6.3.17 Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases.*
>
> *6.3.18 In cases where it is demonstrated that regionally significant infrastructure cannot avoid adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features, avoid significant adverse effects and minimise other adverse effects on those landscapes and features.*
>
> *6.3.24 Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid significant adverse effects on the character of the landscape, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases.*
>
> *6.3.25 In cases where it is demonstrated that regionally significant infrastructure cannot avoid significant adverse effects on the character of the landscape, such adverse effects shall be minimised.*

123. The objectives and policies in Chapter 30 need to give effect to those policies, noting that regionally significant infrastructure is a subset of utilities with a higher status than the generality of utilities.

124. Taking into account the policy direction of Chapter 6, and recognising that the policies under Objective 30.2.7 have the role of defining how it is to be achieved, we consider the objective can be simplified so as to express the overall outcome that is expected. We note that while the focus of the submitters was on the inclusion of the term "high landscape value", the objective is actually directed to all environments in the District. We consider removing reference to a particular type of environment from the objective will make the outcome sought clearer. The policies are able to identify how it will be achieved in different environments. Consequently, we recommend it read:

> *30.2.7 The adverse effects of utilities on the surrounding environment are avoided or minimised.*

125. Submissions on Policy 30.2.7.1 sought:
   a. *Insert* "*remedying*" between "*Avoiding*" and "*or mitigating*" in the first bullet point;[108]
   b. *Add* "*whilst having regard to their technical, operational and locational constraints and their benefits*" at the end of the first bullet point;[109]
   c. *Insert* "*where economically viable and technically feasible*" at the end of the fifth bullet point;[110]

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108 Submissions 251 (supported by FS1186 and FS1097) and 519 (supported by FS1015, opposed by FS1097)

109 Submission 805, supported by FS1186

110 Submission 635

d. *Change* the fifth bullet point to read "*In Outstanding Natural Landscapes and Outstanding Natural Features using landscaping and colours and finishes to remedy or mitigate visual effects where necessary*"[111]; and
e. *Delete* the final bullet point[112].

126. Two of the Telecommunication Companies sought the retention of this policy, but the insertion of the additional policy quoted above[113].

127. Mr Barr recommended changes to clarify the distinction between rural areas contained within ONLs and ONFs and other rural land in the first two bullet points, but no other changes.

128. In our view the changes sought by the submitters to emphasise locational constraints or economic factors in this policy overlooked the fact that such matters are covered in Policy 30.2.7.4. We do not consider it necessary for this policy to cover every matter of consideration under the objective. It is a combination of all the policies that achieve the outcome. We do agree with Mr Barr that the policy should clearly distinguish between how utilities are to be dealt with in ONLs and on ONFs versus other areas. We further consider the purpose of this policy is to identify how utilities are to be managed to achieve the objective. Thus Mr Barr's suggested "Provide for utilities"[114] is unnecessary. We also take into account the policies from Chapter 6 discussed above. With further minor grammatical changes, we recommend the policy read:

30.2.7.1 Manage the adverse effects of utilities on the environment by:
- *a. Avoiding their location on sensitive sites, including heritage and special character areas, Outstanding Natural Landscapes and Outstanding Natural Features, and skylines and ridgelines, and where avoidance is not practicable, avoid significant adverse effects and minimise other adverse effects on those sites, areas, landscapes or features;*
- *b. Encouraging co-location or multiple use of network utilities where this is efficient and practicable in order to avoid, remedy or mitigate adverse effects on the environment;*
- *c. Ensuring that redundant utilities are removed;*
- *d. Using landscaping and or colours and finishes to reduce visual effects;*
- *e. Integrating utilities with the surrounding environment; whether that is a rural environment or existing built form.*

129. There were five submissions in relation to Policy 30.2.7.2. Three sought amendments inserting wording that the undergrounding be efficient, effective and operationally feasible[115]. Two sought additional wording with the effect of requiring undergrounding be economically viable[116]. No specific evidence was provided in support of these amendments. Ms McLeod, in her evidence on behalf of Transpower[117], suggested additional wording limiting the policy to new services in urban areas, although no changes were sought by Transpower.

111 Submission 251, supported by FS1186 and FS1097
112 Submission 251, supported by FS1186 and FS1097
113 Submissions 179, 191, both supported by FS1097 and FS1121
114 In his Reply version of the policy
115 Submissions 179, 191 and 781
116 Submissions 251 (opposed by FS1186) and 635
117 Ainslie McLeod, EiC, paragraph 33

130. We consider it entirely appropriate that areas of new development have utility services provided underground, except where it is technically not feasible. If we had jurisdiction to make the changes suggested by Ms McLeod, we would not make them as we do not consider undergrounding should be limited to new services, nor to urban areas. Underground reticulation can be appropriate in many parts of the District. We recommend the policy remain as notified.

131. One submission supported Policy 30.2.7.3 unaltered[118]. Aurora[119] sought it be limited to residential zones, and Transpower[120] sought it be limited to reticulated lines so that it did not apply to the National Grid. Although not directly related to this policy, the submission of John Walker[121] seeking a policy requiring the progressive undergrounding of reticulated services in Wanaka can be discussed in conjunction with Policy 30.2.7.3.

132. Ms McLeod briefly commented on this policy in her evidence[122], suggesting the amendments proposed would be beneficial, but did note that the NPSET 2008 does not require the undergrounding of the National Grid. Mr Walker appeared in person and spoke to his submission. Mr Barr did not comment on it specifically and recommended no changes to the policy.

133. The policy is that the Council will encourage undergrounding. We do not see any reason to limit the areas the Council may prioritise for such encouragement. While we have sympathy for the views expressed by Mr Walker, we consider the policy as expressed is the most appropriate given the Council's functions under the Act. We recommend the policy remain as notified.

134. Five submissions supported Policy 30.2.7.4 and sought its retention[123]. Transpower[124] sought additional wording such that locational and technical requirements be considered, and that the policy refer to network utilities. No evidence was presented in support of this submission.

135. We are satisfied that, when read in conjunction with the other policies under Objective 30.2.7, the wording as notified is appropriate. We recommend the policy remain as notified.

3.8. Additional Objectives and Policies Sought

136. NZIA sought an objective and policies aimed at reducing energy use[125]. No evidence was presented in support of this submission. We do note, however, that the policies sought seeking a compact urban form and the application of urban growth boundaries have been provided in other chapters. We do not recommend the inclusion of the objective and policies sought in this submission.

137. Transpower[126] sought the inclusion of a new objective and policy specifically related to its operation of the National Grid. Mr Barr did not specifically deal with this in his Section 42A

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118 Submission 251
119 Submission 635
120 Submission 805
121 Submission 292, opposed by FS1106, FS1208 and FS1253
122 Ainsley McLeod, EiC, paragraph 32(h)
123 Submissions 179, 191, 251, 635 and 781
124 Submission 805
125 Submission 238, opposed by FS1157, FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249
126 Submission 805

Report. Ms McLeod[127] proposed the inclusion of two new objectives and further amendments to the amended Policy 30.2.6.4 recommended by Mr Barr[128]. It was Ms McLeod's evidence that these additional policies and the amendments she proposed were necessary to give effect to the NPSET 2008.

138. In his reply statement, Mr Barr largely agreed with Ms McLeod's proposals and recommended an amended objective (Objective 30.2.8) and recommended moving Policy 30.2.6.4, largely as suggested by Ms McLeod to sit under that new objective. In his view, the new objective was the most appropriate way to give effect to the NPSET 2008 Objective 5[129].

139. We agree with and accept the reasoning of Ms McLeod and Mr Barr. We have recommended in paragraph 111 above that notified policy 30.2.6.4 be amended and moved to be located under this objective. We do, however, consider both the objective and the policy need further modification. As recommended, the objective in part reads like a policy, and the policy unnecessarily repeats part of the objective and is grammatically too complicated.

140. We recommend the objective and policy read as follows:

30.2.8 The ongoing operation, maintenance, development and upgrading of the National Grid subject to the adverse effects on the environment of the National Grid network being managed.

30.2.8.1 Enabling the use and development of the National Grid by managing its adverse effects and by managing the adverse effects of activities on the National Grid by:

a. only allowing buildings, structures and earthworks in the National Grid Yard where they will not compromise the operation, maintenance, upgrade and development of the National Grid;
b. avoiding Sensitive Activities within the National Grid Yard;
c. managing potential electrical hazards and the adverse effects of buildings, structures and Sensitive Activities on the operation, maintenance, upgrade and development of the Frankton Substation;
d. managing subdivision within the National Grid corridor so as to facilitate good amenity and urban design outcomes.

141. PowerNet[130] sought the inclusion of a new policy under Objective 30.2.6 which would read:

Provide for the sustainable development, use, upgrading and maintenance of electricity distribution networks, including lines, transformers, substations and switching stations and ancillary buildings.

142. Mr Barr did not address this submission directly in his Section 42A Report, but he did recommend a modification to the objectives and policies in response to several submissions seeking modifications, including PowerNet's[131]. This policy was not addressed in Ms Justice's evidence.

127 Ainsley McLeod, EIC, paragraphs 27 and 33
128 Section 42A Report, Appendix 1, page 30-5
129 Reply of Craig Alan Barr, 22 September 2016, paragraph 9.3
130 Submission 251, opposed by FS1132
131 Craig Barr, Section 42A Report, Section 10

143. Our view is that Policy 30.2.6.1 with the wording we have recommended above achieves the same outcome as that expressed in PowerNet's policy. The only difference is that Policy 30.2.6.1 relates to utilities in general, whereas the PowerNet proposal is directed solely to electricity distribution networks. We see no justification creating a semi-duplication specifically for electricity distribution networks and recommend that the submission be rejected.

3.9. Summary

144. We have set out in Appendix 1 the recommended objectives and policies. We note that two of the objectives we conclude need to be reconsidered by the Council and amended by variation, notwithstanding that we recommend minor amendments under Clause 16(2) to them.

145. In summary, in relation to the remaining objectives and policies, we regard the combination of objectives recommended as being the most appropriate way to achieve the purpose of the Act in this context, while giving effect to, and taking into account, the relevant higher order documents, the Strategic Direction Chapters and the alternatives open to us. The suggested new policies are, in our view, the most appropriate way to achieve those objectives.

4. SECTION 30.3 – OTHER PROVISIONS AND RULES

4.1. Section 30.3.1 – District Wide

146. There were no submissions on this section. We recommend that the references in it be amended to be consistent with the references in other chapters. We consider this to be a non-substantive change of minor effect as the material in the section is purely for information purposes. We have set out are recommended wording in Appendix 1.

4.2. Section 30.3.2 – National

147. As notified this section listed two relevant National Environmental Standards[132] and the NZECP 34:2001, along with a brief explanation of each.

148. Submissions sought:
   a. Amend to refer to the relationship between district plans and National Environmental Standards and update to ensure consistency with NESTF 2016[133];
   b. Add reference to Electricity (Hazards from Trees) Regulations 2003[134];
   c. Amend 30.3.2.1 to clarify that the provisions of NESETA 2009 prevail of the Plan rather than the chapter[135];
   d. Include references to the National Grid in 30.3.2.3 and clarify that compliance with the PDP does not ensure compliance with NZECP 34:2001[136];
   e. Retain 30.3.2.3 as notified[137].

149. Mr Barr recommended the inclusion of an advice note concerning the Electricity (Hazards from Trees) Regulations and a minor change to the title of the section. Ms McLeod was the only

132 NESETA 2009 and NESTF 2016
133 Submissions 179, 191, 421 and 781
134 Submission 805
135 Submission 805
136 Submission 805
137 Submissions 600 (opposed by FS1034, supported by FS1209) and 635

witness to comment on the redrafting and she considered any differences in wording from what was sought were immaterial[138].

150. Our understanding is that the material contained in this section is information to assist readers of the Chapter. It does not contain rules under s.76 of the Act. In our view, that distinction should be made clear in the section title. We recommend the title be "Information on National Environmental Standards and Regulations". In addition, numbering the provisions listed gives the appearance that they are Plan provisions. We recommend the provisions be listed using (a), (b), etc. We consider those to be minor changes with no regulatory effect that fall under Clause 16(2).

151. We agree that the provisions should be updated to reflect the NESTF 2016[139]. These regulations were made on 21 November 2016 after the date of the hearing. As the references are for information purposes we do not consider any person to be disadvantaged by the references being included without further hearing. Four submissions sought that the references be changed. No further submitters opposed those submissions.

152. Taking into account all the above and our earlier conclusions on the NZECP 34:2001, we recommend the section read:

30.3.2 Information on National Environmental Standards and Regulations

a. Resource Management (National Environmental Standard for Electricity Transmission Activities) Regulations 2009:

Notwithstanding any other rules in the District Plan, the National Grid existing as at 14 January 2010 is covered by the Resource Management (National Environmental Standard for Electricity Transmission Activities) Regulations 2009 (NESETA) and must comply with the NESETA.

The provisions of the NESETA prevail over the provisions of this District Plan, to the extent of any inconsistency. No other rules in the District Plan that duplicate or conflict with the Standard shall apply.

b. Resource Management (National Environmental Standards for Telecommunications Facilities "NESTF") Regulations 2016:

The NESTF 2016 controls a variety of telecommunications facilities and related activities as permitted activities subject to standards, including:

- *i. cabinets in and outside of road reserve;*
- *ii. antennas on existing and new poles in the road reserve;*
- *iii. replacement, upgrading and co-location of existing poles and antennas outside the road reserve;*
- *iv. new poles and antennas in rural areas;*
- *v. antennas on buildings;*
- *vi. small-cell units on existing structures;*
- *vii. telecommunications lines (underground, on the ground and overhead) and facilities in natural hazard areas; and*
- *viii. associated earthworks.*

138 Ainsley McLeod, EiC, paragraph 36

139 The Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016

All telecommunications facilities are controlled by the NESTF 2016 in respect of the generation of radiofrequency fields.

The NESTF 2016 and relevant guidance for users can be found at: http://www.mfe.govt.nz/rma/legislative-tools/national-environmental-standards/national-environmental-standards .

In general, the provisions of the NESTF 2016 prevail over the provisions of this District Plan Chapter, to the extent of any inconsistency. No other rules in the District Plan that duplicate or conflict with the NESTF 2016 shall apply. However, District Plan provisions continue to apply to some activities covered by the NESTF 2016, including those which, under regulations 44 to 52, enable rules to be more stringent than the NESTF, such as being subject to heritage rules, Significant Natural Areas, Outstanding Natural Features and Landscapes, and amenity landscape rules.

c. New Zealand Electrical Code of Practice for Electrical Safe Distances
Compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distances ("NZECP 34:2001") is mandatory under the Electricity Act 1992. All activities regulated by the NZECP 34, including any activities that are otherwise permitted by the District Plan must comply with this legislation. Compliance with this District Plan does not ensure compliance with NZECP 34.

Note: To assist plan users in complying with these regulations, the major distribution components of the Aurora network are shown on the Planning Maps.

d. Electricity (Hazards from Trees) Regulations 2003

Vegetation to be planted around electricity networks should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003.

4.3. Section 30.3.3 – Clarification

153. As in other chapters, this section contains a series of provisions establishing how the rules work, including which chapters have precedence over others.

154. There was only one submission on this section[140]. It sought the inclusion of an advice note regarding the planting of vegetation near electricity lines, which has been incorporated into 30.3.2(d), and the retention of the provision which gave utility rules priority over other rules.

155. Other than some minor non-substantive changes, the only amendment recommended by Mr Barr was to include a provision clarifying that Airport Activities in the Airport Mixed Use Zone (Chapter 17) prevail over the provisions of this chapter, in response to a legal submissions presented by Ms Wolt, counsel for QAC[141].

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140 Submission 805

141 Legal Submissions for Queenstown Airport Corporation Limited, dated 9 September 2016, paragraphs 44-57

156. The concern of QAC was that the definition of utility included in Chapter 2 defined the term in such a way as to include airports. Chapter 17 included a specific set of rules relating to Queenstown Airport classifying many of the activities, which would fall within the definition of utility, as permitted. However, such activities could be classified as controlled or discretionary under Chapter 30. While there is an obvious inconsistency, the difficulty we face, as Ms Wolt conceded, is there is no submission seeking an appropriate solution. Ms Wolt submitted that a solution could fall within the Council's broad scope to amend the Plan based on the range of relief sought by submissions.

157. Mr Barr's response is the rule described above. We asked both Ms Wolt and Ms O'Sullivan whether an alternative solution would be to change the definition of utility to exclude airports from the definition. Ms Wolt undertook to consider that option, and Ms O'Sullivan suggested the definition could be changed to exclude airport activities and airport related activities within the Airport Mixed Use Zone. We understood her response to be that QAC would want any of its activities outside of that zone to continue to be controlled by Chapter 30.

158. We are not satisfied that there is scope to make either Mr Barr's amendment or to amend the definition of utility to obviate the apparent inconsistency. Having considered the two alternatives, we conclude that the most appropriate solution is to amend the definition of utility consistent with Ms O'Sullivan's suggestion. That will require a variation to the PDP and we recommend the Council investigate initiating such a variation.

159. Consistent with our approach in other chapters, recommend that the heading of this section be "Explanation of Rules" to better identify the purpose of the provisions contained. The only other change we recommend is to provision 30.3.3.5. This does not explain the rules. Rather it is a note that designations can also apply to some utilities. This should be identified as a note without a provision number to avoid confusion.

160. We set out in Appendix 1 our recommended layout of this section.

5. SECTIONS 30.4 AND 30.5 – RULES

5.1. Introductory Remarks

161. As notified, Section 30.4 contained a single table with activities listed and the activity classification. The list was broken into two section: those for energy activities; and those for utilities. While there may have been a logic to the order of activities within each group, it was not obvious to us. Following this table, Section 30.5 contained a second table, this time setting out the standards that applied to certain activities. Again that was split into two groups. As the rules from sections 30.4 and 30.5 interact with each other, it is sensible to consider them together where possible.

162. In his reply statement, Mr Barr proposed a re-order of both the activity classifications and the standards into several tables such that the standards for a group of activities (such as renewable energy activities) immediately followed the classification table for that group. In part this was a response to submissions lodged by the Telecommunication Companies[142] which sought a re-ordering of the rules applying to telecommunication utilities and a conflating of activity classifications and standards. Thus, Mr Barr's re-ordering had standards for some

[142] Submissions 179, 191, 421 and 781

groups of activities, but in other cases included the standard within the classification of the activity. This has led to some repetition of standards.

163. We agree that the re-ordering is a more user-friendly approach and have largely followed Mr Barr's layout. However, we have made some further changes to assist users. Within each classification table we have generally listed the activities in order of their classification with permitted first, followed by controlled, then restricted discretionary, discretionary, non-complying and prohibited in that order. In addition, we have numbered each table and restarted the rule numbers for each table, meaning that rules have the format 30.4.[Table-Number].[Rule-Number].

164. Our discussion of the submissions on the rules will be in the rule order as notified, but when making our recommendation on each provision we will identify where it fits in our re-ordered version.

5.2. Rule 30.4.1 – Energy Activities which are not listed in this table

165. These activities were classified as non-complying by this rule. No submissions were lodged in respect of this rule. Although we do not recommend any changes in the effect of this rule, we note that the classification of other energy activities in the table has the effect that it only applies to non-renewable energy activities and in part duplicates Rule 30.4.7. We consider that this rule is unnecessary given that the only activity it affects which is not covered by Rule 30.4.7 is one we conclude, in our discussion of Rule 30.4.3 below, is caught by error rather than intent. We recommend that it can be deleted as having no regulatory value.

5.3. Rule 30.4.2 and Rule 30.5.1

166. This rule provides for small and community-scale distributed electricity generation and solar hot water heating as a permitted activity, provided it has a rated capacity of less than 3.5kW and is not located within a number of sensitive zones and areas (covered by Rule 30.4.3).

167. One submission[143] supported the rule, and a second submission[144] sought it be amended by removing the capacity limit, replacing that with an area limit. Mr Barr did not comment on this submission, but in his recommended amendments to the chapter attached to his Section 42A Report he recommended changing the 3.5kW rated capacity limitation to 5kW.

168. This rule needs to be considered in relation to Rule 30.5.1 which sets additional standards for this activity. Four submissions[145] opposed the standards in this rule that allowed solar panels to protrude beyond the maximum height limit specified for the zone. One submission[146] sought the deletion of the area limitation of 150m^2 for free standing solar systems, and one submission[147] sought the standards be amended to promote ground and water source energy at a domestic scale.

169. Mr Barr commented on the submissions concerned with protrusion through the height limit in his Section 42A Report[148]. He concluded that the potential of panels to protrude through the relevant height limit was little different to the exemption given to chimneys, and recommended the rule remain as notified.

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143 Submission 72, supported by FS1352
144 Submission 126
145 Submissions 263, 510, 511 and 792
146 Submission 368
147 Submission 383
148 Paragraphs 14.19 to 14.22

170. We agree with Mr Leece and Ms Kobienia[149] that, when considered in light of the standards in Rule 30.5.1, there is no need for Rule 30.4.2 to contain any limit on rated capacity, even if 5kW as recommended by Mr Barr. There was no evidence to suggest that capacity correlated to the level of adverse effects, and it is the latter that is relevant. In addition, such a limitation essentially discourages the use of more efficient small-scale photovoltaic systems – that is, systems that have a higher rated capacity but take up a smaller area than those contemplated by these rules, and it appears to be inconsistent with the objectives and policies of this chapter relating to renewable electricity generation and Policy F of the NPSREG 2011. We also recommend some minor grammatical changes to this rule.

171. Mr Barr recommended several amendments to Rule 30.5.1[150]:
   a. Insert into Rule 30.5.1.2 after "recessive colours" the phrase "with a light reflectance value of less than 36%" with a reference to Submission 383;
   b. Clarify the phrasing regarding the setback exemption not being available in rule 30.5.1.3;
   c. Specify that such activities had to be located within building platforms within those zones that require them; and
   d. Add a requirement that such facilities cannot exceed site coverage rules.

172. We could not find scope in the submissions Mr Barr referred to for the first and last amendments so consider those no further. We agree that the other two amendments assist in improving the rule. Rule 30.5.1.2 does require some rewording for it to logically fit within the overall wording of the standard. Such a change does not alter the effect of the rule and we consider such a change to be minor in terms of Clause 16(2).

173. In our view, the combination of standards in Rule 30.5.1, incorporating amendments (b) and (c) above, appropriately deal with the potential effects on the environment of the activity. We do not consider that the limited protrusion beyond the height limit allowed by this rule to be any more than minor, and consider such an intrusion to be consistent with the provisions of the NPSREG 2011. We consider that it is appropriate for free-standing units greater than 150m^2 and/or greater than 2.0m in height to be assessed as discretionary activities, as notified Rule 30.5.1 required.

174. As a consequence, and allowing for the relocation of the two rules, we recommend that Rules 30.4.2 and 30.5.1 be renumbered as 30.4.1.1 and 30.4.2.1 respectively, and amended to read:

> *30.4.1.1* ***Small and Community-Scale Distributed Electricity Generation and Solar Water Heating****, excluding Wind Electricity Generation, including any structures and associated buildings, other than those activities restricted by Rule 30.4.1.4.*
>
> As a permitted activity.
>
> *30.4.2.1* ***Small and Community-Scale Distributed Electricity Generation and Solar Water Heating*** *must:*
>
> *30.4.2.1.1 not overhang the edge of any building.*

149 Submission 126

150 Reply Version, p.30-13

30.4.2.1.2 be finished in recessive colours: black, dark blue, grey or brown if Solar Electricity Generation cells, modules or panels.

30.4.2.1.3 be finished in similar recessive colours to those in the above standard if frames, mounting or fixing hardware. Recessive colours must be selected to be the closest colour to the building to which they form part of, are attached to, or service.

30.4.2.1.4 be set back in accordance with the internal and road boundary setbacks for buildings in the zone in which they are located. Any exemptions identified in the zone rules for accessory buildings do not apply.

30.4.2.1.5 not intrude through any recession planes applicable in the zone in which they are located.

30.4.2.1.6 not protrude more than a maximum of 0.5 m above the maximum height limit specified for the zone if solar panels on a sloping roof.

30.4.2.1.7 not protrude more than a maximum of 1.0 m above the maximum height limit specified for the zone, for a maximum area of 5m^2 if solar panels on a flat roof.

30.4.2.1.8 not exceed 150 m^2 in area if free standing Solar Electricity Generation and Solar Water Heating.

30.4.2.1.9 not exceed 2.0 metres in height if free standing Solar Electricity Generation and Solar Water Heating.

30.4.2.1.10 be located within an approved building platform where located in the Rural, Gibbston Character or Rural Lifestyle Zone.[151]

Non-compliance would require consent as a discretionary activity.

5.4. Rule 30.4.3

175. This rule, as notified, classified small and community-scale distributed electricity generation with a rated capacity of 3.5kW or more as a discretionary activity, or a discretionary activity if located within:
   a. Arrowtown Residential Historic management Zone
   b. Town Centre Special Character Areas;
   c. Open Space Zones;
   d. Any open space and landscape buffer areas identified on any of the Special Zones;
   e. Significant Natural Areas;
   f. Outstanding Natural Landscapes;
   g. Outstanding Natural Features;
   h. Heritage Features and Landscapes;
   i. Rural Zones (if detached from or separate to a building).

176. Submissions on this rule sought:
   a. Photovoltaic panels and roofing profiles suitable for photovoltaic laminates be a permitted activity in the Arrowtown Residential Historic Management Zone[152];

151 See discussion of next rule for additional reasons for inclusion of this standard.

152 Submission 752

b. Require at least limited notification of facilities over 1.2 m in height[153];
c. Remove the capacity restriction[154];
d. Limit the restriction in rural zones to outside of a building platform[155].

177. Again, Mr Barr did not comment on this rule but did recommend some minor amendments in Appendix 1 of his Section 42A Report. As well as increasing the rated capacity threshold to 5 kW, to be consistent with Rule 30.4.2, he recommended clarifying that "Rural Zones" meant "Rural Zone, Rural Residential Zone and Rural Lifestyle Zone". He also recommended that the qualification in respect of the rural zones be changed to read "if outside a building platform".

178. We consider the placement of photovoltaic panels (or laminates) on roofs in the Arrowtown Residential Historic Management Zone is a matter best considered within the context of the heritage purpose of that zone. For that reason we conclude the discretionary activity regime proposed for this zone as notified is appropriate and recommend that Submission 752 be rejected.

179. As with the previous rule, and for the same reasons, we recommend the rated capacity threshold be removed. If the proposed facility exceeds the standards in Rule 30.5.1 (as notified) then it will require consent as a discretionary activity. We also agree that the restriction in rural areas (other than in ONLs and on ONFs) should be limited to outside of building platforms. Built form is expected within building platforms and limitation of 150m^2 and a height limit of 2m (as in Rule 30.5.1) is an appropriate threshold in such a location. We note that building platforms are not required in the Rural Residential Zone so this provision should not refer to that zone. We also consider the restriction would be better founded in the standard Rule 30.4.2.1 (formerly 30.5.1) phrased as follows:

> *30.4.2.1.10 be located within an approved building platform where located in the Rural, Gibbston Character or Rural Lifestyle Zone.*

180. A consequential result of removing the rated capacity threshold is that small and community-scale wind electricity generation with a rated capacity of less than 3.5kW will become a discretionary activity, whereas as notified it could have been construed as being non-complying. As notified, Rule 30.4.2 excluded wind electricity generation from the permitted activity status, and Rule 30.4.3 made such generation, provided it had a rated capacity exceeding 3.5kW, a discretionary activity.

181. Mr Barr noted the issue in his Reply Statement and recommended a new rule providing for small scale wind generation as a controlled activity in the Rural, Gibbston Character and Rural Lifestyle Zones[156], subject to compliance with the standards for wind generation. From Mr Barr's Reply Statement it is also apparent that he intended that such facilities did not locate in any of the areas restricted in notified Rule 30.4.3, and that it be limited to being within approved building platforms. These latter restrictions do not seem to have been carried into his draft rules.

182. We doubt that the rule drafters intended that the smaller capacity wind generation facility would require a more onerous consent process than a larger facility. The proposal does also satisfy matters raised in Submission 368. We do not consider the facility should not have a

153 Submission 20, opposed by FS1097 and FS1121
154 Submission 126, supported by FS1024
155 Submission 368
156 Craig Barr, Reply Statement dated 22 September 2016, Section 5

rated capacity limitation, consistent with our reasoning set out above. The standards that would apply, and identifying the activity as being Small and Community Scale Electricity Generation (a defined term which is scale limiting), impose a scale limit on any equipment utilising Mr Barr's proposed rule. Subject to some adjustment to the wording of Mr Barr's proposed rule and Rule 30.4.3, we accept that provision should be made as proposed by Mr Barr.

183. We recommend that a new rule providing a controlled activity for small scale wind electricity generation be included as follows:

> *30.4.1.2* ***Small and Community-Scale Distributed Wind Electricity Generation*** *within the Rural Zone, Gibbston Character Zone and the Rural Lifestyle Zone provided that:*
> *a. it is located within an approved building platform;*
> *b. it is not restricted by Rule 30.4.1.4; and*
> *c. it complies with the standards in Rule 30.4.2.3.*
>
> *Control is reserved to:*
> a. *Noise;*
> *b. Visual effects;*
> c. *Colour;*
> d. *Vibration.*

184. One final change to Rule 30.4.3 is required in respect of "Heritage Features and Landscapes". The Hearing Panel for Stream 3 has recommended that "Heritage Landscapes" be renamed "Heritage Overlay Areas". We recommend that terminology be used in this rule for consistency. Consequently, and incorporating minor grammatical changes consistent with those in the previous rule, we recommend this rule, as a discretionary activity, read:

> *30.4.1.4* ***Small and Community-Scale Distributed Electricity Generation and Solar Water Heating****, including any structures and associated buildings, which is either:*
>
> *30.4.1.4.1 Wind Electricity Generation other than that provided for in Rule 30.4.1.2;*
>
> *OR*
>
> *30.4.1.4.2 Located in any of the following:*
> *a. Arrowtown Residential Historic Management Zone*
> *b. Town Centre Special Character Areas;*
> *c. Significant Natural Areas;*
> *d. Outstanding Natural Landscapes;*
> *e. Outstanding Natural Features;*
> *f. Heritage Features and Heritage Overlay Areas.*

5.5. Rule 30.4.4

185. This rule provides for equipment and activities for the purpose of research and exploratory-scale investigations for renewable electricity generation to be a restricted discretionary activity.

186. There were two submissions on this rule. One[157] sought that it not apply in the Hydro Generation Zone. That zone is within the ODP and not part of the PDP. Notwithstanding that

[157] Submission 580

Mr Barr proposed providing an exclusion to satisfy this submitter[158], we recommend the submission therefore be rejected as not being necessary.

187. The second submission[159] sought amendment to the matter of discretion related to natural hazards. Mr Barr recommended the deletion of that matter of discretion[160], and some minor grammatical changes. Subject to those changes, we recommend the rule remain as notified other than renumbering to 30.4.1.3.

5.6. Rule 30.4.5

188. This rule provided for renewable electricity generation facilities not provided for by the previous rules to be a discretionary activity. The sole submission[161] on the rule supported the discretionary activity status.

189. We recommend the rule be confirmed without alteration, subject to be being numbered 30.4.1.5.

5.7. Rule 30.4.6

190. This rule provided for, as a permitted activity, non-renewable electricity generation that was either:
   a. Standby generation for community, health care and utility activities; or
   b. Part of a stand-alone system on remote sites that do not have connection to the distributed electricity network.

191. The only submission[162] sought that the temporary operation of emergency and back-up generator should be exempt from complying with the Noise Rules in Chapter 36. The same submitter sought that Chapter 36 be similarly amended.

192. In her evidence[163], Ms Dowd identified another issue of concern to Aurora. This related to the interface with the Temporary Activities provisions in Chapter 35. A gap in those rules relating to the definition of utilities meant that temporary electricity generation serving an area wider than the site it was located on was not provided for. Aurora's submission sought amendments to the definition of utilities as a means of overcoming this problem, but Ms Dowd suggested that an amendment to this rule would obviate that change. Ms Dowd's evidence did not consider the noise issue referred to in the previous paragraph.

193. Mr Barr agreed with this approach and recommended amendments in his Reply Statement[164].

194. We agree with the reasons provided by Ms Dowd and Mr Barr for amending this rule. However, we do not consider Mr Barr's solution achieves the correct outcome. We prefer the approach suggested by Ms Dowd[165], albeit with wording more similar to that suggested by Mr Barr.

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158 Craig Barr, Reply Statement, paragraphs 14.45 to 14.48
159 Submission 383
160 Craig Barr, Reply Statement, 22 September 2016, Section 12
161 Submission 580
162 Submission 635
163 Joanne Dowd, EiC, paragraph 28
164 Paragraphs 16.1 and 16.2
165 ibid

195. Finally, we note that Chapter 31 no longer relates to hazardous substances and their control is no longer a function of the Council. We have deleted the reference to that chapter in the note.

196. Consequently we recommend that Rule 30.4.6 be amended and renumbered as follows:

> *30.4.3.1* ***Non-renewable Electricity Generation*** *where either:*
>
> *a. the generation only supplies activities on the site on which it is located and involves either:*
>
> *i. Standby generators associated with community, health care, and utility activities; or*
>
> *ii. Generators that are part of a Stand-Alone Power System on remote sites that do not have connection to the local distributed electricity network;*
>
> *OR*
>
> *b. the generation supplies the local electricity distribution network for a period not exceeding 3 months in any calendar year.*
>
> *Note – Diesel Generators must comply with the provisions of Chapter 36 (Noise) and Chapter 31 (Hazardous Substances)*

5.8. Rule 30.4.7

197. This rule partially duplicated Rule 30.4.1 by classifying non-renewable electricity generation that was not otherwise identified as a non-complying activity. No submissions were received on this rule.

198. We recommend it remain as notified, but be renumbered as 30.4.3.2.

5.9. Rule 30.5.2

199. This rule sets the standards applying to mini and micro hydro electricity generation. There were no submissions on this rule and we heard no evidence on it. Mr Barr recommended two amendments[166]:

a. Insert in 30.5.2.3 after "recessive colours" the phrase "with a light reflectance value of less than 36%" with a reference to Submission 383; and
b. Change the reference in the Note to the Regional Plan: Water

200. We can find no scope in Submission 383 to amend this rule as Mr Barr suggests. His discussion of the issue in the Section 42A Report[167] appears to ignore the fact that the submission clearly states, in the column identifying the provision it relates to, "30.5.3.5". We do, however, accept that the advice note should refer to the Regional Plan: Water rather than the "Water Plan Rules". Therefore, we recommend the rule be adopted with only a minor grammatical change, that it be numbered 30.4.2.2, and the advice note be amended to refer to the Regional Plan: Water.

5.10. Rule 30.5.3

201. This rule provides the standards for wind electricity generation. There were two submissions on this rule. Submission 368 sought that Rule 30.5.3.1 be deleted so that there was no limit

166 Craig Barr, Reply Statement, Appendix 1, p.30-14

167 Craig Barr, Section 42A Report, paragraph 14.3

on the number of turbines. Submission 383[168] sought the inclusion of a maximum reflectance value in Rule 30.5.3.5.

202. Mr Barr discussed the matter of the maximum reflectance value in his Section 42A Report, and we accept his recommendation in relation to this rule. Mr Barr also recommended a grammatical change to 30.5.3.3 in his Reply Version which we accept. Additionally, in his Reply Version, Mr Barr recommended the maximum height of masts in the Rural and Gibbston Character Zones be 12m, rather than the 10m as notified; the maximum height of the turbine be measured to the top of the mast, not the blade as notified; and that a new standard be added requiring compliance with Chapter 36 (Noise).

203. As we have noted with amendments to other standards, we can find no scope in the submissions for these last three amendments. We accept that Chapter 36 contains standards which wind turbines must comply with. It seems that a note referring a reader to that would suffice here, rather than including it as a standard. We are not prepared to recommend the other changes in the absence of submissions.

204. We heard no evidence as to why there should not be a limit of two turbines per site. We consider that, in the context of the environment of this District, to be a suitable limit.

205. We recommend this rule be amended to read:

30.4.2.3 ***Wind Electricity Generation*** *shall:*

30.4.2.3.1 *Comprise no more than two Wind Electricity Generation turbines or masts on any site.*

30.4.2.3.2 *Involve no lattice towers.*

30.4.2.3.3 *Be set back in accordance with the internal and road boundary setbacks for buildings in the zone in which they are located. Any exemptions identified in the zone rules for accessory buildings shall not apply*

30.4.2.3.4 *Not exceed the maximum height or intrude through any recession planes applicable in the zone in which they are located.*

30.4.2.3.5 *Be finished in recessive colours with a light reflectance value of less than 16%*

Notes: *In the Rural and Gibbston Character Zones the maximum height shall be that specified for non-residential building ancillary to viticulture or farming activities (10m).*

The maximum height for a wind turbine shall be measured to the tip of blade when in vertical position.

Wind turbines must comply with Chapter 36 (Noise)

5.11. Rules 30.5.4 and 30.5.5

206. There were no submissions on Rule 30.5.4. We recommend it be adopted renumbered to 30.4.2.4 and with an amendment to the advice note to refer to the appropriate regional plan.

[168] Opposed by FS1106, FS1208 and FS1253

207. The only submission[169] on Rule 30.5.5 sought that the it be a controlled activity. It is unclear from the submission whether the submitters were seeking that to be the base requirement for the activity, or the status of the activity if it did not meet the standards in Rule 30.5.5.

208. Mr Barr recommended changing the maximum height in clause 1 to 3m[170], and inserting a maximum reflectance value of 36% in clause 3[171]. We can find not scope in the submissions for such changes and consider them no further.

209. We are satisfied that this rule as notified provides appropriate standards for buildings accessory to renewable generation activities. We recommend it be adopted as notified, subject to being renumbered 30.4.2.5 and with the title changed to *Buildings accessory to renewable energy activities*.

5.12. Rules for Utilities

210. We preface discussion of this section of the rules by noting that the Telecommunications Companies all lodged submissions[172] seeking the complete replacement of Rules 30.4.8 to 30.4.16 (except for 30.4.10) with a completely new set of rules. In addition, and consequent on that submission, they also sought the deletion of Rules 30.5.7, 30.5.8 and 30.5.9 as no longer being necessary. In his evidence for the Companies, Mr McCallum-Clark did not seek such wholesale replacement. Rather he accepted most of the changes recommended by Mr Barr and provided no direct evidence supporting the complete replacement as sought in the submissions.

211. While we do not disregard these submissions, given the lack of supporting evidence, we do not discuss them in any detail below unless the recommendations of Mr Barr or Mr McCallum-Clark warrant it.

5.13. Rule 30.4.8

212. This rule classified utilities, buildings, structures and earthworks not otherwise listed as a discretionary activity. The sole submission[173] on this rule sought that underground lines be included in the list of activities.

213. To understand this rule, one needs to read it with reference to the heading immediately preceding it, which states:

Rules for Utilities; and Buildings, Structures and Earthworks within or near to the National Grid Corridor

Note - The rules differentiate between four types of activities: lines and support structures; masts and antennas; utility buildings; and flood protection works & waste management facilities.

214. With this understanding, it is clear the rule as notified was directed to two different activities: utilities; and activities within or near the National Grid Corridor. Without that understanding one could conclude that it affected a wide range of activities.

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169 Submission 368

170 Section 42A Report, Appendix 1, p.30-16

171 Reply Version, p. 30-15

172 Submissions 179 (opposed by FS1301), 191 (opposed by FS1301), 421 and 781 (opposed by FS1301)

173 Submission 251, supported by FS1121

215. Mr Barr did not discuss this rule, nor the submission, in his Section 42A Report. He did, however, recommend, as a new rule 30.4.22, that underground lines be a permitted activity, subject to ground reinstatement. In Ms Justice's tabled evidence, she advised that she considered the new rule addressed PowerNet's submission, and that it was appropriate[174].

216. Mr Barr considered Rule 30.4.8 in his Reply Statement and recommended an effective split between the non-specified utilities and the activities in or near the National Grid Corridor. He included the latter activities in standards which we discuss below. His reworded rule was:

Utilities which are not otherwise listed in Rules x to x[175]

217. We consider that Mr Barr may have unintentionally narrowed the scope of this rule in re-arranging the rules in his Reply version. While we agree with his approach, we recommend that the rule continue to apply to all utilities not otherwise provided for, as well as buildings associated with utilities.

218. We note also, that in recommending amendments to make the chapter consistent with the NESTF 2016, Mr Barr and Mr McCallum-Clark added a proviso to clarify that the catch-all status was subject to the regulations contained in the NESTF 2016[176]. We agree that clarification is helpful.

219. In our re-arrangement of the rules we have relocated the rule to make it clear that it apply to all utilities not otherwise provided for, and have numbered it 30.5.1.8. With the additional clarification, we recommend it reads:

Utilities and Buildings (associated with a Utility) which are not:

30.5.8.1 *provided for in any National Environmental Standard;*

OR

30.5.8.2 *otherwise listed in Rules 30.5.1.1 to 30.5.1.7, 30.5.3.1 to 30.5.3.5, 30.5.5.1 to 30.5.5.8, or 30.5.6.1 to 30.5.6.13*

5.14. Rule 30.4.9

220. This rule classified "minor upgrading" as a permitted activity. The only submissions[177] on the rule sought its retention.

221. It is appropriate to consider the definition of "minor upgrading" at this point so that the implications of the rule are fully understood. As notified, that definition read:

Minor upgrading *Means maintenance, replacement and upgrading of existing conductors or lines and support structures provided they are of a similar character, intensity and scale to the existing conductors or line and support structures and shall include the following:*

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174 Paragraph 4.17

175 We presume he intended the relevant rules indicated by "*x to x*" to be the remainder in the same table, being his amended numbers 30.4.2 to 30.4.8

176 Joint Witness Statement at paragraph 2.1(b).

177 Submissions 251, 635 and 805

- *Replacement of existing support structure poles provided they are less or similar in height, diameter and are located within 1 metre of the base of the support pole being replaced;*
- *Addition of a single service support structure for the purpose of providing a service connection to a site, except in the Rural zone;*
- *The addition of up to three new support structures extending the length of an existing line provided the line has not been lengthened in the preceding five year period, except in the Rural Zone;*
- *Replacement of conductors or lines provided they do not exceed 30mm in diameter or the bundling together of any wire, cable or similar conductor provided that the bundle does not exceed 30mm in diameter;*
- *Re-sagging of existing lines;*
- *Replacement of insulators provided they are less or similar in length; and*
- *Addition of lightning rods, earth-peaks and earth-wires.*

222. Seven submissions[178] sought amendments to this definition. Mr Barr discussed these submissions in his Section 42A Report[179], noting that the majority of the relief sought was consistent with definitions used in other district plans[180]. He recommended accepting the following components:
   a. the addition of lines;
   b. removing diameter requirements[181];
   c. introduction of re-sagging and bonding of conductors;
   d. the replacement of insulators with more efficient ones; and
   e. the removal of three additional support structures as a minor upgrade.

223. Ms Justice[182] largely supported Mr Barr's proposed amendments, but sought the additional inclusion of:
   a. provision for replacement of poles in defined circumstances;
   b. replacement of lines or bundling of lines provided they do not exceed 30cm in diameter; and
   c. replacement of equipment of similar intensity and scale.

224. Ms Justice also noted that the ODP contained a practical provision that allowed a replacement pole to be erected prior to removal of an existing pole, and suggested this should be retained.

225. Ms Dowd[183] considered that the definition as notified would require utility companies to obtain unnecessary consents. She largely supported Mr Barr's revised definition, but also sought an additional clause to allow for the increase in height of support structures of up to 15% where required to maintain compliance with NZECP 34:2001, and the retention of the clause allowing for an extension of line length, but for up to four new support structures.

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178 Submissions 179 (supported by FS1121 andFS1301, opposed by FS1132), 191 (supported by FS1121 andFS1301, opposed by FS1132), 251, 421, 635 (supported by FS1301, opposed by FS1132), 781 (supported by FS1121 and FS1342) and 805

179 Paragraphs 9.41 to 9.43

180 He gave the examples of Wellington City District Plan and the Tauranga City District Plan

181 Noting that he considered these too difficult to monitor, and there is a requirement for minor upgrades to be of a similar scale and intensity.

182 Megan Justice, EiC, paragraphs 4.10 to 4.15

183 Joanne Dowd, EiC, paragraphs 31-36

226. Ms McLeod considered Mr Barr's redraft was satisfactory, with the one exception being that she considered the same clause regarding additional height Ms Dowd sought be included, be added to the definition. Ms McLeod noted that such increases in height provide for health and safety of the community, and that the clause mirrors similar regulations in the NESETA 2012.

227. Mr Barr reconsidered the definition in detail in his Reply Statement[184] and recommended acceptance of most of the points raised in the evidence discussed. In particular, he accepted that replacement support structures should be allowed within 2 metres of the existing structure, rather than the 5 m sought by Aurora, and that lines may be extended by up to three new support structures, rather than the 4 sought by Aurora, within any 5 year period, including within the Rural Zone.

228. We agree with Mr Barr's reasoning and recommend to the Stream 10 Panel that the definition of "minor upgrading" be as follows:

> ***Minor upgrading*** *Means an increase in the carrying capacity, efficiency or security of electricity transmission and distribution or telecommunication lines utilising the existing support structures or structures of a similar character, intensity and scale, and includes the following:*
>
> *a. Addition of lines, circuits and conductors;*
> *b. Reconducting of the line with higher capacity conductors;*
> *c. Re-sagging of conductors;*
> *d. Bonding of conductors;*
> *e. Addition or replacement of longer or more efficient insulators;*
> *f. Addition of electrical fittings or ancillary telecommunications equipment;*
> *g. Addition of earth-wires which may contain lightning rods, and earth-peaks;*
> *h. Support structure replacement within the same location as the support structure that is to be replaced;*
> *i. Addition or replacement of existing cross-arms with cross-arms of an alternative design; and*
> *j. Replacement of existing support structure poles provided they are less or similar in height, diameter and are located within 2 metres of the base of the support pole being replaced;*
> *k. Addition of a single support structure for the purpose of providing a service connection to a site, except in the Rural Zone;*
> *l. The addition of up to three new support structures extending the length of an existing line provided the line has not been lengthened in the preceding five year period.*

229. With that understanding as to what Rule 30.4.9 is permitting, we recommend it remain as notified. As part of our re-arrangement of the rules, we have separated the various types of utility activities. The consequence of this is that the rule is repeated as 30.5.3.1 for the National Grid, 30.5.5.1 for electricity distribution, and 30.5.6.1 for telecommunications and other communication activities.

5.15. Rule 30.4.10

230. This rule classified as permitted activities, buildings, other than those for National Grid Sensitive Activities, structures and earthworks within the National Grid Corridor, provided they complied with standards in Rules 30.5.10 and 30.5.11.

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184 Paragraphs 14.4-14.9

231. Aurora[185] sought amendments to this rule as part of its submission seeking special provision for parts of its network. We have already given our reasons for not accepting that submission so discuss it no further here.

232. Transpower[186] sought a complete rewrite of this rule and the associated standards to create a single rule containing all the conditions to be met for an activity to be permitted.

233. To understand both the effect of this rule, and what was being sought by Transpower, it is appropriate to consider it in conjunction with the relevant standards: Rules 30.5.10 and 30.5.11. Rule 30.5.10 set the following standards for buildings and structures within the National Grid Corridor, and set non-compliance with the standards a non-complying activity:

30.5.10.1 A non-conductive fence located 5m or more from any National Grid Support Structure and no more than 2.5m in height.

30.5.10.2 Any utility within a transport corridor or any part of electricity infrastructure that connects to the National Grid.

30.5.10.3 Any new non-habitable building less than 2.5m high and 10m^2 in floor area.

30.5.10.4 Any non-habitable building or structure used for agricultural activities provided that they are:

a. less than 2.5m high
b. Located at least 12m from a National Grid Support Structure
c. Not a milking shed/dairy shed (excluding the stockyards and ancillary platforms), or a commercial glasshouse.
d. Alterations to existing buildings that do not alter the building envelope less than 2.5m high
e. Located at least 12m from a National Grid Support Structure
f. Not a milking shed/dairy shed (excluding the stockyards and ancillary platforms), or a commercial glasshouse.

30.5.10.5 Alterations to existing buildings that do not alter the building envelope.

234. Rule 30.5.11 set standards for earthworks within the National Grid Yard and made non-compliance with those standards a discretionary activity. The standards as notified were:

30.5.11.1 Earthworks within 2.2 metres of a National Grid pole support structure or stay wire shall be no deeper than 300mm.

30.5.11.2 Earthworks between 2.2 metres to 5 metres of a National Grid pole support structure or stay wire shall be no deeper than 750mm.

30.5.11.3 Earthworks within 6 metres of the outer visible edge of a National Grid Transmission Tower Support Structure shall be no deeper than 300mm.

30.5.11.4 Earthworks between 6 metres to 12 metres from the outer visible edge of a National Grid Transmission Tower Support structure shall be no deeper than 3 metres.

185 Submission 635
186 Submission 805

30.5.11.5 Earthworks shall not create an unstable batter that will affect a transmission support structure.

30.5.11.6 Earthworks shall not result in a reduction in the existing conductor clearance distance below what is required by the New Zealand Electrical Code of Practice 34:2001.

235. Rule 30.5.11 also listed the following exemptions from this rule:
30.5.11.7 Earthworks undertaken in the course of constructing or maintaining utilities

30.5.11.8 Earthworks undertaken as part of agricultural activities or domestic gardening
30.5.11.9 Repair sealing, resealing of an existing road, footpath, farm track or driveway

236. As notified, the PDP also contained definitions for National Grid Corridor, National Grid Yard, National Grid Sensitive Activities and Sensitive Activities – Transmission Corridor, each of which is relevant to these rules.

237. The submissions on these three rules and the four definitions are all inter-related and need to be considered together.

238. Federated Farmers sought the retention of Rules 30.5.10 and 30.5.11[187]. Aurora[188] sought minor amendments for clarification to Rule 30.5.10, but otherwise supported it, and supported Rule 30.5.11. Transpower[189] sought the replacement of both rules in section 30.5 so that they were consistent with its approach to managing activities in close proximity to the National Grid.

239. The Council[190] sought clarification as to whether the definitions of National Grid Sensitive Activities and Sensitive Activities – Transmission Corridor were both necessary. Arcadian Triangle Ltd[191] sought the review and amendment of all definitions related to the National Grid. Transpower sought the deletion of the definition of Sensitive Activities – Transmission Corridor and amendments to the definitions of National Grid Corridor and National Grid Yard. Transpower also sought the inclusion of the following new definitions related to these provisions:
a. Artificial crop protection structure;
b. Crop support structure;
c. Earthworks within the National Grid Yard;
d. National Grid; and
e. Protective canopy.

240. Mr Barr considered the new definitions proposed by Transpower in his Section 42A Report. He only supported the inclusion of the National Grid definition. Mr Barr agreed with the Arcadian Triangle submission and recommended amendments to the definitions to increase consistency. He also recommended the amendment sought to the title of National Grid Corridor, changing it to National Grid Subdivision Corridor, to make it clear that corridor

187 Submission 600, supported by FS1209, opposed by FS1034
188 Submission 635
189 Submission 805
190 Submission 383
191 Submission 836

applied only to subdivision activities, while the National Grid Yard applied to all activities. Mr Barr also recommended acceptance of the amendment to 30.5.10 sought by Aurora.

241. Ms McLeod identified a series of differences between the relief sought by Transpower and the rules as recommended by Mr Barr[192]. In her view, the rule framework should clearly establish that activities sensitive to the National Grid are not provided for in the National Grid Yard because such an approach is firmly directed by NPSET 2008 Policy 11[193]. She also explained why various setbacks she proposed were appropriate. She concluded this part of her evidence by suggesting a single rule for "Buildings, Structures and National Grid Sensitive Activities within the National Grid Yard"[194]. This rule made all such activities non-complying, except for a list of exceptions in the rule, which would be permitted. In the same paragraph, as a separate rule, she recommended that all earthworks in the National Grid Yard that complied with rule 30.5.11 be permitted.

242. Ms McLeod took us in detail through her concerns with the standards for earthworks in Rule 30.5.11 and suggested a replacement set of standards[195].

243. Mr Barr, in his Reply Statement, generally accepted the changes proposed by Ms McLeod[196], although he did not agree with the rule structure she proposed.

244. We agree with the recommendation of Mr Barr that the activities in relation to the National Grid be contained in their own two tables: one relating to activities, the second to standards. Given that there was no real difference in opinion between Mr Barr and Ms McLeod by the end of the hearing, we accept their reasoning as to the standards to be achieved and the relevant activity classifications. We also note that there was no real difference between Mr Barr and Ms McLeod as to the definitions to be included, nor how those terms were defined. Additionally, we note that although Transpower sought that the term National Grid Corridor be rephrased National Grid Subdivision Corridor, Ms McLeod did support that wording change. We accept her evidence on that point.

245. As a result, we recommend that (noting that items b. to g. are recommendations to the Stream 10 Hearing Panel):
   a. Rules 30.4.10, 30.5.10 and 30.5.11 be replaced with Rules 30.5.3.2, 30.5.3.3, 30.5.4.1 and 30.5.4.2 as set out below;
   b. The definition of Sensitive Activities – Transmission Corridor be deleted;
   c. The definition of National Grid set out below be included;
   d. The definition of National Grid Corridor refer to the diagram referred to next;
   e. The diagram illustrating the dimensions of the National Grid Corridor and National Grid Yard, plus the setback distances from various poles and tower structures be replaced with that included below;
   f. The definition of National Grid Yard remain unaltered; and
   g. The definition of National Grid Sensitive Activities be amended to read as set out below.

   Rules:

   30.5.3.2 ***Buildings, structures and activities that are not National Grid sensitive activities within the National Grid Corridor*** *– Permitted activities*

192 Ainsley McLeod, EiC, paragraph 50
193 ibid, paragraph 51
194 ibid, paragraph 59
195 ibid, paragraphs 71-80
196 Craig Barr, Reply, Section 9

Subject to compliance with Rules 30.5.4.1 and 30.5.4.2

***30.5.3.3 Earthworks within the National Grid Yard** – Permitted activities*
Subject to compliance with Rule 30.5.4.2

30.5.4.1 Buildings and Structures permitted within the National Grid Yard:

30.5.4.1.1 A non-conductive fence located 5m or more from any National Grid Support Structure and no more than 2.5m in height.

30.5.4.14.2 Any network utility within a transport corridor or any part of electricity infrastructure that connects to the National Grid, excluding a building or structure for the reticulation and storage of water for irrigation purposes.

30.5.4.1.3 Any new non-habitable building less than 2.5m high and 10m2 in floor area and is more than 12m from a National Grid Support Structure.

30.5.4.1.4 Any non-habitable building or structure used for agricultural activities provided that they are:

a. less than 2.5m high
b. Located at least 12m from a National Grid Support Structure
c. Not a milking shed/dairy shed (excluding the stockyards and ancillary platforms), or a commercial glasshouse, or a structure associated with irrigation, or a factory farm.

30.5.4.1.5 Alterations to existing buildings that do not alter the building envelope.

30.5.4.1.6 An agricultural structure where Transpower has given written approval in accordance with clause 2.4.1 of NZECP34:2001.

Note – Refer to the Definitions for illustration of the National Grid Yard.

246. Non-compliance with this standard would require consent as a non-complying activity.

30.5.4.2 Earthworks permitted within the National Grid Yard:

30.5.4.2.1 Earthworks within 6 metres of the outer visible edge of a National Grid Transmission Support Structure must be no deeper than 300mm.

30.5.4.2.2 Earthworks between 6 metres to 12 metres from the outer visible edge of a National Grid Transmission Support structure must be no deeper than 3 metres.

30.5.4.2.3 Earthworks must not create an unstable batter that will affect a transmission support structure.

30.5.4.2.4 Earthworks must not result in a reduction in the existing conductor clearance distance below what is required by NZECP34:2001.

The following earthworks are exempt from the rules above:

30.5.4.2.5 Earthworks undertaken by network utility operators in the course of constructing or maintaining utilities providing the work is not associated with buildings or structures for the storage of water for irrigation purposes.

30.5.4.2.6 Earthworks undertaken as part of agricultural activities or domestic gardening

30.5.4.2.7 Repair sealing, resealing of an existing road, footpath, farm track or driveway

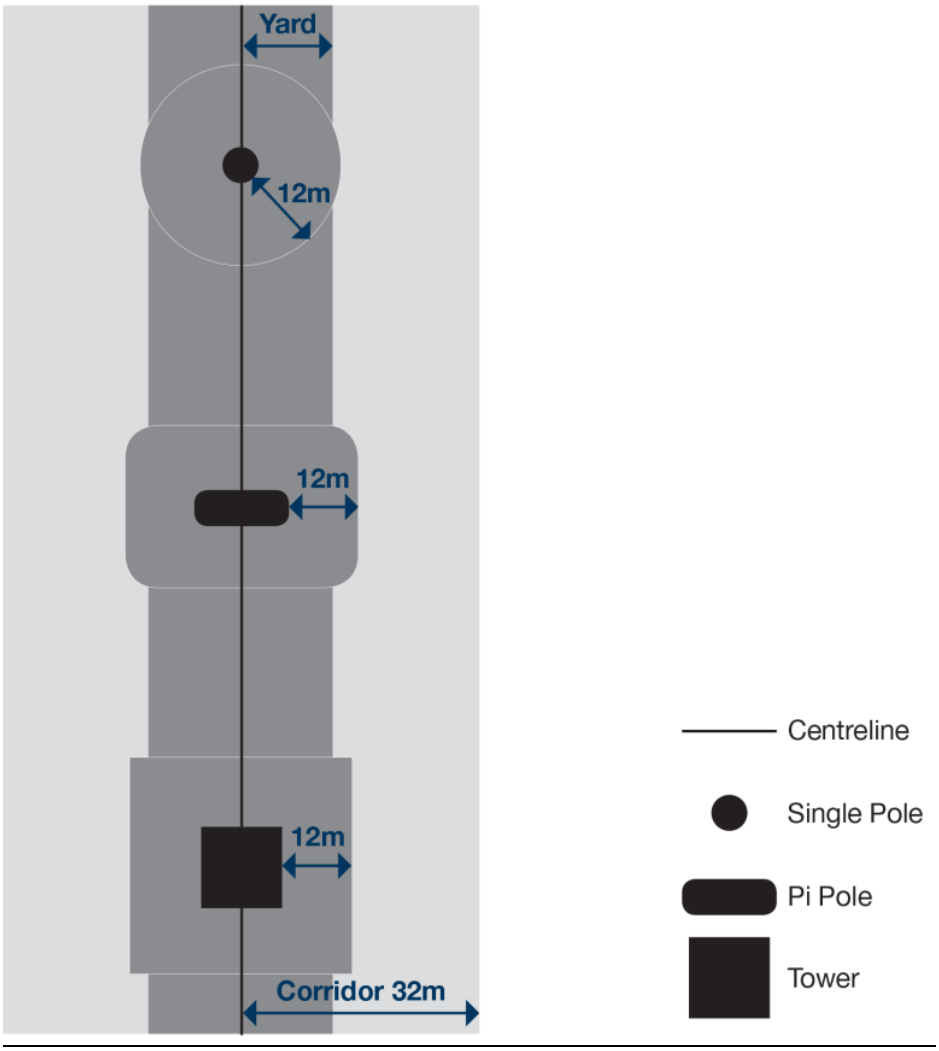
Note – Refer to the Definitions for illustration of the National Grid Yard.

247. Non-compliance with this standard would require consent as a non-complying activity.

Definitions:

National Grid *Means the same as in the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009.*

Diagram relevant to the definitions of National Grid Corridor and National Grid Yard:



National Grid Sensitive Activities *Means those activities within the National Grid Corridor that are particularly sensitive to the risks associated with electricity transmission lines because of either the potential for prolonged exposure to the risk or the vulnerability of the equipment or population that is exposed to the risk. Such activities include buildings or parts of buildings used for, or able to be used for the following purposes:*

a. Day Care facility;
b. Educational facility;
c. Healthcare facility;
d. Papakainga;
e. Any residential activity; or
f. Visitor accommodation.

5.16. New Utility Rule

248. Transpower[197] sought a new rule making it a restricted discretionary activity for any building or intensive development to locate within 150m of the National Grid substation so as to protect the substation from reverse sensitivity effects.

197 Submission 805

249. Mr Barr did not consider another reverse sensitivity rule was justified[198]. At the hearing, we heard from Mr Renton, Senior Principal Engineer at Transpower. He outlined in detail for us the risks associated with substations[199]. Applying his experience in dealing with such risks, he detailed how he considered they could be managed at the Frankton substation[200]. Mr Renton helpfully described to us at the hearing the nature of the risks: noise and voltage surge. He also identified that it was how the activities occurred within the 45m setback that was more important than necessarily excluding them.

250. In her pre-lodged evidence, based on Mr Renton's evidence, Ms McLeod concluded that the provisions recommended in the Section 42A Report would be inadequate to protect the Frankton substation. She considered that a 45m setback and restricted discretionary consent required for buildings, hazardous facility or sensitive activity to establish with the set back[201].

251. At the hearing, following Mr Renton's explanation of the nature of the limitations that would actually be required on an adjoining property, we explored with Ms McLeod whether this could not be dealt with through the notice of requirement process. She agreed that was an option, but maintained her position that it was a matter that should be managed through the resource consent process. However, she did concede that, based on Mr Renton's evidence, that the matter could be managed through a controlled activity. She offered to draft a proposed rule, which was submitted by memorandum of counsel on 16 September 2016. Ms McLeod considered this rule would be better located in the relevant zone provisions rather than the Utilities Chapter, and counsel advised that Transpower supported the rule's inclusion in the Rural Zone, Medium Density Residential zone and the Frankton Flat Special Zone rules.

252. At this point we note that, following receipt of this memorandum containing Ms McLeod's redrafted rule, the Hearing Panel received a memorandum from counsel for Peter and Mary Arnott, who were the registered proprietors of a property immediately adjoining the Frankton substation. Counsel suggested there was no jurisdiction for the Panel to consider the rules proposed by Ms McLeod as there was no submission or further submission seeking such rules.

253. We agree with counsel that there are no submissions or further submissions seeking the inclusion of such a rule in the Rural, Medium Density Residential or Frankton Flats Special Zones. However, we are satisfied that the controlled activity rule is within the scope of the submission of Transpower seeking a restricted discretionary activity applying to a wider area and, thus, we are able to consider this rule for inclusion in Chapter 30.

254. Having heard Mr Renton's helpful evidence and having had a useful discussion with Ms McLeod concerning the regulatory options available, we have concluded that the controlled activity rule drafted by Ms McLeod provides a careful balance of ensuring neighbours' safety without unduly restricting the use of their land. We note that this circumstance is distinguishable from the Aurora request discussed above in that the purpose of the rule is not to restrict buildings and other structures, or to alert Transpower that a building or structure is proposed, but rather ensure the form and method of construction do not cause safety issues. We recommend the rule be included, reading as follows:

30.5.3.4 Buildings, structures and National Grid sensitive activities in the vicinity of the Frankton Substation

198 Craig Barr, Section 42A Report, paragraphs 14.41 and 14.42

199 Andrew Renton, EiC, paragraphs 55 to 66

200 ibid, paragraphs 72 to 77

201 Ainsley McLeod, EiC, paragraphs 69 to 70

Any building, structure or National Grid sensitive activity within 45m of the designated boundary of Transpower New Zealand Limited's Frankton Substation. Control is reserved to:

a. the extent to which the design and layout (including underground cables, services and fencing) avoids adverse effects on the on-going operation, maintenance, upgrading and development of the substation;
b. the risk of electrical hazards affecting public or individual safety, and the risk of property damage; and
c. measures proposed to avoid or mitigate potential adverse effects.

Controlled activity.

5.17. Rules 30.4.11 and 30.4.12

255. As notified, Rule 30.4.11 provided that lines and support structures be a controlled activity. The rule limited the lines to:
A conductor line, or support structure for overhead lines, to convey electricity (at a voltage of equal to or less than 110kV at a capacity of equal to or less than 100MVA); or overhead lines for any other purpose including telecommunications.

256. Control was reserved to: location; route; height; appearance, scale and visual effects; and
Where a site is subject to any natural hazard and the proposal results in an increase in gross floor area: an assessment by a suitably qualified person is provided that addresses the nature and degree of risk the hazard(s) pose to people and property, whether the proposal will alter the risk to any site, and the extent to which such risk can be avoided or sufficiently mitigated[1].

257. Three submissions sought amendments to this rule[202]. PowerNet sought to distinguish the overhead lines provided for in this rule from underground lines. Aurora sought amendments to exclude minor upgrading from this rule, and to delete the final two matters of control. Transpower sought to include a permitted activity provision, with non-compliance with the standards triggering a controlled activity consent.

258. Mr Barr recommended amendments to this rule, relying on the submissions of the Telecommunication Companies, to clarify it and amending the matter of control relating to natural hazards consistent with his recommendations on Rule 30.4.15[203]. In his Section 42A Report he explained why he disagreed with the removal of the matter of control "Appearance, scale and visual effects" sought by Aurora[204]. In response to PowerNet's submission, he recommended a rule making underground lines/cables a permitted activity[205].

259. In her evidence, Ms Dowd queried why there was a distinction between the provisions for overhead lines for telecommunications and those for electricity[206]. She also set out the reasons Aurora was concerned with the control in respect of appearance, scale and visual effects[207].

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202 Submissions 251, 635 and 805 (supported by FS1121)
203 Sought by Submission 383
204 Section 42A Report, paragraph 11.9
205 Section 42A Report version rule 30.4.22
206 Joanne Dowd, EiC, paragraph 30
207 ibid, paragraph 31

260. Ms McLeod considered that the overall approach of Chapter 30, which did not provide for electricity lines, at any scale, without the need for a resource consent to not:
   a. *Give effect to Policy 2 of the NPSET 2008;*
   b. *Have regard to Policy 3.6.4208 of the Proposed RPS;*
   c. *Give effect to various policies within Chapter 30.209*

261. Mr Barr, in his Reply Statement, discussed this issue mainly in relation to how the activities (along with other telecommunications activities) would be controlled in the Rural Zone[210]. He recommended the rules for electricity lines and telecommunication lines be located in separate tables. Within those tables, he recommended lines and support structures within "formed legal road"[211] and underground cables[212] be permitted activities. Finally, Mr Barr recommended the deletion of the matter of control related to natural hazards[213].

262. We consider Mr Barr's revised version of this rule, along with the addition permitted activity rules and separating the rules for electricity lines and telecommunication lines, achieves the right balance between the competing objectives and policies, both in the PDP and in the superior statutory instruments, seeking to provide for utilities on one hand, while minimising adverse effects on the environment on the other.

263. Turning to Rule 30.4.12, as notified this provided for lines and supporting structures as discretionary activities where it involved any of 5 conditions. Those conditions read:

30.4.12.1 *Erecting any lattice towers for overhead lines to convey electricity in all zones.*

30.4.12.2 *Erecting any support structures for new overhead lines to convey electricity (at a voltage of more than 110kV with a capacity over 100MVA) in all zone.*

30.4.12.3 *Erecting any support structures for overhead lines to convey electricity (at a voltage of equal to or less than 110kV at a capacity of equal to or less than 100MVA); or overhead lines for any other purposes including telecommunications in any Outstanding Natural Feature or Outstanding Natural Landscape or Significant Natural Areas.*

30.4.12.4 *Utilising any existing support structures for the erection of cable television aerials and connections.*

30.4.12.5 *Erecting any support structures for overhead lines for any purpose in the area in Frankton known as the "Shotover Business Park", except where any new poles are solely for the purpose of providing street lighting.*

208 Policy 4.4.4 in the Decisions Versions of the proposed RPS
209 Ainsley McLeod, EiC, paragraph 44
210 Craig Barr, Reply Statement, Section 11
211 Reply Version rules 30.4.32 and 30.4.42
212 Reply version rules 30.4.33 and 30.4.43
213 Craig Barr, Reply Statement, Section 12

264. Two submissions[214] sought the retention of this rule, one[215] sought that clause 3 contain an exclusion for minor upgrading, and one sought that the activity status be changed to controlled[216].

265. Without any specific discussion in his Section 42A Report but relying on the general Telecommunications Companies submission, Mr Barr recommended two changes to this rule[217]:
   a. Deleting 30.4.12.1 and inserting the words "lines, lattice towers or" immediately before "support structures" in 30.4.12.2;
   b. Deleting 30.4.12.4.

266. Ms McLeod confirmed her support for the Transpower relief[218], but did not discuss the rule in any detail.

267. Again there was no discussion of this rule by Mr Barr in his Reply Statement, but he recommended various changes to it in Appendix 1 attached to the reply:
   a. Deleting 30.4.12.2, but transferring it to the National Grid Table;
   b. Deleting "including telecommunications" from 30.4.12.3, but creating a new equivalent rule in the telecommunications table with the same activity standard;
   c. Deleting 30.4.12.5.

268. We do not think the changes made by Mr Barr cause any change to the regulatory effect of the rule, but do assist in understanding how lines are controlled in particular circumstances. We also note that we consider the deletion of 30.4.12.5 appropriate as that provision only applied to a zone which is not part of Stage 1 of the PDP. Thus it was of nugatory effect.

269. Amendments recommended by Mr Barr and Mr McCallum-Clark to ensure consistency with the NESTF 2016 involved minor wording changes with little effect on meaning. The only substantive change recommended was providing that new lines on existing structures be permitted in all instances[219].

270. The overall effect of the changes recommended to Rules 30.4.11 and 30.4.12 are:
   a. The National Grid is a permitted activity in the National Grid Corridor;
   b. Any new high voltage (over 110kV with a capacity over 100MVA) line is a discretionary activity in all zones;
   c. Underground electricity cables are a permitted activity in all zones, subject to ground surface re-instatement;
   d. Electricity lines and supporting structures within the reserves of formed roads are permitted activities;
   e. Electricity lines, other than high voltage lines, are a controlled activity provided they are not located with an ONL, on an ONF, or within a Significant Natural Area;
   f. Electricity lines (including new high voltage lines by virtue of b. above) located with an ONL, on an ONF, or within a Significant Natural Area are discretionary activities;
   g. Underground telecommunication lines are permitted activity in all zones, subject to ground surface re-instatement;

214 Submissions 251 (supported by FS1085) and 580
215 Submission 635
216 Submission 805
217 In Appendix 1 to the Section 42A Report
218 Ainsley McLeod, EiC, paragraph 46
219 Joint Witness Statement, 25 September 2017, at paragraph 2.1(h)

h. New telecommunication lines and supporting structures within the reserves of formed roads along with new lines on existing structures are permitted activities;
i. New telecommunication lines and supporting structures outside formed road reserve are a controlled activity provided they are not located within an ONL, on an ONF, or within a Significant Natural Area; and
j. New telecommunication lines and supporting structures located within an ONL, on an ONF, or within a Significant Natural Area are discretionary activities.

271. We recommend that this arrangement be adopted for the reasons set out above. Rather than repeat all the relevant rules here, we will just list the relevant rule numbers from our recommended version of Chapter 30 set out in Appendix 1 to this report. The relevant rules (in the same order as above) are:
a. Rule 30.5.3.2;
b. Rule 30.5.3.5;
c. Rule 30.5.5.3;
d. Rule 30.5.5.2;
e. Rule 30.5.5.6;
f. Rule 30.5.5.7;
g. Rule 30.5.6.3;
h. Rule 30.5.6.2;
i. Rule 30.5.6.4; and
j. Rule 30.5.6.5.

5.18. Rules 30.4.13 and 30.4.14

272. As notified these two rules applied to "Telecommunication Facility and Radio communication Facilities Navigation, Metrological Facilities" (Rule 30.4.13, slightly different grammar in rule 30.4.14). By Rule 30.4.13 these activities were controlled activities where they involved erecting:

30.4.13.1 Within the Rural Zone any mast greater than 8m but less than or equal to 15m in height.

30.4.13.2 Within the Town Centre Zones any mast greater than 8m but less than or equal to 10m in height.

30.4.13.3 in zones with a maximum building height of less than 8m (except for the Business and Industrial Zones), a mast greater than the maximum height permitted for buildings of the zone or activity area in which it is located.

30.4.13.4 If circular shaped an antenna greater than 1.2m in diameter but less than 2.4m in diameter. If another shape, an antenna greater than 1.2m in length or breadth but less than 2.4m in length and breadth.

273. Control was reserved to:
a. Site location
b. External appearance
c. Access and parking
d. Visual amenity impacts
e. Where a site is subject to any natural hazard and the proposal results in an increase in gross floor area: an assessment by a suitably qualified person is provided that addresses the nature and degree of risk the hazard(s) pose to people and property,

whether the proposal will alter the risk to any site, and the extent to which such risk can be avoided or sufficiently mitigated[1]***Error! Bookmark not defined.***.

274. Rule 30.4.14 provided that the following activities were discretionary activities:

30.4.14.1 Erecting any mast, or erecting any antenna greater than 1.2m in diameter (if circular in shape) or 1.2m in length or breadth (if another shape) in:

- *Any Outstanding Natural Landscape or Outstanding Natural Feature*
- *Significant Natural Area*
- *The Arrowtown Residential Historic Management Zone.*
- *Any open space and landscape buffer areas identified on any of the Special Zone structure plans*
- *Town Centre Special Character Areas*
- *Heritage Features and Landscapes.*

30.4.14.2 Erecting antenna greater than 2.4m in diameter or 3m in length or breadth, except omni directional (or "whip) antenna which shall not exceed 4m length, in the following zones: Residential (other than the Arrowtown Residential Historic Management Zone), Rural Lifestyle, Rural Residential, Township, Resort, Airport Mixed Use, Visitor, Town Centre, Corner Shopping Centre, Bendemeer, Penrith Park and Business Zones.

30.4.14.3 Erecting any antenna greater than 2.4m in diameter length or breadth and/or 4m in length if a whip antenna, in the Rural Zone.

30.4.14.4 Erecting a mast which is over 15m in height in the Rural Zone.

30.4.14.5 In all other zones including the Town Centre Zones with a maximum building height of less than 8m (except the Business and Industrial Zones) and erecting a mast which is over 10m in height.

30.4.14.6 In the Business and Industrial Zones, and in all other zones with a maximum building height of 8m or greater, erecting a mast which exceeds the maximum height of buildings in the zone it is located by more than 5m.

275. Two submissions[220] sought amendments to Rule 30.4.13.4 to increase the diameter of circular shaped antenna and to exclude earthworks associated with such facilities. The Telecommunication Companies[221] sought a complete rewrite such that most telecommunications poles, masts, antenna and ancillary equipment were permitted activities up to greater heights than provided for in Rule 13.4.13. The companies sought that erecting masts in the sensitive locations specified in rule 30.4.14.1 be a restricted discretionary activity, as would be larger antenna and masts at heights greater than provided for in their permitted activity rule. There were no other submissions on Rule 30.4.14.

276. In his Section 42A Report Mr Barr identified that the Telecommunication Companies' submissions were lodged in anticipation of the (then) proposed NESTF 2016. At that stage, while noting that the PDP could not be more lenient than an NES, Mr Barr was only prepared to recommend minor changes. The changes proposed permitted activity status for facilities

220 Submissions 607 and 615 (supported by FS1105 and FS1137)

221 Submissions 179, 191, 421 and 781

up to specified heights, controlled activity status to a higher specified height, and full discretionary status in the sensitive locations.

277. Following conferencing between Mr Barr and Mr McCallum on ensuring consistency between the PDP rules and the NESTF 2016, the one area of disagreement between Mr Barr and Mr McCallum-Clark related to the application of Regulation 47 of the NESTF 2016 as it related to the height of poles in the Rural Zone outside of an ONL or ONF. Regulation 47 reads:

> ***47 Visual amenity landscapes***
> *a. This regulation applies to a regulated activity if it is carried out at a place identified in the relevant district plan or proposed district plan as being subject to visual amenity landscape rules.*
> *b. This regulation is complied with if the regulated activity is carried out in accordance with the visual amenity landscape rules that apply in that place.*
> *c. In this regulation, visual amenity landscape rules means district rules about the protection of landscape features (such as view shafts or ridge lines) identified as having special visual amenity values (however described).*

278. The Joint Witness Statement explained the issue as follows:[222]

Rule 30.4.6, as drafted in the Council's recommended Reply version, limits the height of poles in the Rural Zone (outside of an ONF or ONL) to 15 metres in height. The NESTF 2-16 permits poles in these areas up to 25 metres in height, except where Regulation 47 is applicable and the rules in the District Plan prevail.

279. Mr Barr's position was based on the findings of the landscape reports which formed the basis for the section 32 analysis for the Rural Zone; in particular, the finding that rural land not otherwise identified as an ONL or ONF was a visual amenity landscape in terms of section 7 of the Act[223]. Thus, in his view, in those parts of the Rural Zone identified as Rural Character Landscape[224] are subject to visual amenity landscape rules in terms of Regulation 47 of the NESTF 2016.

280. It was Mr McCallum-Clark's view that clause 3 of Regulation 47 set out a higher bar than a general rural amenity protection rule[225]. It was his view that while Regulation 47 would apply to an ONL, it would not apply to the Rural Character Landscape portions of the Rural Zone.

281. We do not think Mr McCallum-Clark is correct to suggest that an ONL would qualify under Regulation 47. Regulation 50 specifically provides for the application of ONL and ONF provisions to regulated activities. In our view, Regulation 47 must, therefore, be aimed at a lower order of landscape significance.

282. On the other hand, we consider Mr Barr's interpretation to take too broad a view of what Regulation 47(3) defines as visual amenity landscape rules. That regulation states that such rules are to be for the protection of landscape features having <u>special</u> visual amenity values. Strategic Objective 3.2.5.2 refers to the values of Rural Character Landscapes being "*rural character and visual amenity values*" and the relevant Strategic Policies in Chapter 3, as well as the policies in Chapter 6, do not suggest that the Rural Character Landscapes have any more

222 C Barr & M McCallum-Clark, Joint Witness Statement dated 25 September 2017, at paragraph 3.3
223 ibid, at paragraph 3.4
224 The term we are recommending replace Rural Landscapes Classification.
225 C Barr & M McCallum-Clark, Joint Witness Statement dated 25 September 2017, at paragraph 3.5

than general visual amenity value, albeit that parts may have higher visual amenity value than others. Notably, the PDP does not specifically identify any landscape feature within the district that is not within an ONL or ONF.

283. Consequently, we do not agree with Mr Barr's recommendation. We recommend the relevant rule provide for poles in the Rural Zone to have a maximum height of 25 m as a permitted activity. With that amendment, we agree with the approach recommended by Mr Barr in his Reply Statement, notably replacing notified rules 30.4.13 and 30.4.14 with a permitted regime for poles to a certain height, thence discretionary. We recommend these rules read (incorporating amendments to ensure consistency with the NESTF 2016):

30.5.6.6 Poles

With a maximum height no greater than:

25m	*Rural Zone;*
15m	*in the Business Mixed Use Zone (Queenstown);*
18m	*in the High Density Residential (Queenstown – Flat Sites), Queenstown Town Centre, Wanaka Town Centre (Wanaka Height Precinct) or Airport Mixed Use zones;*
13m	*in the Local Shopping Centre, Business Mixed Use (Wanaka) or Jacks Point zones;*
11m	*in any other zone; and*
8m	*in any identified Outstanding Natural Landscape.*

Where located in the Rural Zone within the Outstanding Natural Landscape or Rural Landscape Classification, poles must be finished in colours with a light reflectance value of less than 16%.

Permitted activity.

30.5.6.7 Poles

Exceeding the maximum height for the zones identified in Rule 30.5.6.6 OR any pole located in

a. *any identified Outstanding Natural Feature;*
b. *the Arrowtown Residential Historic Management Zone;*
c. *Arrowtown Town Centre;*
d. *Queenstown Special Character Area;*
e. *Significant Natural Area;*
f. *Sites containing a Heritage Feature; and*
g. *Heritage Overlay Areas.*

Discretionary activity.

5.19. Antennas

284. As notified, the PDP provided rules for antennas in Rules 30.4.13 and 30.4.14. Although not discussed within his Section 42A Report, Mr Barr did recommend in Appendix 1 to that report three new rules be included providing for antennas:

a. Providing for smaller antennas as a permitted activity (his Rule 30.4.19);
b. Medium scale antennas as a controlled activity (his Rule 30.4.20); and
c. Larger antennas and those located sensitive areas as discretionary activities (his Rule 30.4.21).

285. Mr Barr relied on the Telecommunication Companies' submissions for scope to include these. In addition, they were in part drawn from notified Rules 30.4.13 and 30.4.14.

286. Mr McCallum-Clark described these recommended rules as a rather historically-based set of dimensions which did not enable technological changes to be easily adopted[226]. He suggested amended provisions based on the surface area of the antennas, again split into permitted, controlled and discretionary activities.

287. In large part, in his Reply Statement, Mr Barr accepted the suggestions of Mr McCallum-Clark. In addition, in his re-arrangement to separate Electricity Distribution Activities from Telecommunication Activities, he recommended separate rules for antennas under each group of activities (being Reply Rules 30.4.36, 30.4.37, 30.4.38, 30.4.48, 30.4.49 and 30.4.50).

288. Following the conferencing of Mr Barr and Mr McCallum-Clark, they recommended minor amendments to Reply Rules 30.4.48, 30.4.49 and 30.4.50 so as to align them with Regulations 29 and 31 of NESTF 2016[227].

289. The result of the various permutations the rules have gone through is that we have two sets of slightly different rules relating to antennas: those recommended by Mr Barr in his Reply in the Electricity Distribution Activities table; and those recommended by Mr Barr and Mr McCallum-Clark in the Telecommunications, Radio Communication, Navigation or Metrological Communication activities table. We did not understand that antennas would be used for electricity distribution. Rather, we understood the purpose of including the rules in that table was because electricity distributors rely in part on radio and telecommunication activities to maintain their operations. It seems to us that the rules describe the activities, not the operators, so it is irrelevant whether the user of an antenna is an electricity distributor or a telecommunications company, the rule relates to the telecommunication or radio communication (which are the same thing in reality) ability of the antenna. We conclude that these rules only need be located in the Telecommunications table.

290. We agree with the evidence of Mr Barr and Mr McCallum-Clark regarding the structure of the rules relating to antennas. We recommend the following three rules be included:

> ***30.5.6.8*** ***Antennas, and ancillary equipment***
> *Provided that for panel antennas the maximum width is 0.7m and for all other antenna types the maximum surface area is no greater than 1.5m2 and for whip antennas, less than 4m in length.*
>
> *Where located in the Rural Zone within the Outstanding Natural Landscape or Rural Landscape Classification, antennas must be finished in colours with a light reflectance value of less than 16%.*
>
> Permitted activity.
>
> ***30.5.6.9*** ***Antennas, and ancillary equipment***
> *Subject to Rule 30.5.6.10, provided that for panel antennas the maximum width is between 0.7m and 1.0m and for all other antenna types the surface*

226 M McCallum-Clark, EiC at paragraph 36

227 Joint Witness Statement at paragraph 2.1(k) and Appendix 1

area is between 1.5m^2 and 4m^2 and for whip antennas, more than 4m in length.

Control is reserved to:

a. Location
b. appearance, colour and visual effects

Controlled activity.

30.5.6.10 Any antennas located in the following:

a. any identified Outstanding Natural Feature;
b. the Arrowtown Residential Historic Management Zone;
c. Arrowtown Town Centre;
d. Queenstown Special Character Area;
e. Significant Natural Areas; and
f. Heritage, Features and Heritage Overlay Areas.

Discretionary activity.

5.20. Rules 30.4.15 and 30.4.16

291. These rules, as notified, related to buildings larger than 10m^2 in area and 3m in height associated with utilities, other than masts for telecommunication and radio facilities, navigation or meteorological communication facility or supporting structures for lines. Under Rule 30.4.15 such buildings were a controlled activity with control reserved to:

- *Location*
- *External appearance and visual effects*
- *Associated earthworks*
- *Parking and access*
- *Landscaping*
- *Where a site is subject to any natural hazard and the proposal results in an increase in gross floor area: an assessment by a suitably qualified person is provided that addresses the nature and degree of risk the hazard(s) pose to people and property, whether the proposal will alter the risk to any site, and the extent to which such risk can be avoided or sufficiently mitigated.*

292. Rule 30.4.16 classified such buildings as discretionary activities where they were located in: any significant natural area; the Arrowtown Residential Historic Management Zone; or the Remarkables Park Zone. Both rules contained the following clause:

However, this rule shall not apply where the provisions of the underlying zone or a District Wide matter specify a more restrictive activity status.

293. Three submissions[228] sought amendments to Rule 30.4.15, while two[229] sought amendments to Rule 30.4.16. PowerNet sought that Rule 30.4.15 apply to structures as well as buildings, and, along with Aurora, sought the deletion of the provision quoted in the previous paragraph applying more restrictive zone standards. PowerNet also sought that it be clarified that smaller buildings were permitted. Ms Chin and Mr Vautier sought that such buildings be permitted where the zone provisions provided for similar scale buildings to be permitted.

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228 Submissions 251, 368 and 635

229 Submissions 251 (supported by FS1117, FS1121 and FS1097) and 635

294. PowerNet sought the deletion of the application of more restrictive zone provisions from Rule 30.4.16, while Aurora sought that electricity cabinets and kiosks be exempt from this rule.

295. Although he did not specifically discuss these two rules in his Section 42A report, Mr Barr did recommend the deletion of the clause applying more restrictive provisions, from each rule. He also recommended that a permitted activity provision be included for buildings smaller than those covered by these rules, as well as some amendments to the natural hazard matter of control under Rule 30.4.15.

296. Ms Justice[230] considered that the additional permitted activity rule satisfied PowerNet's concerns. Ms Dowd provided us with photographic examples of the types of equipment Aurora wanted exempted from Rule 30.4.16. It was her opinion that such equipment could be considered as controlled activities[231].

297. In his Reply Statement, Mr Barr continued to recommend the three rules he recommended in the Section 42A Report with only minor amendments. He deleted the matter of control relating to natural hazards consistent with his treatment of other rules, and he deleted the reference to the Remarkables Park Zone in Rule 30.4.16[232] and, as a result of him accepting that provision should be made for wind electricity generation discussed above, he included an exclusion of wind electricity generation masts from these rules.

298. We are largely in agreement with the rules as presented by Mr Barr in his reply. We do not consider that providing for utility buildings of the type proposed by Aurora, even as controlled activities, in significant natural areas or the Arrowtown Residential Historic Management Zone would be consistent with the objectives and policies in the strategic chapters of this Plan, nor with the relevant provisions of s.6 of the Act.

299. The one matter where we disagree with Mr Barr is in relation to his inclusion of wind electricity masts in the rules. The rules explicitly state that they only relate to buildings associated with a utility. Electricity generation does not fall within the definition of utility. It is only equipment and lines for the transmission and distribution of electricity that fall within that definition. Thus, in our view his inclusion is unnecessary. If it were necessary, we would have also included an exemption for free-standing solar electricity generation and solar water heating.

300. Mr Barr and Mr McCallum-Clark agreed that to ensure consistency with the NESTF 2016, the exclusions should be rather more clearly expressed in each rule. We agree and have incorporated those changes.

301. Consequently, subject to some minor grammatical changes for clarification purposes, we recommend the following three rules replace Rules 30.4.15 and 30.4.16:

> *30.5.1.1* ***Buildings associated with a Utility***
> *Any building or cabinet or structure of 10m^2 or less in total footprint and 3m or less in height which is not located in the areas listed in Rule 30.5.1.4. This rule does not apply to:*
> *a. Masts or poles for navigation or meteorology;*

230 Megan Justice, EiC, paragraph 4.16

231 Joanne Dowd, EiC, paragraph 42

232 As this zone has been formally excluded from the PDP by the Council its deletion was automatic in any event

b. *Poles, antennas, and associated cabinets (cabinets up to 10m^2 in area and 3m in height, exclusive of any plinth or other foundation), for any telecommunication and radio communication;*
c. *Lines and support structures.*

Permitted activity

30.5.1.3 ***Buildings associated with a Utility***

The addition, alteration or construction of buildings greater than 10m^2 in total footprint or 3m in height, other than buildings located in the areas listed in Rule 30.5.1.4.

This rule does not apply to:

a. *Masts or poles for navigation or meteorology;*
b. *Poles, antennas, and associated cabinets (cabinets up to 10m^2 in area and 3m in height, exclusive of any plinth or other foundation), for any telecommunication and radio communication;*
c. *Lines and support structures.*

Control is reserved to:

a. *location;*
b. *external appearance and visual effects;*
c. *associated earthworks;*
d. *parking and access;*
e. *landscaping.*

Controlled activity.

30.5.1.4 ***Buildings associated with a utility***

The addition, alteration or construction of buildings in:

a. *Any Significant Natural Area*
b. *The Arrowtown Residential Historic Management Area.*

This rule does not apply to:

c. *Masts or poles for navigation or meteorology;*
d. *Poles, antennas, and associated cabinets (cabinets up to 10m^2 in area and 3m in height, exclusive of any plinth or other foundation), for any telecommunication and radio communication;*
e. *Lines and support structures.*

Discretionary activity.

5.21. Rules 30.4.17 and 30.4.18

302. As notified, these rules provided for flood protection works. Rule 30.4.17 was a permitted activity described as follows:

Flood Protection Works *for the maintenance, reinstatement, repair or replacement of existing flood protection works for the purpose of:*

- *maintaining the flood carrying capacity of water courses and/or maintaining the integrity of existing river protection works*
- *fill works undertaken within Activity Area 1f of the Shotover Country Special Zone*

303. Rule 30.4.18 classified all other flood protection works as a discretionary activity.

304. Two submissions[233] on Rule 30.4.17 both sought that the rule simply state: **Flood Protection Works** for the maintenance, reinstatement, repair or replacement of existing flood protection works. The sole submission on Rule 30.4.18 noted that the definition of utility did not include flood protection works and queried the location of the rule.

305. Mr Barr neither mentioned these rules, nor recommended any change to them, in his Section 42A Report, and we heard no evidence on them. Mr Barr did respond to submission 806 and recommend including flood protection works within the definition of utility[234]. The only amendment recommended by Mr Barr in his reply was to clarify the relationship between the two rules.

306. We have considered the amendments sought to Rule 30.4.17. It is clear that the rule only applies to existing flood protection works, and while the term "maintenance, reinstatement, repair or replacement" could be said to encompass the condition "maintaining the flood carrying capacity of water courses and/or maintaining the integrity of the existing river protection works", we consider the purpose of the condition is to limit the scope of permitted works, and is therefore necessary. However, we do not understand how the second condition is relevant to this rule. It relates to an area in a zone which has not been notified in Stage 1 of the PDP, and there is no evidence that the zone will ever become part of the PDP. We agree with the submitters that it should be deleted.

307. We note that Shotover Country Limited[235] opposed Submission 615 on the basis that there was no jurisdiction to remove the part of the rule related to the Shotover Country Special Zone as that zone had not been included in Stage 1 of the Review. We find that logic rather unusual. As we have explained above, we consider the reverse to be correct. The rule should not have been included in the PDP in the first place.

308. We recommend these rules be adopted as notified with the exception that the phrase "fill works undertaken within Activity Area 1f of the Shotover Country Special Zone" be deleted from Rule 30.4.17, and that the rules be renumbered 30.5.1.2 and 30.5.1.5 respectively.

5.22. Rules 30.4.19, 30.4.20 and 30.4.21

309. There were no submissions on Rules 30.4.19 and 30.4.20. The only submission[236] on Rule 30.4.21 sought its deletion.

310. Mr Barr recommended the deletion of Rule 30.4.21 in his Reply Version. We agree with that recommendation and note that as the Council has withdrawn the Remarkables Park Zone from the PDP[237], this rule has automatically been removed.

311. We recommend that Rules 30.4.19 and 30.4.20 be adopted without alteration subject to being renumbered 30.5.1.6 and 30.5.1.7 respectively.

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233 Submissions 607 and 635 (supported by FS1105 and FS1137, opposed by FS1294)

234 Section 42A report, paragraph 9.53. Also note Submission 383 also sought the inclusion of flood protection works in the definition of utility.

235 Further submission 1294

236 Submission 251

237 Minutes of full Council, 25 May 2017

5.23. Rule 30.5.6

312. This standard required that where a utility was a building, it needed to be set back from internal and road boundaries in accordance with the setback requirements for accessory buildings in the relevant zone. Non-compliance required consent as a discretionary activity.

313. There were three submissions on this rule, one seeking its retention[238]. PowerNet[239] sought that the non-compliance status changed to restricted discretionary activity. Ms Chin and Mr Vautier[240] sought that the rule take account of building platforms, although it was unclear how it was intended this occur.

314. Mr Barr made no comments or recommendations in respect of this rule, other than changing its number in the re-arrangement proposed in the Reply Version. Ms Justice maintained her view that restricted discretionary activity status was appropriate and suggested a matter of discretion that she considered would be suitable[241]. Unfortunately, as Ms Justice did not attend the hearing, we were unable to discuss her proposal with her, nor explore with her whether it covered all the matters that may be relevant.

315. Mr Barr and Mr McCallum-Clark recommended[242] that, to ensure consistency with the NESTF 2016, the rule should explicitly exclude:

a. Poles, antennas, and associated cabinets (up to 10m2 in area and 3m in height) for telecommunication and radio communication; and
b. Lines and support structures for telecommunications.

316. We agree with that recommendation.

317. In the absence of clear evidence on how the rule could be changed and still implement the relevant policies, we recommend it be adopted as notified subject to amending "shall" to "must", inserting the exclusions recommended by Mr Barr and Mr McCallum-Clark, and changing the rule number to 30.5.2.1.

5.24. Rule 30.5.7

318. This standard set a maximum building size of 10m^2 in area and 3m in height for all utility buildings in ONLs and on ONFs. Non-compliance required a discretionary activity consent.

319. The four Telecommunication Companies[243] sought that the rule be deleted, while PowerNet[244] sought that it be retained.

320. Mr Barr discussed in detail the issue of utilities locating in ONLs and on ONFs in his Section 42A Report[245]. While this discussion covered the relevant objectives and policies, and several of the rules, he did not refer to this rule directly. It was not referred to by any of the other witnesses we heard from either.

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238 Submission 635
239 Submission 251
240 Submission 368
241 Megan Justice, EiC, paragraph 4.20
242 Joint Witness Statement, dated 25 September 2017, at paragraph 2.1(k)
243 Submissions 179, 191, 421 (supported by FS1121) and 781
244 Submission 251, supported by FS1121
245 Issue 4, Section 11

321. In his Reply Statement, Mr Barr discussed the issue of utilities locating in ONLs and on ONFs again, and recommended a series of rule amendments which he considered provided appropriate management of utilities while still providing safeguards to manage the adverse effects of them, particularly where matters under section 6 of the Act were at issue[246]. His conclusion in respect of this rule was to amend it only by excluding masts and supporting structures for lines, for which he was recommending separate controls.

322. We agree with Mr Barr's reasoning and largely accept his recommendation regarding this rule. Mr Barr and Mr McCallum-Clark also recommended[247] amending the exclusions consistent with Rules 30.5.1.1 [notified 30.4.15] and 30.5.1.3 [notified 30.4.16]. We agree with those amendments also.

323. We recommend some minor wording changes consistent with our wording of other rules in this chapter, such that it reads:

> *30.5.2.2* ***Buildings associated with a Utility in Outstanding Natural Landscapes (ONL) and Outstanding Natural Features (ONF)***
>
> *Any building within an ONL or ONF must be less than 10m^2 in area and less than 3m in height.*
>
> *This rule does not apply to:*
>
> *a. masts or poles for navigation or meteorology;*
>
> *b. poles, antennas, and associated cabinets (cabinets up to 10m^2 in area and 3m in height, exclusive of any plinth or other foundation), for any telecommunication and radio communication;*
>
> *c. lines and support structures.*
>
> Non-compliance requires a discretionary activity consent.

5.25. Rule 30.5.8

324. This rule provided that all buildings and structures, other than masts and antennas, had to comply with the relevant maximum height limits of the zone they were located in. Non-compliance required consent as a discretionary activity.

325. Five submissions sought the deletion of this rule[248], and two sought amendments[249]. The submissions seeking amendments both sought exclusion of line supporting structures from the rule.

326. Mr Barr did not discuss this rule in his Section 42A Report and did not recommend any changes to it. While Mr McCallum-Clark recommended deletion of the rule, he did not clearly set out in his evidence reasons in support of that deletion. Ms Justice[250] explained that, in terms of support structures, the Electricity Industry Standards and Regulations set out minimum safety separation distances which control the height of support structures, and that no utility provider would use support structures higher than necessary.

327. Mr Barr did not discuss this in his Reply Statement and the only amendment he recommended was a re-ordering of the exemption wording in the rule.

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246 Craig Barr, Reply Statement, Section 11

247 Joint Witness Statement dated 25 September 2017 at paragraph 2.1(d)

248 Submissions 179, 191, 368, 421 (supported by FS1121) and 781 (supported by FS1342)

249 Submissions 251 and 638

250 Megan Justice, EiC, paragraph 4.21

328. We agree with PowerNet and Aurora that support structures should be exempt from this rule in the same way that masts and antennas are. We note, in coming to this conclusion, that as there is no underlying zoning of roads, there is effectively no height limit on line support structures when they are located in the road reserve due to the operation of s.9 of the Act. It would seem inconsistent to provide that support structures within the road reserve have no height restriction, but if they need to locate outside of the road reserve they need to reduce height to that applying to buildings in the relevant zone (or obtain a consent). We also agree that achieving appropriate safety separation distances for electricity lines is important, and that electricity lines companies are unlikely to use support structures taller than necessary.

329. Mr Barr and Mr McCallum-Clark recommended[251] the exclusion be worded consistent with that recommended for the previous rule. We agree that such consistency is appropriate.

330. For those reasons we recommend this rule read:

30.5.2.3 ***Height***

All buildings or structures must comply with the relevant maximum height provisions for buildings of the zone they are located in.

This rule does not apply to:

a. masts or poles for navigation or meteorology;

b. poles, antennas, and associated cabinets (cabinets up to 10m^2 in area and 3m in height, exclusive of any plinth or other foundation), for any telecommunication and radio communication;

c. lines and support structures.

Non-compliance requires a discretionary activity consent.

5.26. Rule 30.5.9

331. This rule required that all utilities' development comply with NZS4404:2011. Non-compliance required consent as a discretionary activity.

332. Four submissions sought that rule be deleted[252], while PowerNet[253] sought that the consent required for non-compliance be changed to restricted discretionary activity.

333. Although not discussed in his Section 42A Report, Mr Barr recommended deletion of the rule. It is our understanding that the relevant standard applies to earthworks related to subdivision[254]. There does not seem to be any direct relationship to utilities' development. We agree with the QLDC submission[255] that compliance with such standards, to the extent it is required, would be achieved through other legislation.

334. We recommend the rule be deleted.

5.27. New Rules Relating to Telecommunications

335. The evidence provided by the Telecommunications Companies[256] was that the changing technology of telecommunications, combined with the increasing demand for mobile services,

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251 Joint Witness Statement dated 25 September 2017 at paragraph 2.1(d)

252 Submissions 179, 191, 383, 421 (supported by FS1121) and 781

253 Submission 251

254 Reasons given in Submissions 179, 191, 421 and 781

255 Submission 383.

256 G McCarrison and C Clune, Joint EiC, and M McCallum-Clark, EiC at paragraph 34

meant there was a move to small and microcells. Mr McCallum-Clark identified that if specific provision was not made for such infrastructure there was a risk that it would default to discretionary status, which, he considered, would be inappropriate.

336. Mr McCallum-Clark proposed two new activity rules[257]:
   a. Permitted activity status for small cells with a volume of no greater than 0.11m^3; and
   b. Controlled activity status for cells with a volume of between 0.11m^3 and 2.5m^3, with control reserved to appearance, colour and visual effects.

337. Mr Barr largely agreed with Mr McCallum-Clark's proposal[258], although he considered that such cells should require a discretionary activity consent when located within a heritage precinct. His proposed rules[259] also provided that any small cell with a volume exceeding 2.5m^3 would require discretionary activity consent.

338. Following caucusing, Mr Barr and Mr McCallum-Clark recommended further changes to these rules[260]. First, they recommended that the permitted activity refer to "small cell unit" consistent with the use of the term in the NESTF 2016 (Regulation 38), and that a definition of "small cell unit" the same as that in the NESTF 2016 be included in the PDP. They also recommended that the reference to "small cell" in the other two rules be changed to "microcell".

339. We agree with the reasoning of Mr McCallum-Clark and Mr Barr in respect of these three proposed rules and the proposed definition, with one exception. Mr Barr's reply version provided that small cell units (as defined in the NESTF 2016) would be a discretionary activity when located within a heritage precinct. That is consistent with Regulations 38 and 46 of the NESTF 2016. However, the wording changes proposed in the Joint Witness Statement, although described as being "a minor clarification"[261] have the effect of making small cell units a permitted activity in heritage precincts. Given the lack of explanation for this change in the Joint Witness Statement we do not consider that was intended, nor do we consider it appropriate as it does not give effect to the objectives and policies of the PDP as they apply to heritage precincts.

340. Consequently we recommend the following three new rules be inserted:

30.5.6.11 ***Small Cell Units***
Provided that the small cell unit is not located within a Heritage Precinct

Permitted activity

30.5.6.12 ***Microcells***
A microcell and associated antennas with a volume of between 0.11m^3 and 2.5m^3.
Provided that the microcell is not located within a Heritage Precinct

Control is reserved to:
a. appearance;
b. colour; and

257 Proposed Rules 30.4.28 and 30.4.29 in the amended version of Chapter 30 attached to his EiC
258 C Barr, Reply Statement at paragraph 10.1
259 C Barr, Reply Statement, Appendix 1, Rules 30.4.51, 30.4.52 and 30.4.53
260 Joint Witness Statement dated 25 September 2017, at paragraphs 2.1(l), 2.1(m), 2.1(n) and 2.1(o)
261 ibid at paragraph 2.1(o)

c. visual effects

Controlled activity

30.5.6.13 ***Small Cell Units and Microcells***

30.5.13.6.1 A microcell and associated antennas with a volume more than 2.5m^3

OR

30.5.6.13.2 A small cell unit or microcell located within a Heritage Precinct

Discretionary activity

341. We also recommend to the Stream 10 Hearing Panel that a new definition of "small cell unit", as defined in the NESTF 2016, be included in Chapter 2.

5.28. Rule 30.6

342. This rule set out the situations in which resource consent applications for activities that would not require written consent of other person and not be notified or limited notified.

343. There were two submissions on this rule. One submission[262] sought that where it applied to small and community scale distributed electricity generation, it only apply to proposals having a rated capacity of less than 3.5kW. The second[263] sought that notification occur for renewable energy systems over 1.2m in height.

344. Mr Barr discussed this in detail in his Section 42A Report. He noted that stand alone power systems and small and community scale distributed electricity generation are to be controlled through a series of performance standards. Non-compliance with those performance standards could have adverse effects on neighbours. He recommended deleting stand-alone power systems and small and community scale distributed electricity generation from this rule, leaving the circumstances of each application to determine whether an application be notified or not.

345. We agree with Mr Barr. We add that the proposed location of such activities in one of the sensitive locations listed in [notified] Rule 30.4.3 may also justify public notification, depending upon the circumstances of the proposal. We note that the further submission by Queenstown Park Limited opposing Submission 20 gave as its reasons that applications for utilities should generally not be notified. The activities the submission refers to are not utilities, rather they are renewable electricity generation activities.

346. In his Reply Statement, Mr Barr recommended two exceptions to the proposed rule (30.6.1.3) exempting controlled activity applications from notification, both related to activities near the National Grid. The additional wording recommended by Mr Barr read:

… except for applications when within the National Grid Corridor or within 45 m of the designated boundary of Transpower New Zealand Limited's Frankton substation.

347. We understood from Mr Renton, as we have discussed above in Section 5.16, that Transpower preferred to work with landowners to ensure buildings and structures close to the Frankton

262 Submission 383

263 Submission 20 opposed by FS1097.

Substation could be erected. It was the nature of materials and way buildings and structures were erected that was critical. From that understanding, we agree that applications under our recommended Rule 30.5.3.4 not be exempt from notification. There is value in Transpower having the ability to be involved in any such application.

348. The exemption is relation to applications in the National Grid Corridor recommended by Mr Barr is superfluous as there are no rules that we are recommending that are controlled activities in that corridor. Under recommended Rules 30.5.3.2 and 30.5.3.3 certain activities are permitted. Activities not meeting the standards applicable to those permitted activities requires consent as a non-complying activity (Rules 30.5.4.1 and 30.5.4.2).

349. Consequently, we recommend that 30.6.1.1 and 30.6.1.2 be deleted from Rule 30.6 and the remaining two clauses be renumbered, and what is now 30.6.1.1 read:

Controlled activities except for applications when within 45 m of the designated boundary of Transpower New Zealand Limited's Frankton substation.

5.29. Summary of Conclusions on Rules

350. We have set out in full in Appendix 1 the rules we recommend the Council adopt. For all the reasons set out above, we are satisfied that these rules are the most effective and efficient means of implementing the policies so as to achieve the objectives of Chapter 30, and those in the Strategic Directions chapters. Where we have recommended rules not be included, that is because, as our reasons above show, we do not consider them to be efficient or effective.

6. CHANGES SOUGHT TO DEFINITIONS

6.1. Introduction

351. Submitters on this Chapter also lodged submissions on a number of notified definitions and also sought the inclusion of several new definitions. In accordance with the Hearing Panel's directions in its Second Procedural Minute dated 5 February 2016, we heard evidence on these definitions and have considered them in the context of the rules which apply them. However, to ensure a consistent outcome of consideration of definitions, given the same definition may be relevant to a number of hearing streams, our recommendations in this part of the report are to the Hearing Stream 10 Panel, who have overall responsibility for recommending the final form of the definitions to the Council. As the recommendations in this section are not directly to the Council, we have listed the wording we are recommending for these definitions in Appendix 5.

352. We note that we have already dealt with the following definitions relevant to the rules relating to the National Grid in Section 5.15 above:

a. National Grid Corridor;
b. National Grid Yard;
c. National Grid Sensitive Activities;
d. Sensitive Activities – Transmission corridor;
e. Artificial crop protection structure;
f. Crop support structure;
g. Earthworks within the National Grid Yard; and
h. Protective canopy.

We do not discuss those further.

353. In Section 5.14 above we dealt with the definition of "minor upgrading".

354. Transpower[264] lodged submissions supporting the definitions of "amenity" and "structure". As both are terms defined in s.2 of the Act we consider no further discussion of these submissions is warranted. We recommend the submissions be accepted.

355. Aurora[265] lodged a submission supporting the definition of "development". In the context of this chapter, we recommend that submission be accepted.

356. The Telecommunication Companies[266] lodged submissions supporting the definition of "height" and sought its retention. In the context of this chapter, we recommend those submissions be accepted.

357. Two of the definitions sought by Aurora[267] were directly related to its submission seeking rules to impose setbacks from certain of its lines. We discussed this part of Aurora's submission in detail in Section 2.2 above and recommended that it not be adopted. As the two definitions would only need to be included in the PDP if we had accepted that submission, we recommend that the submission seeking the inclusion of definitions for "critical electricity lines" and "electricity distribution line corridor" be rejected.

6.2. Building

358. As notified, this was defined as:

Building *Shall have the same meaning as the Building Act 2004, with the following exemptions in addition to those set out in the Building Act 2004:*

- *Fences and walls not exceeding 2m in height.*
- *Retaining walls that support no more than 2 vertical metres of earthworks.*
- *Structures less than 5m² in area and in addition less than 2m in height above ground level.*
- *Radio and television aerials (excluding dish antennae for receiving satellite television which are greater than 1.2m in diameter), less than 2m in height above ground level.*
- *Uncovered terraces or decks that are no greater than 1m above ground level.*
- *The upgrading and extension to the Arrow Irrigation Race provided that this exception only applies to upgrading and extension works than involve underground piping of the Arrow Irrigation Race.*
- *Flagpoles not exceeding 7m in height.*
- *Building profile poles, required as part of the notification of Resource Consent applications.*
- *Public outdoor art installations sited on Council-owned land.*
- *Pergolas less than 2.5 metres in height either attached or detached to a building.*
- *Notwithstanding the definition set out in the Building Act 2004, a building shall include:*

264 Submission 805
265 Submission 635
266 Submissions 179, 181, 421 and 781
267 Submission 635

- *Any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on a site for residential accommodation for a period exceeding 2 months.*

359. The Telecommunication Companies[268] sought that this be amended to refer to the Building Act 2004 definition. Their submission was that the inclusion of a number standards in the definition caused confusion and that such standards should be included in the rules rather than the definition. Transpower[269] supported the notified definition.

360. Mr Barr agreed with the further submission by Arcadian Triangle Ltd[270] that the definition had been used in the ODP for at least 20 years and that it was preferable to have the exemptions listed in one place, rather than scattered repeatedly through the rules. Mr McCallum-Clark did not address this issue in his evidence and omitted this definition from his list of recommended changes to definitions[271].

361. In the absence of any evidence in support of this definition being amended, we recommend the submissions of the Telecommunication Companies and the further submissions in support be rejected, and Transpower's submission and the further submissions in opposition by Arcadian Triangle Ltd be accepted.

6.3. Telecommunications Facility

362. As notified, this read:

Telecommunications Facility *Means devices, such as aerials, dishes, antennae, wires, cables, casings, tunnels and associated equipment and support structures, and equipment shelters, such as towers, masts and poles, and equipment buildings and telephone boxes, used for the transmitting, emission or receiving of communications.*

363. The Telecommunication Companies[272] sought minor amendments to the wording of this definition. Mr Barr noted[273] that with the replacement of the word 'facilities' with the word 'mast' in the relevant rules, this definition becomes redundant and should be deleted.

364. We agree with Mr Barr's assessment and recommend the definition be deleted.

6.4. Utility

365. As notified, this read:

Utility *Means the systems, services, structures and networks necessary for operating and supplying essential utilities and services to the community including but not limited to:*

- *transformers, lines and necessary and incidental structures and equipment for the transmissions and distribution of electricity;*
- *pipes and necessary incidental structures and equipment for transmitting and distributing gas;*

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268 Submissions 179 (supported by FS1097, opposed by FS1255), 191 (supported by FS1097, opposed by FS1255), 421 (opposed by FS1117 and FS1097) and 781

269 Submission 805

270 FS1255

271 Matthew McCallum-Clark, EiC, Appendix

272 Submissions 179, 191, 421 and 781 (supported by FS1342)

273 C Barr, Reply Statement, paragraph 14.1

- *storage facilities, pipes and necessary incidental structures and equipment for the supply and drainage of water or sewage;*
- *water and irrigation races, drains, channels, pipes and necessary incidental structures and equipment (excluding water tanks);*
- *structures, facilities, plant and equipment for the treatment of water;*
- *structures, facilities, plant, equipment and associated works for receiving and transmitting telecommunications and radio communications (see definition of telecommunication facilities);*
- *structures, facilities, plant, equipment and associated works for monitoring and observation of meteorological activities and natural hazards;*
- *structures, facilities, plant, equipment and associated works for the protection of the community from natural hazards.*
- *structures, facilities, plant and equipment necessary for navigation by water or air;*
- *waste management facilities; and*
- *Anything described as a network utility operation in s166 of the Resource Management act 1991*
- *Utility does not include structures or facilities used for electricity generation, the manufacture and storage of gas, or the treatment of sewage.*

366. Seven submissions on this definition sought the following changes:
    a. Add "flood protection works"[274];
    b. Include "substations"[275];
    c. Include "temporary emergency generators" by excluding them from the exclusion of electricity generation facilities[276];
    d. Add "antennas, lines (including cables)" to the 6th bullet point[277] or alternatively delete the definition and replace with the definition of "infrastructure" from the Act; and
    e. Add "structures for transport on land by cycleways, rail, roads, walkway, or any other means"[278].

367. Transpower[279] supported the definition but sought a minor grammatical change to refer to transmission of electricity in the singular.

368. In his Section 42A Report[280], Mr Barr recommended that substations and flood protection works be included in the definition, but that other submissions be rejected. Mr MacColl, appearing for NZTA, disagreed with Mr Barr's assessment that structures for land transport were not utilities[281]. He noted that NZTA was a network utility operator and thus its roading network, through the inclusion in the definition of anything described as a network utility operation by the Act, was a utility. Queenstown Park Ltd supported the NZTA amendment

274 Submission 383
275 Submission 635 supported by FS1301
276 Submission 635
277 Submissions 179 (opposed by FS1132), 191 (supported by FS1121, FS1097), 421 and 781 (supported by FS1342)
278 Submission 719 supported by FS1097
279 Submission 805
280 Craig Barr, Section 42A Report, paragraphs 9.53 to 9.57
281 Anthony MacColl, EiC, paragraphs 21 to 22

provided it included gondolas[282]. Mr Fitzpatrick appeared in support of this further submission and Mr Young filed written legal submissions.

369. In his Reply Statement, Mr Barr expressed the concern that the definition of utilities was potentially too enabling, as it could allow any person to apply the utility chapter to their activities, irrespective of whether it was an essential service to the community. He considered that the definition should simply confirm that the chapter applies only to network utility operators[283]. Otherwise, he did not recommend any further amendments to the definition.

370. We have some sympathy with the concerns expressed by Mr Barr in his Reply Statement. When looked at closely, for the most part the definition repeats, although with different wording, the activities described in s.166 of the Act which are undertaken by network utility operators. There are some additional activities included such as works for protection from natural hazards, waste management facilities, and facilities for meteorological activities. However, the phrase used to include reference to s.166 actually refers to the operations listed, and is not limited to network utility operators. This means, for instance, that the private operation of a road would be deemed a utility for the purposes of Chapter 30. It is exemplified by the submissions of Queenstown Park Limited suggesting that a gondola proposal of the company's should be considered a utility because it would offer a form of land transport.

371. We agree with Mr Barr that there is no scope to modify the definition to deal with this matter. We do recommend that the Council review this definition and consider, in the context of the provisions of Chapter 30 as we are recommending them, whether it is actually providing for the operations they expect it to be providing for.

372. As for the definition itself, we agree with Mr Barr that flood protection works and substations should be included. We do not consider it necessary to exclude temporary emergency generators from the exclusion as we have recommended rules in the Energy Section of the chapter to provide for such activities as generation activities. We do not consider the inclusion the NZTA sought is necessary. Rather, we consider retaining their operations through the wording of s.166 is preferable to widening it in the way the NZTA submission sought.

373. We consider the addition sought by the Telecommunication companies to be a "belts and braces" approach. The definition of Telecommunication Facilities includes those terms. It would actually be cleaner to just replace the entire 6th bullet point with the term Telecommunication Facilities, but we do consider there to be scope to make such a change.

374. We additionally note, however, for the reasons discussed in Section 4.3 above, that in our view the Council should initiate a variation to exclude airport activities and airport related activities occurring within the Airport Mixed Use zone from the definition of Utility.

375. For all of those reasons we recommend the definition of utility be as follows[284]:

> ***Utility*** *Means the systems, services, structures and networks necessary for operating and supplying essential utilities and services to the community including but not limited to:*
>
> *a. substations, transformers, lines and necessary and incidental structures and equipment for the transmissions and distribution of electricity;*

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282 Further submission 1097

283 Craig Barr, Reply Statement, paragraphs 14.11 to 14.13

284 We have changed the bullet points to an alphabetic list for ease of future reference

b. *pipes and necessary incidental structures and equipment for transmitting and distributing gas;*
c. *storage facilities, pipes and necessary incidental structures and equipment for the supply and drainage of water or sewage;*
d. *water and irrigation races, drains, channels, pipes and necessary incidental structures and equipment (excluding water tanks);*
e. *structures, facilities, plant and equipment for the treatment of water;*
f. *structures, facilities, plant, equipment and associated works for receiving and transmitting telecommunications and radio communications (see definition of telecommunication facilities);*
g. *structures, facilities, plant, equipment and associated works for monitoring and observation of meteorological activities and natural hazards;*
h. *structures, facilities, plant, equipment and associated works for the protection of the community from natural hazards.*
i. *structures, facilities, plant and equipment necessary for navigation by water or air;*
j. *waste management facilities;*
k. *flood protection works; and*
l. *Anything described as a network utility operation in s166 of the Resource Management act 1991*
m. *Utility does not include structures or facilities used for electricity generation, the manufacture and storage of gas, or the treatment of sewage.*

6.5. Energy Activities

376. QLDC[285] sought the inclusion of a new definition of energy activities to read:

Energy Activities

- *Small and Community-Scale Distributed Electricity Generation and Solar Water Heating*
- *Renewable Electricity Generation*
- *Non-renewable Electricity Generation*
- *Wind Electricity Generation*
- *Solar Electricity Generation*
- *Solar Water Heating*
- *Stand-Alone Power Systems (SAPS)*
- *Biomass Electricity Generation*
- *Hydro Generation Activity*
- *Mini and Micro Hydro Electricity Generation*

377. Mr Barr recommended inclusion of this submission so as to provide clarity on which activities would be intended covered by the rules on energy activities, and that it would limit the possibility for unintended activities to be applicable[286]. There were no further submissions and no other evidence on this submission.

378. We agree with Mr Barr's reasoning, but note that in his suggested wording he has added "Includes the following" before the list of activities. Those words undermine his rationale for

285 Submission 383

286 Craig Barr, Section 42A Report, paragraphs 9.24 and 9.25

the definition by allowing for other non-listed activities to be included. We also doubt that there is scope to widen the definition in that way. We agree the definition needs some introductory words but consider that such words should limit the term "energy activities" to those in the list and no others. Therefore, we recommend the definition read:

Energy Activities *means the following activities:*

a. Small and Community-Scale Distributed Electricity Generation and Solar Water Heating;
b. Renewable Electricity Generation;
c. Non-renewable Electricity Generation;
d. Wind Electricity Generation;
e. Solar Electricity Generation;
f. Solar Water Heating;
g. Stand-Alone Power Systems (SAPS);
h. Biomass Electricity Generation;
i. Hydro Generation Activity;
j. Mini and Micro Hydro Electricity Generation.

6.6. Electricity Distribution

379. Aurora[287] sought the inclusion of a new definition of electricity distribution to read as follows:

Electricity Distribution *Means the conveyance of electricity via electricity distribution lines, cables, support structures, substations, transformers, switching stations, kiosks, cabinets and ancillary buildings and structures, including communication equipment, by a network utility operator. For the avoidance of doubt, this includes, but is not limited to Aurora Energy Limited assets shown on the planning maps.*

380. Mr Barr noted that Federated Farmers opposition was to the critical lines network provisions we dealt with earlier in this report, and they did support the notion of clarifying the lines which were not part of the national grid. Transpower supported the submission for similar reasons. Mr Barr supported the inclusion of a definition to achieve that distinction and recommended the Aurora definition be adopted, subject to deletion of the last sentence. We heard no other evidence on this definition.

381. We agree that it would be useful for the PDP to include a definition distinguishing those electricity lines that do not form part of the national grid. We recommend the definition, as modified by Mr Barr, be adopted.

6.7. Regionally Significant Infrastructure

382. Two submissions[288] sought the inclusion of a definition of regionally significant infrastructure. Each definition was different so we do not repeat them here.

383. Mr Barr identified that this definition had been considered in the Stream 1B hearing[289]. He adopted the definition recommended by Mr Paetz in that hearing, but modified it to include reference to the sub-transmission network (Mr Barr's term for Aurora's "critical electricity lines").

384. The only submissions in relation to this definition were from Mr Young on behalf of Queenstown Park Ltd. He submitted that if the gondola QPL intends to construct proceeded,

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287 Submission 635 supported by FS1301, opposed by FS1132

288 Submissions 635 (supported by FS1077, FS1211, FS1097, opposed by FS1132) and 805 (supported by FS1121, FS1159, FS1340, FS1077, FS1106, FS1208, FS1211, FS1253)

289 Craig Barr, Section 42A Report, paragraphs 9.2 to 9.8.

it would be a significant addition to Queenstown's tourist offering. However, we cannot see how that, nor the connection of the Remarkables Park Zone to the Remarkables ski field as referred to by Mr Young, are regionally significant. In our view, for infrastructure to be regionally significant it must do more than just serve this district.

385. We have considered the Recommendation Report of the Stream 1B Panel and agree with that Panel's conclusion[290] that the identification of regionally significant infrastructure is primarily a matter for the Regional Council, except where the proposed RPS might be considered ambiguous or inapplicable. We adopt that Panel's reasoning and recommend the definition be worded as that Panel recommended.

6.8. Support Structure

386. Aurora[291] sought the inclusion of a definition of support structure reading as follows:

Support Structure *Means a utility pole or tower that forms part of the electricity distribution network or National Grid that supports conductors as part of an electricity distribution line or transmission line. This includes any ancillary equipment, such as communication equipment or transformers, used in the conveyance of electricity.*

387. Mr Barr agreed that adding this definition would add clarity to the rules as the term is used in several places[292]. He also considered whether it should be limited to electricity lines and concluded that as telecommunication lines have their own definition such a limitation would be satisfactory. He did recommend some minor word changes of a non-substantive nature.

388. The difficulty that we can see with the inclusion of the definition as recommended is that the term "support structures" is, as Mr Barr noted, used in the definition of telecommunications facility. The inclusion of this definition would mean that the reference in telecommunication facility would be limited to electricity lines, which is not what is intended. If "support structure" is to have a definition in the PDP it must be a definition which can be applied every time the term "support structure" is used.

389. We have examined our recommended text of Chapter 30 and related definitions and found that "support structure" is used both in relation to electricity lines and telecommunication lines, as well as other telecommunication facilities. We do not think that a satisfactory definition could be created to encompass all the actual uses of the term that would improve on the ordinary natural meaning of the words. We therefore recommend that this submission be rejected.

6.9. Reverse Sensitivity

390. Transpower[293] sought the inclusion of a definition of reverse sensitivity worded as follows:
Reverse Sensitivity: *is the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The 'sensitivity' is this: if the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity.*

290 Recommendation Report 3, paragraph 768
291 Submission 635, supported by FS1301, opposed by FS1132
292 Craig Barr, Section 42A Report, paragraphs 9.26 to 9.27
293 Submission 805, supported by FS1211, opposed by FS1077

391. Mr Barr was hesitant to recommend this definition as it essentially stated caselaw from a 2008 Environment Court decision and could be subject to further refinement by the courts[294].

392. Ms McLeod accepted Mr Barr's opinion and did not consider the definition was necessary[295]. The New Zealand Defence Force[296] tabled a letter accepting the recommendations in the Section 42A Report.

393. We accept that agreement between the parties and recommend that Transpower's submission seeking the reverse sensitivity definition be rejected.

6.10. Small Cell Unit

394. We have explained our reasons for including this new definition in Section 5.27 above. We agree with Mr Barr and Mr McCallum-Clark[297] that scope for the inclusion of this definition is provided by the submissions of the Telecommunications Companies[298]. We recommend that the definition read:

> ***Small Cell Unit means*** *a device:*
> *a. that receives or transmits radiocommunication or telecommunication signals; and*
> b. *the volume of which (including any ancillary equipment, but not including any cabling) does not exceed 0.11m^3.*

294 Craig Barr, Section 42A Report, paragraphs 9.35 to 9.37
295 Ainsley McLeod, EiC, p.29
296 Further Submission FS1211
297 Joint Witness Statement dated 25 September 2017 at paragraph 2.1(o)
298 Submissions 179, 191, 421 and 781

PART D: CHAPTER 36 - NOISE

13. PRELIMINARY

13.1. Stage 2 Variations

558. On 23 November 2016 the Council notified Stage 2 of the PDP and variations. That proposed the inclusion of new rules in this chapter providing noise controls for the Wakatipu Basin Zone and the Open Space and Recreation Zones.

559. We have left space for these rules in locations we consider appropriate for the respective rules. The rules do not form part of our recommendations and we discuss them no further.

13.2. General Submissions

560. Two submissions[388] generally supported this Chapter. As we recommend changes to this Chapter, we recommend those submissions be accepted in part.

561. Submission 115 stated that the landscape values of the District can be spoilt by noise from motor boats and lawnmowers. The submitter sought that the Plan institute a quiet day each week. Ms Evans considered that the PDP provisions set appropriate standards for the receipt of noise in a way that managed amenity standards[389]. We agree with Ms Evans' opinion. We also consider it would be both impractical and inconsistent with the general expectations of the people of the District to impose a noise ban on a weekly basis. We recommend this submission be rejected.

562. Submission 159 was concerned with noise from late night parties and sought increased monitoring. We agree with Ms Evans' analysis that the noise standards provide a basis for monitoring and enforcement[390]. The PDP cannot do any more than that. We recommend this submission be rejected.

13.3. 36.1 –Purpose

563. There were four submissions in relation to this section. These sought:
   a. the retention of the section unaltered[391];
   b. the retention of the third paragraph[392];
   c. amendment to exclude application of this chapter to the Town Centre Zone[393]; and
   d. amend to apply appropriate and consistent terminology[394].

564. Ms Evans agreed with the wording changes sought by the Southern District Health Board[395] for the reasons given in the submission[396]. She did not agree that the Chapter did not relate to the Town Centre Zones, noting that rules in Chapter 36 imposed restrictions on noise generated in that zone and received in residential zones, as well as imposing ventilation requirements in the Queenstown and Wanaka Town Centre zones. As a result, she recommended a series of minor word changes to the purpose statement in her Section 42A

388 Submissions 19 and 21
389 Ruth Evans, Section 42A Report, page 28
390 ibid, page 28
391 Submission 433, supported by FS1211, opposed by FS1097 and FS1117
392 Submission 1365
393 Submission 714
394 Submission 649
395 Submission 649
396 Ruth Evans, Section 42A Report, page 11

Report. The only substantive change she recommended in her Reply Statement was to amend the reference to the Civil Aviation Act to refer to the correct section.

565. We agree with Ms Evans (and the Southern District Health Board) that the amendments she has proposed to this section improve clarity and understanding of the purpose of the chapter. We also agree with her that the amendments she has proposed that are outside of the scope of the submissions lodged are minor with no substantive effect, or improve grammar, and therefore can be made under Clause 16(2).

566. The Stream 8 Hearing Panel has recommended to us[397] a further amendment to clarify that certain forms of noise (from music, voices and loudspeakers) generated in the Queenstown and Wanaka Town Centres are not managed under this Chapter. We recommend that change be made for the reasons given by the Stream 8 Panel.

567. We recommend the Section 36.1 be adopted as worded in Appendix 3 to this report, and the submissions be accepted in part.

14. 36.2 – OBJECTIVES AND POLICIES

14.1. Objective 36.2.1 and Policies

568. As notified, these read:

Objective ***Control the adverse effects of noise emissions to a reasonable level and manage the potential for conflict arising from adverse noise effects between land use activities.***

36.2.1.1 *Manage subdivision, land use and development activities in a manner that avoids, remedies or mitigates the adverse effects of unreasonable noise.*

36.2.1.2 *Avoid, remedy or mitigate adverse noise reverse sensitivity effects.*

569. The submissions on these sought:
   a. Retain all as notified[398];
   b. Retain the objective[399];
   c. Retain Policy 2[400];
   d. Amend Policy 2 to discourage noise sensitive activities establishing in the vicinity of consented or existing noise generating activities.[401]

570. In her Section 42A Report, Ms Evans recommended minor changes to the objective to make it more outcome focussed. Following our questioning at the hearing, she recommended further changes to the objective and Policy 1 in her Reply Statement.

397 Report 11, Section 8.11

398 Submissions 197, 649 (supported by FS1211) and 1365

399 Submissions 717 (supported by FS1211 and FS1270, opposed by FS1029), 719 and 847 (supported by FS1207)

400 Submission 719

401 Submissions 717 (supported by FS1211 and FS1270, opposed by FS1029) and 847 (supported by FS1207)

571. Ms Evans considered the submissions seeking amendments to Policy 2 and concluded that the policy did not need to be altered as it does not distinguish between new or established noise sensitive activities leading to reverse sensitivity effects[402].

572. The only evidence we heard on these provisions was from Mr MacColl[403] who supported Policy 2 as notified and agreed with Ms Evans' conclusions in respect of that policy.

573. We do not think Policy 2 provides any guidance as to how to achieve the objective, but we consider the wording proposed by Submitters 717 and 847 does not particularly assist. Without evidence we are not inclined to amend this policy.

574. We consider the word changes recommended by Ms Evans to the objective and Policy 1 improve their clarity without altering the meaning. We agree that those changes are minor non-substantive amendments that the Council can make under Clause 16(2).

575. We note that Policy 1 fails to provide any guidance as to how to it is to achieve the objective, in the same manner as Policy 2.

576. We recommend that the Council amend the objectives and policies under Clause 16(2) so that they read:

Objective ***The adverse effects of noise emissions are controlled to a reasonable level to manage the potential for conflict arising from adverse noise effects between land use activities.***

36.2.1.1 *Avoid, remedy or mitigate adverse effects of unreasonable noise from land use and development.*

36.2.1.2 *Avoid, remedy or mitigate adverse noise reverse sensitivity effects.*

577. We also recommend that the Council review the two policies with a view to providing clearer guidance as to how the objective is to be achieved. We do not consider that parroting s.5(2)(c) of the Act assists.

15. 36.3 – OTHER PROVISIONS

15.1. 36.3.1 – District Wide

578. There were no submissions on this section. The only changes we recommend to it are to make it consistent with the same section in other chapters. We consider this to be a minor amendment that can be made under Clause 16(2).

579. We recommend the Council amend this section as shown in Appendix 3 as a minor, non-substantive amendment under Clause 16(2).

15.2. 36.3.2 – Clarification

580. As notified this section contained 10 clauses, the first two of which, consistent with other chapters, described when a consent was required and the abbreviations used in the tables. The following eight clauses read:

36.3.2.3 *Sound levels shall be measured and assessed in accordance with NZS 6801:2008 Acoustics - Measurement of Environmental Sound and NZS 6802:2008 Acoustics -*

402 Ruth Evans, Section 42A Report, page 12

403 Anthony MacColl, EiC, page 7

Environmental Noise, except where another Standard has been referenced in these rules, in which case that Standard should apply.

36.3.2.4 Any activities which are Permitted, Controlled or Restricted Discretionary in any section of the District Plan must comply with the noise standards in Tables 2, 3, 4 and 5 below, where that standard is relevant to that activity.

36.3.2.5 In addition to the above, the noise from the following activities listed in Table 1 shall be Permitted activities in all zones (unless otherwise stated). For the avoidance of doubt, the activities in Table 1 are exempt from complying with the noise standards set out in Table 2.

36.3.2.6 Notwithstanding compliance with Rules 36.5.13 (Helicopters) and 36.5.14 (Fixed Wing Aircraft) in Table 3, informal airports shall be subject to the rules in the applicable zones.

36.3.2.7 Sound from non-residential activities, visitor accommodation activities and sound from stationary electrical and mechanical equipment must not exceed the noise limits in Table 2 in each of the zones in which sound from an activity is received. The noise limits in Table 2 do not apply to assessment locations within the same site as the activity.

36.3.2.8 The noise limits contained in Table 2 do not apply to sound from aircraft operations at Queenstown Airport.

36.3.2.9 Noise standards for Town Centre, Local Corner Shopping and Business Mixed Use zones are not included in this chapter. Please refer to Chapters 12, 13,14, 15 and 16.

36.3.2.10 The standards in Table 3 are specific to the activities listed in each row and are exempt from complying with the noise standards set out in Table 2.

581. Submissions on this section sought the following:
   a. Support the provisions[404];
   b. Amend 36.3.2.7 so as to exclude the temporary operation of emergency and backup generators from the noise limits[405];
   c. Include reference to Wanaka Airport in 36.3.2.8[406];
   d. Include an additional clarification stating that activities in the Rural Zone established at the time of the Review will be administered for noise purposes in accordance with the rules at the time the activity was established or consented[407].

582. Ms Evans agreed that reference to Wanaka Airport should be included in 36.3.2.8. Ms Evans also noted that the noise of aircraft at that airport, as for Queenstown Airport, is controlled by the designation[408]. We agree with that conclusion.

404 Submissions 649 (supported by FS1211) and 1365
405 Submission 635
406 Submission 433, opposed by FS1097 and FS1117
407 Submissions 717 (supported by FS1270, opposed by FS1029) and 847 (supported by FS1270).
408 Ruth Evans, Section 42A Report, page 13

583. Ms Evans considered that the additional clarification sought (item (d)) was unnecessary as provision was made in the Act to protect lawfully established existing uses[409]. We agree with her assessment. We heard no evidence from the submitters so our understanding of their reasoning is that contained in the submission. That reasoning is clearly focussed on restating existing use provisions from the Act in the PDP. We cannot understand why, if such provisions were to be included, they should be limited to the Rural Zone. We recommend those submissions be rejected.

584. The submission by Aurora concerning the temporary operation of emergency and backup generators included a proposal to include such operations in Table 1 as a permitted activity. It is appropriate to consider both parts of the submission together.

585. Dr Chiles assessed this submission[410]. It was his opinion that, in terms of emergency generators, people are prepared to tolerate the noise of them because it is an emergency, and by definition, temporary. He also noted that where emergency generators are fixed installations they need to be tested regularly. He recommended that emergency generators be provided for as a permitted activity in Table 1, along with an allowance for testing. He considered that amendment to 36.3.2.7 was unnecessary as 36.3.2.5 already identified that the activities in Table 1 were exempt from compliance with Table 2 standards. Ms Evans adopted Dr Chiles evidence and recommended changes to Table 1 consistent with his opinion.

586. Ms Dowd, appearing for Aurora, supported this proposed rule[411].

587. In response to our questioning, Ms Evans further refined the rule in Table 1 in her Reply Statement so as to clarify the circumstances when it applied to backup generation[412].

588. We accept the advice of Dr Chiles for the reasons he set out and recommend that a new permitted activity be included in Table 1, modified as proposed by Ms Evans in her Reply Statement subject to replacing "grid" with "network" so that the wording is consistent with that used in Chapter 30. We agree that it is unnecessary to make provision in 36.3.2.7 for an activity that listed in Table 1.

589. Ms Evans recommended some minor changes to 36.3.2.9 to properly identify the zones it applied to, and to note that activities in those zones were still required to meet the noise standards for noise received in other zones. The Stream 8 Panel has further recommended that this provision be amended to make it clear that noise from music, voices and loud speakers in the Wanaka and Queenstown Town Centre Zones (excluding the Queenstown town Centre Transition Sub-Zone) need not meet the noise standards set in this chapter.[413]

590. Ms Evans also recommended minor changes to 36.3.2.1 to clarify the meaning and remove unnecessary words.

591. We agree that those amendments are helpful in providing clarity to the meaning of the relevant provision. We consider them to be minor changes that can be made under Clause 16(2). We recommend the amendments recommended by the Stream 8 Panel be adopted for the reasons that Panel has given.

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409 ibid, page 12

410 Dr Stephen Chiles, EiC, pages 9-10

411 Joanne Dowd, EiC, page 6

412 Ruth Evans, Reply Statement, paragraph 2.4

413 Report 11, Section 8.11

592. We also recommend moving 36.3.2.2 to the end of the list so it more clearly relates to the tables that follow. As a consequence it becomes renumbered as 36.3.2.10 and clauses 3 to 10 are consequentially renumbered.

593. The Stream 13 Hearing Panel has recommended an amendment to notified 36.3.2.6 under Clause 16(2) to clarify the relationship of Rules 36.5.13 and 36.5.14 and the rules in the relevant zone chapters. We adopt their recommendation and include the amendment to recommended Rule 36.3.2.5 in Appendix 3.

594. For those reasons we recommend that Section 36.3.2 be titled "Rules – Explanation" and that clauses 1, 8 (renumbered as 7) and 9 (renumbered as 8) be amended to read as follows:

36.3.2.1 *Any activity that is not Permitted requires resource consent. Any activity that does not specify an activity status for non-compliance, but breaches a standard, requires resource consent as a Non-complying activity.*

36.3.2.7 *The noise limits contained in Table 2 do not apply to sound from aircraft operations at Queenstown Airport or Wanaka Airport.*

36.3.2.8 *Noise standards for noise received in the Queenstown, Wanaka and Arrowtown Town Centre, Local Shopping and Business Mixed Use zones are not included in this chapter. Please refer to Chapters 12, 13, 14, 15 and 16. The noise standards in this chapter still apply for noise generated within these zones but received in other zones, except that noise from music, voices, and loud speakers in the Wanaka and Queenstown Town Centres (excluding the Queenstown Town Centre Transition Sub-Zone) need not meet the noise limits set by this chapter.*

595. We also recommend, as discussed above, that a new permitted activity be inserted in Rule 36.4 Table 1 to read as follows:

Sound from emergency and backup generators:

a. Operating for emergency purposes; or
b. Operating for testing and maintenance for less than 60 minutes each month during a
c. weekday between 0900 and 1700.

For the purpose of this rule, backup generators are generators only used when there are unscheduled outages of the network (other than routine testing or maintenance provided for in (b) above).

16. 36.4 – RULES – ACTIVITIES

16.1. Table 1

596. As notified, this rule listed the following as permitted activities (exempt from the standards in Table 2):

36.4.1 *Sound from vehicles on public roads or trains on railway lines (including at railway yards, railway sidings or stations).*

36.4.2 *Any warning device that is activated in the event of intrusion, danger, an emergency or for safety purposes, provided that vehicle reversing alarms are a broadband directional type.*

36.4.3 Sound arising from fire stations (including rural fire stations), fire service appliance sirens and call-out sirens for volunteer brigades.

36.4.4 Sound from temporary military training activities.

36.4.5 In the Rural Zone and the Gibbston Character Zone, sound from farming and forestry activities, and bird scaring devices, other than sound from stationary motors and stationary equipment.

36.4.6 Sound from aircraft movements within designated airports.

36.4.7 Sound from telecommunications cabinets in road reserve.

597. Apart from the Aurora submission dealt with in the previous section, the submissions on this rule sought:
   a. Retain the rules[414];
   b. Retain Rule 36.4.3[415];
   c. Retain Rule 36.4.4[416];
   d. Delete Rule 36.4.6[417];
   e. Add new rule exempting noise from vessels[418].

598. Ms Evans agreed that Rule 36.4.6 could be deleted as such aircraft noise was covered by the designations, and deleting it was consistent with the amended 36.3.2.7 above[419]. We agree with that analysis and recommend the submission be accepted and Rule 36.4.6 be deleted.

599. Dr Chiles provided detailed evidence on the noise effects of motorised craft[420]. We heard no contrary expert noise evidence on this issue. It was Dr Chiles' opinion that sound from motorised craft has the potential to cause significant adverse noise effects in terms of degradation of amenity and disturbance. Consequently, he did not consider it appropriate to provide a blanket permitted activity status for noise from motorised craft.

600. We accept Dr Chiles assessment and recommend the submissions seeking the inclusion of this rule be rejected.

601. In summary, therefore, we recommend that Rule 36.4.6 be deleted, Rule 36.4.7 be renumbered 36.4.6, and, as we recommended above, a new Rule 36.4.7 be inserted for emergency and backup electrical generators. For clarity purposes, we recommend the Table be titled "Permitted Activities". The revised Table 1 is set out in Appendix 3.

17. 36.5 – RULES – STANDARDS

17.1. Table 2 : General Standards

602. As notified, this table set out the noise standards that applied to all activities, other than those specifically exempted, when measured in the receiving environment. Non-compliance with the set standards were non-complying, except in two cases as discussed below.

414 Submissions 649 (supported by FS1211) and 719
415 Submissions 438 and 708
416 Submission 1365
417 Submission 433, opposed by FS1097 and FS1117
418 Submissions 607 (supported by FS1097) and 621
419 Ruth Evans, Section 42A Report, page 14
420 Dr Stephen Chiles, EiC, section 7

603. Ms Evans identified an error in the labelling of the table as notified[421]. The second column heading as notified was "Activity or sound source". Ms Evans advised that it should have been headed "Zones sound is received in" and she recommended it be so amended as a minor Clause 16(2) amendment. As the various standards do not make sense if the notified heading is applied, we agree with Ms Evans that it should be corrected. We do not consider such a change to be anything other than minor as any person reading the standards would immediately see that the column did not list activities or sound sources (except for Rule 36.5.2 which we discuss below). We recommend this change be made as a correction under Clause 16(2).

604. As noted, Rule 36.5.2 applied different standards in the residential zones and the Rural Zone for sound generated in the Queenstown Airport Mixed Use Zone. Rule 36.5.2 had the effect of allowing more noise to be generated within the Queenstown Airport Mixed Use Zone than could be generated by any other activity, where the noise was received in a residential zone or the Rural Zone. Non-compliance with this more generous standard required consent as a restricted discretionary activity.

605. The second situation where non-compliance was not specified as "Non-complying" was Rule 36.5.5, which set no limit for noise received in the Queenstown Airport Mixed Use Zone. Although the non-compliance column stated "permitted", logically it was not possible to not comply with that standard.

606. The other matter in respect of this table we need to point out at the outset is that it included standards for a large number of zones which were not in Stage 1 of the Review, but are, rather, zones in the ODP. We note in this respect that a submission by Real Journeys Limited seeking to change the standard applying to the Rural Visitor Zone was identified by the reporting officer as being "out of scope"[422]. We also note that by resolution of the Council the geographic areas of several of these have been withdrawn from the PDP[423]. As of the date of that resolution those zones (or parts of zones) have been removed from this rule.

607. We also note that, as notified, Rule 27.3.3.1 explicitly stated that the zones listed were not part of the PDP: Stage 1, and Rule 27.3.3.2 explicitly stated that all the Special Zones in Chapter 12 of the ODP other than Jacks Point, Waterfall Park and Millbrook, were excluded from the PDP subdivision chapter.

608. Ms Scott addressed this matter in her Reply Submissions. It was her submission that the provisions of Chapter 36 were, at notification, intended to apply district-wide, even to zones not included in Stage 1. She submitted that we could take a "*flexible and* pragmatic *approach as to whether submissions are "on" Stage 2 matters, when they relate to types of activities addressed through one of the district-wide chapters*"[424].

609. We have previously advised the Council that we have serious concerns with the approach it has taken regarding the suggestion that provisions in the PDP:Stage 1 apply to land which does

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421 Ruth Evans, Section 42A Report, Paragraph 8.24

422 Ruth Evans, Section 42A Report, Appendix 2, page 7

423 Resolution of the Council dated 25 May 2017 to withdraw the geographic areas of the following ODP zones from the PDP: Frankton Flats B, Remarkables Park, Shotover Country Estate, Northlake Special, Ballantyne Road Industrial and Residential (Change 46), Queenstown Town Centre extension (Change 50), Peninsula Bay North (Change 51), Mount Cardrona Station

424 Council Reply Submissions, paragraph 2.4

not have a Stage 1 zoning[425]. In this chapter, what have been listed in the rules are, in addition to the Stage 1 zones, ODP zones. Ms Scott submitted that it would be appropriate for us to direct that those provisions be transferred to Stage 2[426].

610. There is no information before us to suggest that any of these zones (in the terms used in these rules) will become part of the PDP. While the geographic areas those ODP zones apply to may become part of the PDP in due course, it is not axiomatic that those areas will have the same ODP zones applied.

611. We also note that the only submission[427] on these rules referring to the zones listed in Ms Scott's submissions sought the deletion of "Industrial Zones" on the basis that those zones were not in Stage 1 and should not, therefore, be included in the rule at this stage. This raises the question for us as to whether the public understood that the Council was expecting the submission period in 2015 to be the one time a submission could be lodged in respect of noise received in any of these zones. We also have a concern that, if we were simply to direct that they be transferred to Stage 2, that would not automatically confer any submission rights in respect of these rules at Stage 2. Such submission rights will only be conferred if the Stage 2 process involves a change to the PDP to include such areas or zones.

612. We note at this point that the Stream 13 Hearing Panel is recommending the inclusion of the Coneburn Industrial Zone in the PDP. No noise limits were proposed within this zone, but the policies proposed included:

To minimise the adverse effects of noise, glare, dust and pollution.[428]

613. It may be that the submitter assumed that the provisions in Chapter 36 would apply, both within and outside the zone. On the face of it, the inclusion of the Coneburn Industrial Zone within the PDP would support the retention of notified Rule 36.5.7 as it applies to Industrial Zones. However, when the rule is examined, it only sets limits within Activity Areas 2, 2a, 3, 4, 5, 6, 7 and 8. It is unclear what this specification relates to, but it is clear that the rule as notified would not apply in the Coneburn Industrial Zone even if Rule 36.5.7 remained in the District Plan.. We do note that activities in the Coneburn Industrial Zone, while not needing to meet noise limits within the zone, would still need to meet the standards for noise received in the adjoining Rural Zone, or the nearby Jacks Point Zone.

614. Given the above, including the position the Council took in the reply, we have come to the conclusion that listing of the following zones in Rule 36.5 is an error:
   a. Township Zones;
   b. Rural Visitor Zones;
   c. Quail Rise Special Zone;
   d. Meadow Park Special Zone;
   e. Ballantyne Road Special Zone;
   f. Penrith Park Special Zone;
   g. Bendemeer Special Zone;
   h. Kingston Village Special Zone;
   i. Industrial Zones.

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425 Minute Concerning Annotations on Maps, dated 12 June 2017

426 Council Reply Submissions, paragraph 4.1

427 Submission 746

428 Proposed Policy 18.2.1.5 in Revised Chapter 18 provided with Joint Witness Statement on 15 September 2017

615. Consequently, we recommend all references to those zones be deleted from Rule 36.5 to correct this error. In terms of item (i) Industrial Zones, we recommend accepting Submission 746. The remainder we consider can be deleted as errors requiring correction with no substantive effect under Clause 16(2). We also consider that without deleting these references, the Council may inadvertently deprive persons with land in geographic area covered by those zones the opportunity to submit on the noise rules which would affect them when those geographic areas are brought into the PDP.

616. We consider the proper course for the Council to follow in the future is, when a variation or plan change is initiated to include an additional geographic area in the PDP, where applicable, references to the zones applied can be included in these rules as appropriate. Obviously, if that land has a PDP zone applied, such a change would not be necessary.

617. Two submissions generally supported the entire rule[429]. We recommend those submissions be accepted in part.

618. There were no submissions on Rule 36.5.1 which sets the standards for noise received in the Rural and Gibbston Character Zones. We recommend this rule be adopted as notified.

619. There were no submissions on Rule 36.5.4, other than that by Real Journeys Limited[430] which the Council identified as being out of scope. With our recommended amendments to this rule to correct the error of including references to ODP zones, the area that submission related to is no longer affected by the rule. We recommend that Rule 36.5.4 be adopted in the revised form shown in Appendix 3. We note that recommendations we make below will further amend this rule.

620. Following the Council's withdrawal of the geographic areas covered by the Shotover Country Special Zone and Mount Cardrona Special Zone, Rule 36.5.6 only applied to the Ballantyne Road Special Zone. Our recommendation that the error of including that zone in this rule be corrected by its deletion, would have the effect of deleting this rule, but Ms Evans has recommended the inclusion of other provisions within it. We will deal with that matter below.

17.2. Rule 36.5.2

621. Rule 36.5.2, which as we explained above, allowed a higher level of noise to emanate from the Queenstown Airport than from other activities, was subject to one submission[431] which sought that this rule be deleted and replaced with notified Rule 17.5.6. We note that the only substantive difference between those rules was that the night-time L_{max} was 5dB lower under Rule 17.5.6.

622. We were concerned these two rules were inconsistent with the general approach to managing noise in the District and there appeared to be no policy support for such a difference. Dr Chiles considered these limits to be inconsistent also, and it was his opinion that the inconsistencies undermine the level of amenity provided in surrounding locations by district wide noise limits[432].

429 Submissions 52 and 649
430 Submission 621
431 Submission 433, opposed by FS1097 and FS1117
432 Dr Stephen Chiles, EiC, paragraph 8.3

623. Mr Day did not address this inconsistency in his evidence. When questioned by the Panel, he answered that the residential areas around the airport are generally exposed to higher noise levels anyway.

624. Ms Evans, in her Reply Statement, noted that the noise limits were the same as in the ODP in respect of the Residential Zones, but have been extended to the Rural Zone also in the PDP. She recommended moving the standard to Table 3, which relates to specific noise sources, with a minor alteration to the wording to clarify the activities affected by the rule.

625. We agree with Dr Chiles that a separate and less onerous noise standard for Queenstown Airport is both inconsistent with the standards generally applied and undermines the amenity values the PDP is generally protecting in close-by residential areas. We also can find no basis for this differentiation in the objectives and policies of the PDP. However, with no submissions seeking the complete deletion of the standard, we cannot recommend its deletion. If there were a submission that sought such relief we would have recommended that submission be accepted. As it is, we largely agree with Ms Evans' proposed rule subject to two changes:
   a. clarification that it does not apply to sound from aircraft operations that are subject to Designation 2; and
   b. Changing the night-time L_{AFmax} to 70dB as it was notified in Rule 17.5.6.

626. For the reasons set out, we recommend to the Stream 8 Hearing Panel that Rule 17.5.6 (as notified) be deleted, and recommend to the Council that Rule 36.5.2 be moved to become Rule 36.5.15 with the wording as set out in Appendix 3. We add that we cannot confirm that this rule meets the statutory tests of s.32AA.

17.3. Rule 36.5.3

627. This rule applies standards for noise received in the residential parts of the Jacks Point and Millbrook Resort Zones. We note that the former zone was incorrectly named in the rule, being termed a resort zone. We recommend that the zone name be changed by deleting "Resort" from "Jacks Point Resort Zone" so it has the zone name applied in the PDP. We consider this to be a minor correction under Clause 16(2).

628. Two submissions were received seeking:
   a. Include the Village Activity Area in the assessment locations[433]; and
   b. Exclude the Village and EIC Activity Areas from column 2, and create a new rule making it a restricted discretionary activity for sounds from the Village and EIC Activity Areas to exceed the limits[434].

629. We note that since hearing Stream 5, submitters on the Jacks Point Zone have sought the removal of the EIC Activity Area from that zone, and the Hearing Stream 9 Panel is recommending that change be accepted. Thus, we will not address that Activity Area further.

630. Ms Evans attempted to reconcile these two seemingly opposing submissions[435]. Dr Chiles was concerned that imposing the residential noise standards on the Village Activity Area would hinder the development of activities such as cafes with patrons sitting outside[436]. Ms Evans recommendation was to move both the Millbrook and Jacks Point provisions from Rule 36.5.3 to 36.5.4 on the basis that the standards would be the same for residential areas, and to

433 Submission 632, opposed by FS1219, FS1252, FS1275, FS1277, FS1283, FS1316
434 Submission 762, opposed by FS1316
435 Ruth Evans, Section 42A Report, paragraphs 8.28 to 8.31 inclusive
436 Dr Stephen Chiles, EiC, Section 9

include the Jacks Point Zone Village Activity Area in Rule 36.5.6 which provides for higher levels of received noise.

631. Mr Ferguson supported these changes but raised two matters:
   a. Clarification of how the noise standards are applied between the stipulated assessment locations and the zone or activity areas within it is received; and
   b. The status of any breach of the noise standards[437].

632. Mr Ferguson's first point was that the heading to Column 2 (as amended) referred to receiving zones, whereas in Jacks Point Zone at least, it was only within part of the zone that it applied. We consider this can be dealt with by amending the additional words after each zone to say "Residential (or Village) Activity Areas only" to make it clear it is only part of the zone within which the relevant rule controls the receipt of noise.

633. We have considered Mr Ferguson's opinion that non-compliance with the rules applicable to the Village Activity Area should require consent as a restricted discretionary activity. In our view the point of noise standards is to establish a bottom line for amenity values which should not be breached. The standards themselves, and the forms of measurement, provide for the rare or momentary exceedance of any fixed level. If an activity is proposing to create a level of noise that will always or regularly exceed the standard, then we consider it appropriate for the Council, on a resource consent application, to be able to firstly consider whether that activity meets the thresholds of s.104D, and if so, to undertake a full evaluation of the proposal under s.104. We agree with Ms Evans' evaluation of this matter in her Reply Statement.

634. In summary, we recommend that Rule 36.5.3 be deleted and the following be inserted in Column 2 of Rule 36.5.4 (consequently renumbered 36.5.2):

Millbrook Resort Zone – Residential Activity Areas only
Jacks Point Zone – Residential Activity Areas only

635. We additionally recommend that the following be inserted in Column 2 of Rule 36.5.6 (now renumbered 36.5.4):
Jacks Point Zone – Village Activity Area only

17.4. Rule 36.5.5

636. The only submission on this rule sought its retention[438]. As noted above, and agreed by Ms Evans[439], there is no possibility of not complying with this rule, so the appropriate thing is to leave the Non-compliance Status Column blank. With that change, we recommend the rule be adopted.

17.5. Table 3

637. This table sets standards for noise from specified activities, including identifying any applicable special considerations. One submitter[440] supported all of the rules in this table subject to amendments to Rule 36.5.11 which we deal with below. There were no other submissions on Rules 36.5.8, 36.5.9, 36.5.10, 36.5.12 and 36.5.17.

638. The only other submission[441] on Rule 36.5.15 sought that it be retained.

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437 Christopher Ferguson, EiC, page 5
438 Submission 433, opposed by FS1097, FS1117
439 Ruth Evans, Reply Statement, Appendix 1
440 Submission 649
441 Submission 580

639. Ms Evans recommended that Rule 36.5.17 be transferred to Chapter 41 as a rule applying to Jacks Point Zone. We agree with that recommendation and refer that rule to the Stream 9 Hearing Panel.

640. Subject to renumbering and altering the reference in Rule 36.5.8 to the NESTF 2016, we recommend that Rules 36.5.8, 36.5.9, 36.5.10, 36.5.12 and 36.5.15 be adopted as notified.

17.6. Rule 36.5.11

641. This rule controls noise from frost fans. The sole submission[442] sought that the L_{AFmax} limit failed to account for increased annoyance where there are special audible characteristics present. It sought that the limit be changed to 55 dB $L_{Aeq(15\ min)}$.

642. Dr Chiles[443] agreed that the 85 dB L_{AFmax} would not adequately control noise effects. He considered that proposed in the submission to be adequate, although significantly more lenient than the general night-time noise limit of 40 dB $L_{Aeq(15\ min)}$. Ms Evans accepted Dr Chiles advice and recommended amending this rule as requested.

643. On the basis of that evidence we recommend that Rule 36.5.11 (renumbered as 36.5.8) be amended to set a noise limit of 55 dB $L_{Aeq(15\ min)}$.

17.7. Rule 36.5.13

644. This rule set the standard for noise from helicopters. Three submitters[444] supported this rule. Other submissions sought:
   a. Delete the rule[445];
   b. Measure L_{max} rather than L_{dn}[446];
   c. Delete the L_{dn} measurement[447];
   d. Make non-compliance a discretionary activity[448].

645. In addition, one submission sought the introduction of a separate rule for helicopters landing near the top of Skyline Access Road[449].

646. It was Dr Chiles' evidence[450] that the adverse effects of helicopters are related to both the sound level of individual helicopter movements, and also the frequency of movements. He noted that while there were some limitations with the use of an L_{dn} noise limit, it would control both factors. On the other hand, while a L_{AFmax} noise level would control the sound level, it would not control the number of movements. He also noted that there can be difficulty in obtaining reliable assessments of helicopter noise using the L_{AFmax} limit.

647. Dr Chiles also explained why he considered the L_{dn} control for helicopter noise in this rule, coupled with the additional controls on movement numbers in the Rural Zone, sets an appropriate noise limit to manage adverse noise effects. While he agreed that there was

442 Submission 649
443 EiC, Section 12
444 Submissions 143 (opposed by FS1093), 433 (opposed by FS1097, FS1117) and 571
445 Submission 475, opposed by FS1245
446 Submissions 607, 626, 660, 713
447 Submission 243, opposed by FS1224, FS1245
448 Submission 607
449 Submission 574, opposed by FS1063
450 EiC, Section 13

justification for applying the noise limits recommended for commercial areas by NZS6807 to commercial areas in the PDP, as sought in Submission 574, he considered that limit not to be appropriate in the area specified in that submission. He advised us that a recent Environment Court decision[451] found that the commercial area noise limit from NZ6807 was not appropriate in that location. He advised that in considering that application, the Court found that a helicopter noise limit of 60 dB L_{dn} in conjunction with a limit of four helicopter flights a day to be appropriate. He was unaware of justification to insert specific and different noise limits for this location into the PDP.

648. Mr Dent appeared in support of Submission 574. It was his opinion that NZ6807 was the appropriate standard for measuring helicopter noise. He explained that the ODP rules effectively have no applicable noise rules for helicopters. Turning to the specific issue of the Skyline helicopter pad, he considered there was value in making provision for a helicopter pad to locate in the vicinity of Bobs Peak with a noise limit of 60 dB L_{dn} (less than the 65 dB L_{dn} sought in the submission).

649. In response to this evidence, Ms Evans proffered the opinion that if the Council were to include specific controls for a specific consented activity, the PDP would be littered with such special provisions. She also advised that the Environment Court only granted consent for 5 years, to enable review, whereas if it became a rule in the PDP then it would not be subject to review until the PDP were reviewed, and would, potentially, be there for the life of the activity[452].

650. There are three issues for us to deal with in regard to this rule:
   a. Whether helicopter noise limits be set using NZS6807 or in the same manner as other noise is generally controlled in the District;
   b. The activity status of a resource consent for non-compliance; and
   c. Whether special provision should be made for helicopter landing at Skyline.

651. All the expert evidence we heard advised us that NZS6807 is the appropriate standard to use of the assessment and control of helicopter noise. As that standard is specifically designed to deal with helicopter noise, that is unsurprising. Mr Dent assisted us by setting out a number of local consent hearings where the hearing commissioners had agreed with expert noise evidence that concluded the ODP noise rules were ineffective, or unable to control, helicopter noise. We accept all that evidence and conclude that Rule 36.5.13 as notified is fundamentally sound. We also agree with Ms Evans' recommendation that the Advice Note should specify Queenstown and Wanaka Airports.

652. Our views on the non-compliance status of any breach of this rule is consistent with those we gave above in respect of Rule 36.5.3 above. As it was, we heard no evidence on this from the submitter.

653. The Stream 10 Hearing Panel has recommended that the final clause in the notified definition of noise in Chapter be inserted in this rule. We agree that is a more appropriate location and is a non-substantive change under Clause 16(2).

654. For those reasons we recommend that Rule 36.5.13 (renumbered 36.5.10) be adopted as notified, with the addition of the phrase from Chapter 2 and a minor amendment to the advice note.

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451 ZJV (NZ) Limited v Queenstown Lakes District Council & Skyline Enterprises Limited [2015] NZEnvC 205

452 Ruth Evans, Reply Statement, Section 9

655. We also note that, in addition to this rule, other rules in the Rural Zone relating to informal airports restrict the frequency of flights and impose setback requirements in certain situations. The combination of those rules should go some way to address the concerns of those submitters who sought the deletion or modification of this rule.

656. Turning to the Skyline issue, we agree with Ms Evans that turning a resource consent into district plan rules, when that consent is subject to a time limitation because of the potential adverse effects, is fraught with issues. We consider it would be poor resource management practice to create such a rule as it would restrict the Council's ability to adjust the terms of the activity if monitoring disclosed adverse environmental effects beyond those foreseen. In our view, if Skyline wishes to choose a better site for helicopter landing, and it requires a resource consent, then they should follow that process. We recommend that submission be rejected.

17.8. Rule 36.5.14

657. This rule sets noise limits for fixed wing aircraft using NZS6805 as the means of measuring and assessing aircraft noise. One submission[453] sought the retention of this rule, while two submissions[454] sought its replacement with an L_{max} limit and changing the non-compliance status to discretionary.

658. Again this issue is whether a standard specifically designed to measure and assess aircraft noise (NZS6805) should be used as the basis for setting the limits in this rule, or the general provisions used elsewhere in the District. We heard no evidence in support of the submissions seeking to amend this rule and see no reason to for there to be a different approach to setting noise limits for fixed wing aircraft from that used for setting noise limits for helicopters.

659. We recommend that Rule 36.5.14 (renumbered 36.5.11) be adopted as notified, and the advice note be amended to specify Queenstown and Wanaka Airports.

17.9. Rule 36.5.16 and Rule 36.8

660. Rule 36.5.16 set a noise limit of 77 dB L_{ASmax} for commercial motorised craft operating on the surface of lakes and rivers. Rule 36.8 set out the methods of measurement and assessment of such noise.

661. One submission[455] sought the retention of Rule 36.8. Other submissions sought:
   a. Lower the limit in Rule 36.5.16 and include live commentary on vessel as well[456];
   b. Exempt low or moderate speed passenger service vessels from 36.8[457];
   c. Set the limit for jet boats competing in jet boat race events at 92 dB L_{ASmax}[458].

662. We note in respect of item (b) above, the same submitter sought that such vessels be permitted activities in Table 1. We have deal with that matter above and recommended rejecting that submission.

663. Dr Chiles discussed the issues that have arisen with administering the noise rules relating to motorised craft under the ODP. He recommended that deletion of the testing methodology

453 Submission 433, supported by FS1345 and opposed by FS1097, FS1117
454 Submissions 607 and 621
455 Submission 649
456 Submission 243, opposed by FS1224, FS1245
457 Submission 621
458 Submission 758

in Rule 36.8 would partly address concerns raised in Submission 621. Ms Evans recommended a consolidation of Rules 36.5.16 and 36.8 which would include deletion of the testing methods.

664. Dr Chiles advised us that the level of 77 dB L_{ASmax} had operated successfully under the ODP. He considered that if it were reduced, it would restrict the ability of many vessels to operate on the surface of lakes and rivers in the District. He also considered it was not practicable to assess the sound of on-board commentary using the methods for assessing motorised craft. He considered the general noise standards (Rule 36.5.1 for instance) should apply to such noise.

665. It was Dr Chiles' opinion that the noise from jet boat racing should be assessed on a case by case basis via the resource consent process.

666. As alluded to above, Ms Evans recommended a consolidation of Rules 36.5.16 and 36.8. In doing this she incorporated Rule 36.8.1.2 into Rule 36.5.16. As notified, there was a potential conflict between these two rules, and, at minimum, an ambiguity. Rule 36.5.16 set a single noise limit, and in the "Time" Column stated "Refer 36.8". Rule 36.8.1.2 stated:
The measured sound pressure level shall not exceed a maximum A weighted level:
- *77 dB LASmax for vessels to be operated between the hours of 0800 and 2000;*
- *67 dB LASmax for vessels to be operated between the hours of 2000 and 0800.*

667. In consolidating the rules, Ms Evans pulled the night-time level into Rule 36.5.16. We need to consider whether a plan user would have expected the night-time limits to apply given the notified version of Rule 36.5.16. As Ms Black's evidence, on behalf of Real Journeys Ltd, was concerned in part with the ability of her company's vessels to operate between 0700 and 0800, and 2000 and 2100, in accordance with the lower levels, we can be satisfied that submitters understood those lower limits to apply.

668. While Ms Black's evidence was mainly focussed on the permitted activity status sought, as discussed in an earlier section above, she did explain the nature of Real Journeys' vessel operations. We understood Dr Chiles' evidence to be that the PDP noise rules for vessels represented no change from those in the ODP for commercial vessels. There was nothing in Ms Black's evidence to suggest that meeting the ODP noise limits had been an issue for her company. For those reasons, we see no justification in altering the limits in Rule 36.5.16.

669. Mr McKenzie presented a statement on behalf of Jet Boating New Zealand Inc in respect of the request for a separate noise limit for jet boats taking part in jet boat race events. He attached to his evidence a noise report from 2005 for applications for a number of international jet boat races.

670. The fundamental difficulty this submitter has is that Rules 36.5.16 and 36.8 only relate to commercial vessels. We do not understand jet boats involved in jet boat races to fall into that category. In the absence of any other noise rules controlling vessels, non-commercial boating fall to be considered under the provisions of Table 2. Dr Chiles expressed the opinion that the same noise limits should apply to all motorised craft[459]. We agree and recommend that the Council initiate a variation to apply the noise limits in Rule 36.5.16 to all motorised craft. Jet Boating New Zealand Inc would have the opportunity to lodge a submission on such a variation if it considered it did not adequately provide for its members' activities.

459 Dr Stephen Chiles, EiC, paragraph 7.1

671. In summary, for the reasons set out above, we agree with the revised version of Rule 36.5.16 (renumbered 36.5.14) recommended by Ms Evans and recommend the Council adopt that version of the rule as set out in Appendix 3, and we recommend the deletion of Rule 36.8.

17.10. Rule 36.6

672. This rule contained provisions designed to protect nearby residents from the effects of airport noise. Rule 36.6.1 related specifically to a zone which was not part of PDP: Stage 1 – the Rural Visitor Zone. Rule 36.6.2 (Table 4) set the acceptable construction methods to meet the sound insulation requirements within the Air Noise Boundary of the Queenstown Airport. Rule 36.6.3 (Table 5) set out the ventilation requirements within the Outer Control Boundary and Air Noise Boundary of Queenstown and Wanaka Airports.

673. One submission supported the rules in full[460], one supported Table 4 with a minor correction and replacement of Table 5[461], one sought amendments to address modern building solutions[462], and another sought that provision be made for requiring air conditioning[463]. Another submission[464] was listed as being relevant to this rule, but on reading the submission we concluded it only related to the provision for informal airports in the rural chapters. We have taken no account of that submission and leave it to the Stream 2 Hearing Panel to deal with.

674. We consider Rule 36.6.1 creates the same issues as those we discussed above in relation to ODP zone names being listed in Rules 36.5.4, 36.5.6 and 36.5.7. In our view, for the purposes of the PDP, the Rural Visitor Zone does not exist. Thus, this rule is of no practical effect. We also note that this rule has not been mentioned in the Section 32 Report for Noise. In fact, that report does not mention the Rural Visitor Zone at all. We can only conclude that the inclusion of this rule is a mistake that should be corrected. For those reasons, we recommend Rule 36.6.1 be deleted as an error under Clause 16(2).

675. Dr Chiles provided useful evidence on the construction and ventilation requirements[465]. It was his advice that the glazing requirement in Table 4 be changed to double glazing with 4mm thick panes separated by a cavity at least 12mm wide. He also confirmed that ceiling plasterboard should be 9 mm, as sought in Submission 433.

676. In terms of ventilation, Dr Chiles advised that he had sought advice (for another client) on how ventilation rules could meet the aim of providing sufficient thermal comfort for occupants, so they have a free choice to leave windows closed if required to reduce adverse external sound. Based on that review, he recommended a specification that would replace Rule 36.6.3 (and also 36.7 which we deal with below). In his opinion, such a specification would give effect to Submission 80, but would only adopt the specification put forward in Submission 433 in part. Ms Evans redrafted Rule 36.6.3 based on Dr Chiles advice.

677. The only submitter heard from in respect of this rule was QAC. By the time of the hearing the only matters at issue related to Rule 36.6.3 – Table 5. These issues can be further narrowed to be, in essence:

a. The appropriate standard for low rate ventilation;

460 Submission 649
461 Submission 433, opposed by FS1097, FS1117
462 Submission 383, opposed by FS1340
463 Submission 80, opposed by FS1077
464 Submission 310, opposed by FS1245
465 Dr Stephen Chiles, EiC, Section 14

b. How many air changes per hour occurred at high setting on the ventilation system;
c. The need for passive relief venting; and
d. The measuring point for assessing the noise level of the ventilation system.

678. Mr Roberts provided expert ventilation evidence. He described the difficulties faced in implementing the ventilation system required by the notified rules. He also identified that some of the requirements, particularly that requiring 15 air changes per hour, were unnecessary in the Queenstown climate. His recommendation was that Table 5 should be amended so as to:

a. Reduce the high setting air changes so that there is no difference between Bedrooms and other Critical Listening Environments, for the purposes of rationalising the type, physical size and quantity of separate ventilation systems required to comply, and that those ventilation systems can readily achieve the difference between high and low setting air flow rates;
b. Provide the ability to use more modern and efficient plant, including heat pump air conditioning units; and
c. Simplify the system design in order that it can be readily designed to comply by local contractors.[466]

679. In respect of the differences between the Council provisions and QAC provisions, he noted:
a. The ventilation rates should not be linked to provisions of the NZ Building Code as those provisions are designed for different purposes;
b. While 6 air changes per hour proposed by the Council is very similar to the 5 air changes per hour he recommended, the extra change per hour would require an additional fan or complex air flow control system, with costs disproportionate to benefit;
c. High air change setting and cooling via heat pump cooling system could be provided as alternates;
d. The omission of a heating requirement from the Council proposal is possibly an error;
e. To ensure that combustion appliances can operate safely under the high air change requirement, additional passive relief venting is required;
f. There should be no need to duplicate heating, ventilation or cooling systems where they are already present and satisfy the requirements of the rule[467].

680. Ms O'Sullivan attached a draft rule that, in her opinion, achieved the matters raised by Mr Roberts[468].

681. The other outstanding matter was the point at which to measure the noise of the cooling system. The rule stated that noise levels were to be measure at a distance of 1 m to 2 m from any diffuser. Dr Chiles recommended that it be set at 1 m to remove ambiguity, while it was Mr Day's evidence that this should be set at 2 m.

682. Ms Wolt submitted that there was no scope to set the measuring point at 1 m, while there was scope to set it at 2 m. In her Reply Statement, Ms Evans accepted that there may not be scope to set it at 1 m and recommended that it be set at 2 m, noting that it was likely that most persons measuring such noise would use the most lenient point.[469]

466 Scott Roberts, EiC, paragraph 17
467 ibid, paragraphs 28 - 38
468 Kirsty O'Sullivan, EiC, Appendix D
469 Ruth Evans, Reply Statement, paragraph 8.4

683. The evidence from the noise experts did not suggest that there was a difference between the ventilation rule options put to us in terms of protecting residents from aircraft noise. Given that lack of difference, we prefer the expert advice of Mr Roberts and accept that the rule drafted by Ms O'Sullivan, subject to minor amendments, is the most appropriate to include in the PDP. As amended, this rule explicitly provides for cooling as sought in Submission 80.

684. For those reasons, we recommend that Rule 36.6.3 (renumber 36.6.2) be adopted in the form shown in Appendix 3.

17.11. Rule 36.7

685. This rule provides ventilation requirements for critical listening environments in the Wanaka and Queenstown Town Centre Zones, the Local Shopping Zones and the Business Mixed Use Zone. There were no submissions on this rule and the Council, therefore, has no scope to change it other than by variation. It was Dr Chiles' evidence that it did need changing, even if only to correct the low setting from 1-2 ac/hr to 0.5 ac/hr. We recommend the Council obtain expert ventilation advice on appropriate standards for these zones and implement a variation to implement that advice if required.

17.12. Consequential Amendments Recommended by Other Hearing Streams

686. In addition to the amendments recommended by the Stream 8 Panel in relation to Section 36.1 and Rule 36.3.2.8 discussed above, that Panel has also recommended consequential amendments to recommended Rules 36.5.1, 36.5.3, 36.5.4 and 36.5.14.

687. The amendment to Rule 36.5.1 is consequential on the recommended rezoning of Wanaka Airport from Rural to Airport Zone. We agree that listing the Airport Zone – Wanaka in this rule will continue the notified noise regime for the land and therefore it can be made as a non-substantive change under Clause 16(2).

688. The remaining amendments are consequential on changing the name of the Airport Mixed Use Zone to Airport Zone. Again such changes are non-substantive changes under Clause 16(2).

689. We recommend those amendments, as shown in Appendix 3, are adopted.

17.13. Summary of Conclusions on Rules

690. We have set out in Appendix 3 the rules we recommend the Council adopt. For all the reasons set out above, we are satisfied that the rules are the most effective and efficient means of implementing the policies so as to achieve the objectives of Chapter 36, and those in the Strategic Directions chapters. Where we have recommended rules not be included, that is because, as our reasons above show, we do not consider them to be efficient or effective.

18. CHANGES SOUGHT TO DEFINITIONS

18.1. Introduction

691. Submitters on this Chapter also lodged submissions on a number of notified definitions and also sought the inclusion of several new definitions. In accordance with the Hearing Panel's directions in its Second Procedural Minute dated 5 February 2016, we heard evidence on these definitions and have considered them in the context of the rules which apply them. However, to ensure a consistent outcome of consideration of definitions, given the same definition may be relevant to a number of hearing streams, our recommendations in this part of the report are to the Hearing Stream 10 Panel, who have overall responsibility for recommending the final form of the definitions to the Council. As the recommendations in this section are not

directly to the Council, we have listed the wording we are recommending for these definitions in Appendix 5.

18.2. Noise

692. One submission[470] sought that L_{dn} be deleted from the definition of noise. The submission suggests that it is only there to allow helicopters and no special provision should be made for noise from helicopters.

693. In discussing Rule 36.5.13 above we noted that expert noise evidence advised that the L_{dn} method is the best for measuring noise from helicopters. We recommend to the Stream 10 Hearing Panel that this submission be rejected.

18.3. Notional Boundary

694. The Southern District Health Board[471] recommended that "façade" in this definition be replaced by "any side" on the basis that in rural areas, where notional boundaries are used for noise measurement, it is all sides of the building that are important. Using the term façade may imply that it is only that facing the road which is relevant.

695. We agree with that logic and recommend to the Stream 10 Hearing Panel that the definition of notional boundary be amended to read:
Notional boundary *means a line 20 m from any side of any residential unit or the legal boundary whichever is closer to the residential unit.*

470 Submission 243, opposed by FS1340
471 Submission 649

PART E: OVERALL RECOMMENDATION

696. For the reasons we have set out above, we recommend to the Council that:
   a. Chapter 30, in the form set out in Appendix 1, be adopted;
   b. Chapter 35, in the form set out in Appendix 2, be adopted;
   c. Chapter 36, in the form set out in Appendix 3, be adopted; and
   d. The relevant submissions and further submissions be accepted, accepted in part or rejected as set out in Appendix 4.

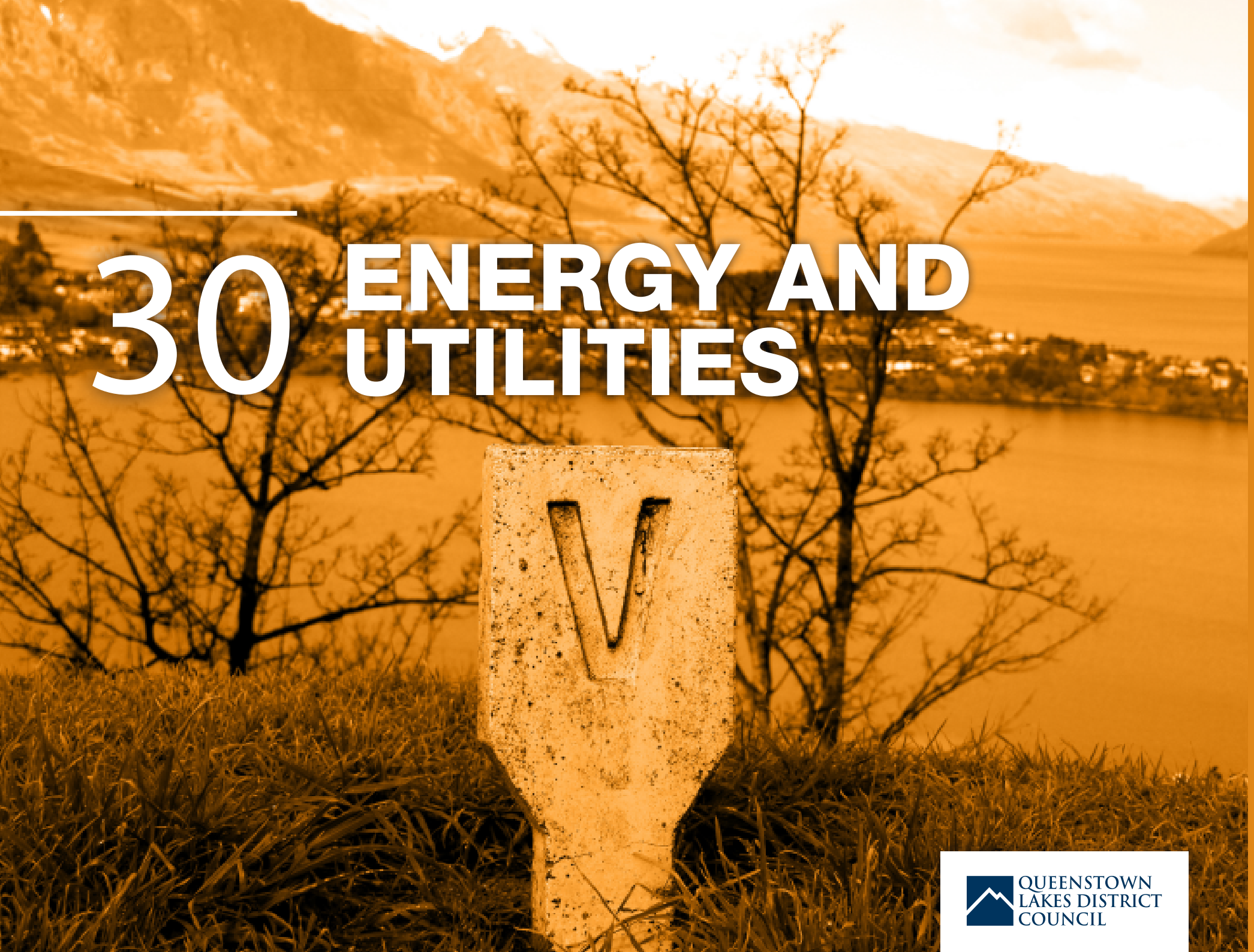
697. We recommend to the Stream 10 Hearing Panel that the definitions listed in Appendix 5 be included in Chapter 2 for the reasons set out above.

698. We further recommend that the Council consider initiating variations to deal with the following matters:
   a. Amend Objective 30.2.1 and associated policies as discussed in Section 3.1 above;
   b. Delete Policy 30.2.5.4 as discussed in Section 3.5 above;
   c. Amend definition of "utility" to exclude airport activities within the Airport Zone as discussed in Section 4.3 above;
   d. Amend Rule 35.4.12 to make it consistent with Objective 35.2.5 and associated policies as discussed in Section 8.5 above;
   e. Apply Rule 36.5.13 to all motorised craft as discussed in Section 19.9 above;
   f. Amend Rule 36.7 as recommended to us by Dr Chiles and discussed in Section 19.11 above.

For the Hearing Panel

Denis Nugent, Chair
Date: 30 March 2018

Appendix 1: Chapter 30 as Recommended



30 ENERGY AND UTILITIES

QUEENSTOWN LAKES DISTRICT COUNCIL

30.1 Purpose

Energy and Utilities are of strategic importance and require a coordinated approach in relation to the development of energy resources, the generation of electricity and the provision of essential infrastructure throughout the District.

30.1.1 Energy

Energy resources play a key role in the socio-economic wellbeing and growth of the District. Local energy needs may change over time and are dependent on the scale of demand, as well as measures to reduce demand through energy efficiency, conservation and small scale renewable generation.

In the future, there may be a need for new generation sources to meet demand. Electricity generation by renewable energy sources is desired over non-renewable sources and this is reinforced in the National Policy Statement on Renewable Electricity Generation 2011. The generation of electricity from non-renewable sources is generally discouraged. However, standby generation may be necessary for essential public, civic, community and health functions, or in areas not connected to the electricity distribution network.

Energy efficiency and conservation go hand in hand with renewable energy. Conserving the use of energy together with the generation of renewable energy will be vital in responding to the challenges of providing enough energy to meet future energy needs and reducing greenhouse gas emissions. Small and community scale generation is encouraged and advantages of solar energy within the District are recognised. The benefits of solar energy may be realised through site design methods which promote solar efficient design, in addition to the inclusion of solar photovoltaic panels and solar hot water heating systems within buildings. Sustainable building forms which reduce energy demand and minimise heating costs are encouraged, including use of the Homestar™ rating system for residential buildings and Green Star tool for commercial buildings.

30.1.2 Utilities

Utilities are essential to the servicing and functioning of the District. Utilities have the purpose to provide a service to the public and are typically provided by a network utility operator.

Due to the importance of utilities in providing essential services to the community, their often high capital cost to establish, and their long life expectancy, the need for the establishment and on-going functioning, maintenance and upgrading of utilities is recognised. In addition, some utilities have specific locational needs that need to be accommodated for their operation. The co-location of utilities may achieve efficiencies in design and operation, reduce capital investment costs and also minimise amenity and environmental effects. The ability to co-locate compatible uses should be considered for all utility proposals.

It is recognised that while utilities can have national, regional and local benefits, they can also have adverse effects on surrounding land uses, some of which have been established long before the network utility. The sustainable management of natural and physical resources requires a balance between the effects of different land uses. However, it is also necessary that essential utilities are protected, where possible, from further encroachment by incompatible activities which may lead to reverse sensitivity effects. This chapter therefore also addresses requirements for sensitive uses and habitable buildings located near to utilities.

30.2 Objectives and Policies

Energy

30.2.1 Objective - The sustainable management of the District's resources benefits from the District's renewable and non-renewable energy resources and the electricity generation facilities that utilise them.

Policies

30.2.1.1 Recognise the national, regional and local benefits of the District's renewable and non-renewable electricity generation activities.

30.2.1.2 Enable the operation, maintenance, repowering, upgrade of existing non-renewable electricity generation activities and development of new ones where adverse effects can be avoided, remedied or mitigated.

30.2.2 Objective - The use and development of renewable energy resources achieves the following:

a. It maintains or enhances electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;

b. It maintains or enhances the security of electricity supply at local, regional and national levels by diversifying the type and/or location of electricity generation;

c. It assists in meeting international climate change obligations;

d. It reduces reliance on imported fuels for the purpose of generating electricity;

e. It helps with community resilience through development of local energy resources and networks.

Policies

30.2.2.1 Enable the development, operation, maintenance, repowering and upgrading of new and existing renewable electricity generation activities, (including small and community scale), in a manner that:

a. recognises the need to locate renewable electricity generation activities where the renewable electricity resources are available;

b. recognises logistical and technical practicalities associated with renewable electricity generation activities;

c. provides for research and exploratory-scale investigations into existing and emerging renewable electricity generation technologies and methods.

30.2.2.2 Enable new technologies using renewable energy resources to be investigated and established in the district.

30.2.3 Objective - Energy resources are developed and electricity is generated, in a manner that minimises adverse effects on the environment.

Policies

30.2.3.1 Promote the incorporation of Small and Community-Scale Distributed Electricity Generation structures and associated buildings (whether temporary or permanent) as a means to improve efficiency and reduce energy demands.

30.2.3.2 Ensure the visual effects of Wind Electricity Generation do not exceed the capacity of an area to absorb change or significantly detract from landscape and visual amenity values.

30.2.3.3 Promote Biomass Electricity Generation in proximity to available fuel sources that minimise external effects on the surrounding road network and the amenity values of neighbours.

30.2.3.4 Assess the effects of Renewable Electricity Generation proposals, other than Small and Community Scale with regards to:

a. landscape values and areas of significant indigenous flora or significant habitat for indigenous fauna;

b. recreation and cultural values, including relationships with tangata whenua;

c. amenity values;

d. the extent of public benefit and outcomes of location specific cost-benefit analysis.

30.2.3.5 Existing energy facilities, associated infrastructure and undeveloped energy resources are protected from incompatible subdivision, land use and development.

30.2.3.6 To compensate for adverse effects, consideration must be given to any offset measures (including biodiversity offsets) and/or environmental compensation including those which benefit the local environment and community affected.

30.2.3.7 Consider non-renewable energy resources including standby power generation and Stand Alone Power systems where adverse effects can be mitigated.

30.2.4 Objective - Subdivision layout, site layout and building design takes into consideration energy efficiency and conservation.

Policies

30.2.4.1 Encourage energy efficiency and conservation practices, including use of energy efficient materials and renewable energy in development.

30.2.4.2 Encourage subdivision and development to be designed so that buildings can utilise energy efficiency and conservation measures, including by orientation to the sun and through other natural elements, to assist in reducing energy consumption.

30.2.4.3 Encourage Small and Community-Scale Distributed Electricity Generation and Solar Water Heating structures within new or altered buildings.

30.2.4.4 Encourage building design which achieves a Homestar™ certification rating of 6 or more for residential buildings, or a Green Star rating of at least 4 stars for commercial buildings.

30.2.4.5 Transport networks should be designed so that the number, length and need for vehicle trips is minimised, and reliance on private motor vehicles is reduced, to assist in reducing energy consumption.

30.2.4.6 Control the location of buildings and outdoor living areas to reduce impediments to access to sunlight.

Utilities

30.2.5 Objective - The growth and development of the District is supported by utilities that are able to operate effectively and efficiently.

Policies

30.2.5.1 Utilities are provided to service new development prior to buildings being occupied, and activities commencing.

30.2.5.2 Ensure the efficient management of solid waste by:

a. encouraging methods of waste minimisation and reduction such as re-use and recycling;

b. providing landfill sites with the capacity to cater for the present and future disposal of solid waste;

c. assessing trends in solid waste;

d. identifying solid waste sites for future needs;

e. consideration of technologies or methods to improve operational efficiency and sustainability (including the potential use of landfill gas as an energy source);

f. providing for the appropriate re-use of decommissioned landfill sites.

30.2.5.3 Recognise the future needs of utilities and ensure their provision in conjunction with the provider.

30.2.5.4 Assess the priorities for servicing established urban areas, which are developed but are not reticulated.

30.2.5.5 Ensure reticulation of those areas identified for urban expansion or redevelopment is achievable, and that a reticulation system be implemented prior to subdivision.

30.2.5.6 Encourage low impact design techniques which may reduce demands on local utilities.

30.2.6 Objective - The establishment, continued operation and maintenance of utilities supports the well-being of the community.

Policies

30.2.6.1 Provide for the need for maintenance or upgrading of utilities including regionally significant infrastructure to ensure its on-going viability and efficiency subject to managing adverse effects on the environment consistent with the objectives and policies in Chapters 3, 4, 5 and 6.

30.2.6.2 When considering the effects of proposed utility developments consideration must be given to alternatives, and also to how adverse effects will be managed through the route, site and method selection process, while taking into account the locational, technical and operational requirements of the utility and the benefits associated with the utility.

30.2.6.3 Ensure that the adverse effects of utilities on the environment are managed while taking into account the positive social, economic, cultural and environmental benefits that utilities provide, including:

a. enabling enhancement of the quality of life and standard of living for people and communities;

b. providing for public health and safety;

c. enabling the functioning of businesses;

d. enabling economic growth;

e. enabling growth and development;

f. protecting and enhancing the environment;

g. enabling the transportation of freight, goods, people;

h. enabling interaction and communication.

30.2.6.4 Encourage the co-location of facilities where operationally and technically feasible.

30.2.6.5 Manage land use, development and/or subdivision in locations which could compromise the safe and efficient operation of utilities.

30.2.7 Objective - The adverse effects of utilities on the surrounding environments are avoided or minimised.

Policies

30.2.7.1 Manage the adverse effects of utilities on the environment by:

a. avoiding their location on sensitive sites, including heritage and special character areas, Outstanding Natural Landscapes and Outstanding Natural Features, and skylines and ridgelines and where avoidance is not practicable, avoid significant adverse effects and minimise other adverse effects on those sites, areas, landscapes or features;

b. encouraging co-location or multiple use of network utilities where this is efficient and practicable in order to avoid, remedy or mitigate adverse effects on the environment;

c. ensuring that redundant utilities are removed;

d. using landscaping and or colours and finishes to reduce visual effects;

e. integrating utilities with the surrounding environment; whether that is a rural environment or existing built form.

30.2.7.2 Require the undergrounding of services in new areas of development where technically feasible.

30.2.7.3 Encourage the replacement of existing overhead services with underground reticulation or the upgrading of existing overhead services where technically feasible.

30.2.7.4 Take account of economic and operational needs in assessing the location and external appearance of utilities.

30.2.8 Objective - The ongoing operation, maintenance, development and upgrading of the National Grid subject to the adverse effects on the environment of the National Grid network being managed.

Policies

30.2.8.1 Enabling the use and development of the National Grid by managing its adverse effects by:

a. only allowing buildings, structures and earthworks in the National Grid Yard where they will not compromise the operation, maintenance, upgrade and development of the National Grid;

b. avoiding Sensitive Activities within the National Grid Yard;

c. managing potential electrical hazards, and the adverse effects of buildings, structures and Sensitive Activities on the operation, maintenance, upgrade and development of the Frankton Substation;

d. managing subdivision within the National Grid corridor so as to facilitate good amenity and urban design outcomes.

30.3 Other Provisions and Rules

30.3.1 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 and Rural Character
25	*Earthworks*	26	Historic Heritage	27	Subdivision
28	Natural Hazards	*29*	*Transport*	*31*	*Signs*
32	Protected Trees	33	Indigenous Vegetation	34	Wilding Exotic Trees
35	Temporary Activities and Relocated Buildings	36	Noise	37	Designations
	Planning Maps				

30.3.2 Information on National Environmental Standards and Regulations

a. Resource Management (National Environmental Standard for Electricity Transmission Activities) Regulations 2009:

Notwithstanding any other rules in the District Plan, the National Grid existing as at 14 January 2010 is covered by the Resource Management (National Environmental Standard for Electricity Transmission Activities) Regulations 2009 (NESETA) and must comply with the NESETA.

The provisions of the NESETA prevail over the provisions of this District Plan to the extent of any inconsistency. No other rules in the District Plan that duplicate or conflict with the Standard shall apply.

b. Resource Management (National Environmental Standards for Telecommunications Facilities "NESTF") Regulations 2016:

The NESTF 2016 controls a variety of telecommunications facilities and related activities as permitted activities subject to standards, including:

i. cabinets in and outside of road reserve;

ii. antennas on existing and new poles in the road reserve;

iii. replacement, upgrading and co-location of existing poles and antennas outside the road reserve;

iv. new poles and antennas in rural areas;

v. antennas on buildings;

vi. small-cell units on existing structures;

vii. telecommunications lines (underground, on the ground and overhead) and facilities in natural hazard areas; and

viii. associated earthworks.

All telecommunications facilities are controlled by the NESTF 2016 in respect of the generation of radiofrequency fields.

The NESTF 2016 and relevant guidance for users can be found at: http://www.mfe.govt.nz/rma/legislative-tools/national-environmental-standards/national-environmental-standards .

The provisions of the NESTF 2016 prevail over the provisions of this District Plan, to the extent of any inconsistency. No other rules in the District Plan that duplicate or conflict with the NESTF 2016 shall apply. However, District Plan provisions continue to apply to some activities covered by the NESTF 2016, including those which, under regulations 44 to 52, enable rules to be more stringent than the NESTF, such as being subject to heritage rules, Significant Natural Areas, Outstanding Natural Features and Landscapes, and amenity landscape rules.

c. New Zealand Electrical Code of Practice for Electrical Safe Distances.

Compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distances ("NZECP 34:2001") is mandatory under the Electricity Act 1992. All activities regulated by the NZECP 34, including any activities that are otherwise permitted by the District Plan must comply with this legislation.

Advice Note: To assist plan users in complying with these regulations, the major distribution components of the Aurora network are shown on the Planning Maps.

Compliance with this District Plan does not ensure compliance with NZECP 34.

d. Advice Note: Electricity (Hazards from Trees) Regulations 2003.

Vegetation to be planted around electricity networks should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003.

30.3.3 Interpreting and Applying the Rules

30.3.3.1 A permitted activity must comply with all the rules listed in the Activity and Standards tables, and any relevant district wide rules.

30.3.3.2 Where an activity does not comply with a Standard listed in the Standards table, the activity status identified by the Non-Compliance Status column applies. Where an activity breaches more than one Standard, the most restrictive status applies to the Activity.

30.3.3.3 The rules contained in this Chapter take precedence over any other rules that may apply to energy and utilities in the District Plan, unless specifically stated to the contrary and with the exception of:

a. 25 Earthworks;

b. 26 Historic Heritage.

Note: Utilities can also be provided as designations if the ulitity operator is a requiring authority. Refer to Chapter 37 – Designations of the Plan for conditions and descriptions of designated sites.

30.3.3.4 The following abbreviations are used in the tables.

P	Permitted	C	Controlled	RD	Restricted Discretionary
D	Discretionary	NC	Non-Complying	PR	Prohibited

30.4 Energy Rules

30.4.1	Renewable Energy Activities	Activity Status
30.4.1.1	**Small and Community-Scale Distributed Electricity Generation and Solar Water Heating** (including any structures and associated buildings but excluding Wind Electricity Generation), other than those activities restricted by Rule 30.4.1.4.	P
30.4.1.2	**Small and Community-Scale Distributed Wind Electricity Generation** within the Rural Zone, Gibbston Character Zone and Rural Lifestyle Zone that complies with Rule 30.4.2.3 Control is reserved to the following: a. noise; b. visual effects; c. colour; d. vibration.	C
30.4.1.3	**Renewable Electricity Generation Activities,** limited to masts, drilling and water monitoring for the purpose of research and exploratory-scale investigations that are temporary. Discretion is restricted to: a. the duration of works and the research purpose; b. the location of investigation activities and facilities, including proximity to, and effects on, sensitive uses and environments; c. the height and scale of facilities and potential visual effects; d. environmental effects.	RD
30.4.1.4	**Small and Community-Scale Distributed Electricity Generation and Solar Water Heating** including any structures and associated buildings, which is either: a. Wind Electricity Generation other than that provided for in Rule 30.4.1.2. OR b. Located in any of the following sensitive environments: i. Arrowtown Residential Historic Management Zone; ii. Town Centre Special Character Areas ; iii. Significant Natural Areas; iv. Outstanding Natural Landscapes; v. Outstanding Natural Features; vi. Heritage Features and Heritage Overlay Areas.	D
30.4.1.5	**Renewable Electricity Generation Activities**, other than Small and Community-Scale Distributed Electricity Generation, and including any new or additional building housing plant and electrical equipment.	D

30.4.2	Renewable Energy Standards	Activity Status
30.4.2.1	**Small and Community-Scale Distributed Electricity Generation and Solar Water Heating must:** **30.4.2.1.1** Not overhang the edge of any building. **30.4.2.1.2** Be finished in recessive colours: black, dark blue, grey or brown if Solar Electricity Generation cells, modules or panels. **30.4.2.1.3** Be finished in similar recessive colours to those in the above standard if frames, mounting or fixing hardware. Recessive colours must be selected to be the closest colour to the building to which they form part of, are attached to, or service. **30.4.2.1.4** Be set back in accordance with the internal and road boundary setbacks for buildings in the zone in which they are located. Any exemptions identified in the zone rules for accessory buildings do not apply. **30.4.2.1.5** Not intrude through any recession planes applicable in the zone in which they are located. **30.4.2.1.6** Not protrude more than a maximum of 0.5 m above the maximum height limit specified for the zone if solar panels on a sloping roof. **30.4.2.1.7** Not protrude a maximum of 1.0 m above the maximum height limit specified for the zone, for a maximum area of $5m^2$ if solar panels on a flat roof. **30.4.2.1.8** Not exceed $150m^2$ in area if free standing Solar Electricity Generation and Solar Water Heating. **30.4.2.1.9** Not exceed 2.0 metres in height if free standing Solar Electricity Generation and Solar Water Heating. **30.4.2.1.10** Be located within an approved building platform where located in the Rural, Gibbston Character or Rural Lifestyle Zone.	D
30.4.2.2	**Mini and Micro Hydro Electricity Generation must:** **30.4.2.2.1** Comply with Road and Internal Boundary Building Setbacks in the zone in which they are located. **30.4.2.2.2** Not exceed 2.5 metres in height. **30.4.2.2.3** Be finished in recessive colours consistent with the building it is servicing on site. Note: Reference should also be made to the Otago Regional Council Regional Plan: Water.	D

30.4.2	Renewable Energy Standards	Activity Status
30.4.2.3	**Wind Electricity Generation must:** **30.4.2.3.1** Comprise no more than two Wind Electricity Generation turbines or masts on any site. **30.4.2.3.2** Involve no lattice towers. **30.4.2.3.3** Be set back in accordance with the internal and road boundary setbacks for buildings in the zone in which they are located. Any exemptions identified in the zone rules for accessory buildings do not apply. **30.4.2.3.4** Not exceed the maximum height or intrude through any recession planes applicable in the zone in which they are located. **30.4.2.3.5** Be finished in recessive colours with a light reflectance value of less than 16%. Notes: In the Rural and Gibbston Character Zones the maximum height shall be that specified for non-residential building ancillary to viticulture or farming activities (10m). The maximum height for a wind turbine shall be measured to the tip of blade when in vertical position. Wind turbines must comply with Chapter 36 (Noise).	D
30.4.2.4	**Biomass Electricity Generation** **30.4.2.4.1** Biomass Electricity Generation fuel material shall be sourced on the same site as the generation plant, except where the generation plant is located in Industrial Zones (and Industrial Activities Areas within Structure Plans). **30.4.2.4.2** Any outdoor storage of Biomass Electricity Generation fuel material shall be screened from adjoining sites and public places. **30.4.2.4.3** Biomass Electricity Generation plant and equipment shall be located inside a Building. Note: Reference should also be made to the Otago Regional Council Regional Plan: Air	D
30.4.2.5	**Buildings for renewable energy activities** Any building housing plant and electrical equipment associated with Renewable Electricity Generation activities, unless permitted in the zone in which it located or approved by resource consent, shall: **30.4.2.5.1** Not exceed $10m^2$ in area and 2.5m in height. **30.4.2.5.2** Be set back in accordance with the internal and road boundary setbacks for accessory buildings in the zone in which it is located. **30.4.2.5.3** Be finished in recessive colours, consistent with the building it is servicing on site.	D

30.4.3	Non-Renewable Energy Activities	Activity Status
30.4.3.1	**Non-renewable Electricity Generation where either:** a. the generation only supplies activities on the site on which it is located and involves either: i. standby generators associated with community, health care, and utility activities; or ii. generators that are part of a Stand-Alone Power System on sites that do not have connection to the local distributed electricity network. OR b. generators that supply the local distributed electricity network for a period not exceeding 3 months in any calendar year. Note: Diesel Generators must comply with the provisions of Chapter 36 (Noise).	P
30.4.3.2	**Non-Renewable Energy Activities which are not otherwise specified.**	NC

30.5 Utility Rules

30.5.1	General Utility Activities	Non-compliance Status
30.5.1.1	**Buildings associated with a Utility** Any building or cabinet or structure of 10m^2 or less in total footprint or 3m or less in height which is not located in the areas listed in Rule 30.5.1.4. This rule does not apply to: a. masts for navigation or meteorology b. poles, antennas, and associated cabinets (cabinets up to 10m^2 in area and 3m in height, exclusive of any plinth or other foundation), for telecommunication and radio communication c. lines and support structures.	P
30.5.1.2	**Flood Protection Works for the maintenance, reinstatement, repair or replacement of existing flood protection works for the purpose of** maintaining the flood carrying capacity of water courses and/or maintaining the integrity of existing river protection works.	P

30.5.1	General Utility Activities	Non-compliance Status
30.5.1.3	**Buildings (associated with a Utility)** The addition, alteration or construction of buildings greater than 10m² in total footprint or 3m in height other than buildings located in the areas listed in Rule 30.5.1.4. This rule does not apply to: a. masts or poles for navigation or meteorology; b. poles, antennas, and associated cabinets (cabinets up to 10m² in area and 3m in height, exclusive of any plinth or other foundation) for telecommunication and radio communication; c. line and support structures. Control is reserved to: a. location; b. external appearance and visual effects; c. associated earthworks; d. parking and access; e. landscaping.	C
30.5.1.4	**Buildings (associated with a Utility)** Any addition, alteration or construction of buildings in: a. any Significant Natural Areas; b. the Arrowtown Residential Historic Management Zone. This rule does not apply to: a. masts or poles for navigation or meteorology; b. poles, antennas, and associated cabinets (cabinets up to 10m² in area and 3m in height, exclusive of any plinth or other foundation), for telecommunication and radio communication; c. lines and support structures.	D
30.5.1.5	**Flood Protection Works** not otherwise provided for in Rule 30.4.5.1.2	D
30.5.1.6	**Waste Management Facilities**	D
30.5.1.7	**Water and Wastewater Treatment Facilities**	D
30.5.1.8	**Utilities and Buildings (associated with a Utility) which are not:** **30.5.8.1** provided for in any National Environmental Standard; OR **30.5.8.2** otherwise listed in Rules 30.5.1.1 to 30.5.1.7, 30.5.3.1 to 30.5.3.5, 30.5.5.1 to 30.5.5.8, or 30.5.6.1 to 30.5.6.13.	D

30.5.2	General Utilities - Standards	Non-compliance Status
30.5.2.1	**Setback from internal boundaries and road boundaries** Where the utility is a building, it must be set back in accordance with the internal and road boundary setbacks for accessory buildings in the zone in which it is located. This rule does not apply to: a. poles, antennas, and associated cabinets (cabinets up to $10m^2$ in area and 3m in height, exclusive of any plinth or other foundation), for telecommunication and radio communication; b. lines and support structures for telecommunications.	D
30.5.2.2	**Buildings associated with a Utility in Outstanding Natural Landscapes (ONL) and Outstanding Natural Features (ONF)** Any building within an ONL or ONF must be less than $10m^2$ in area and less than 3m in height. This rule does not apply to: a. masts or poles for navigation or meteorology; b. poles, antennas, and associated cabinets (cabinets up to $10m^2$ in area and 3m in height, exclusive of any plinth or other foundation), for telecommunication and radio communication; c. lines and support structures.	D
30.5.2.3	**Height** All buildings or structures must comply with the relevant maximum height provisions for buildings of the zone they are located in. This rule does not apply to: a. masts or poles for navigation or meteorology; b. poles, antennas, and associated cabinets (cabinets up to $10m^2$ in area and 3m in height, exclusive of any plinth or other foundation), for telecommunication and radio communication; c. lines and support structures.	D

30.5.3	National Grid Activities	Non-compliance Status
30.5.3.1	**Minor Upgrading**	P
30.5.3.2	**Buildings, structures and activities that are not National Grid sensitive activities within the National Grid Corridor** Subject to compliance with Rules 30.5.4.1 and 30.5.4.2.	P
30.5.3.3	**Earthworks within the National Grid Yard** Subject to compliance with Rule 30.5.4.2	P
30.5.3.4	**Buildings, structures and National Grid sensitive activities in the vicinity of the Frankton Substation** Any building, structure or National Grid sensitive activity within 45m of the designated boundary of Transpower New Zealand Limited's Frankton Substation. Control is reserved to: a. the extent to which the design and layout (including underground cables, services and fencing) avoids adverse effects on the on-going operation, maintenance upgrading and development of the substation; b. the risk of electrical hazards affecting public or individual safety, and the risk of property damage; and c. measures proposed to avoid or mitigate potential adverse effects.	C
30.5.3.5	**Erecting any lines, lattice towers or support structures** for new overhead lines to convey electricity (at a voltage of more than 110kV with a capacity over 100MVA) in all zones.	D

30.5.4	National Grid Standards	Non-compliance Status
30.5.4.1	**Buildings and Structures permitted within the National Grid Yard** **30.5.4.1.1** A non-conductive fence located 5m or more from any National Grid Support Structure and no more than 2.5m in height. **30.5.4.1.2** Network utility within a transport corridor or any part of electricity infrastructure that connects to the National Grid, excluding a building or structure for the reticulation and storage of water for irrigation purposes. **30.5.4.1.3** Any new non-habitable building less than 2.5m high and 10m^2 in floor area and is more than 12m from a National Grid Support Structure. **30.5.4.1.4** Any non-habitable building or structure used for agricultural activities provided that they are: a. less than 2.5m high; b. located at least 12m from a National Grid Support Structure; c. not a milking shed/dairy shed (excluding the stockyards and ancillary platforms), or a commercial glasshouse, or a structure associated with irrigation, or a factory farm. **30.5.4.1.5** Alterations to existing buildings that do not alter the building envelope. **30.5.4.1.6** An agricultural structure where Transpower has given written approval in accordance with clause 2.4.1 of NZECP34:2001. Note: Refer to the Definitions for illustration of the National Grid Yard.	NC
30.5.4.2	**Earthworks permitted within the National Grid Yard** **30.5.4.2.1** Earthworks within 6 metres of the outer visible edge of a National Grid Transmission Support Structure must be no deeper than 300mm. **30.5.4.2.2** Earthworks between 6 metres to 12 metres from the outer visible edge of a National Grid Transmission Support Structure must be no deeper than 3 metres. **30.5.4.2.3** Earthworks must not create an unstable batter that will affect a transmission support structure. **30.5.4.2.4** Earthworks must not result in a reduction in the existing conductor clearance distance below what is required by the NZECP 34:2001. The following earthworks are exempt from the rules above: **30.5.4.2.5** Earthworks undertaken by network utility operators in the course of constructing or maintaining utilities providing the work is not associated with buildings or structures for the storage of water for irrigation purposes. **30.5.4.2.6** Earthworks undertaken as part of agricultural activities or domestic gardening. **30.5.4.2.7** Repair sealing, resealing of an existing road, footpath, farm track or driveway. Note: Refer to the Definitions for illustration of the National Grid Yard.	NC

30.5.5	Electricity Distribution Activities	Non-compliance Status
30.5.5.1	**Minor Upgrading**	P
30.5.5.2	**Lines and Supporting Structures** The placement and upgrading of lines, poles and supporting structures within formed legal road.	P
30.5.5.3	**Underground Electricity Cables** The placement of underground electricity distribution cables provided the ground surface is reinstated to the state it was prior to works commencing.	P
30.5.5.4	**Lines and Supporting Structures** Except as otherwise stated in Rules 30.5.5.2 above, and 30.5.5.5 below new lines and assoicated above ground support structures including masts, poles or ancillary equipment, but excluding lattice towers, to convey electricity (at a voltage of equal to or less than 100kV at a capacity equal to or less than 100MV). Control is reseved to: a. location; b. route; c. height; d. appearance, scale and visual effects.	C
30.5.5.5	**Lines and Supporting Structures** Any line or support structure where it involves erecting any support structures for overhead lines to convey electricity (at a voltage of equal to or less than 110kV at a capacity of equal to or less than 100MVA) in any Outstanding Natural Feature or Outstanding Natural Landscape or Significant Natural Areas.	D

30.5.6	Telecommunications, radio communication, navigation or meteorological communication activities	Activity Status
30.5.6.1	**Minor Upgrading**	P
30.5.6.2	**New Aerial Lines and Supporting Structures** within formed road reserve; or New aerial telecommunication line/s on existing telecommunication or power structures including when located in sensitive environments identified in Rule 30.5.6.5.	P
30.5.6.3	**The construction, alteration, or addition** to underground lines providing the ground surface is reinstated to the state it was prior to works commencing.	P
30.5.6.4	**New Aerial Lines and Supporting Structures (outside formed road reserve)** Not located in any of the sensitive environments identified by Rule 30.5.6.5 Control is reserved to: a. location; b. route; c. appearance, scale and visual effects.	C
30.5.6.5	**New Aerial Lines and Supporting Structures** Any line or support structure within any Outstanding Natural Feature or Outstanding Natural Landscape or Significant Natural Areas.	D
30.5.6.6	**Poles** With a maximum height no greater than: a. 18m in the High Density Residential (Queenstown – Flat Sites), Queenstown Town Centre, Wanaka Town Centre (Wanaka Height Precinct) or Airport Zones; b. 25m in the Rural Zone; c. 15m in the Business Mixed Use Zone (Queenstown); d. 13m in the Local Shopping Centre, Business Mixed Use (Wanaka) or Jacks Point zones; e. 11m in any other zone; and f. 8m in any identified Outstanding Natural Landscape. Where located in the Rural Zone within the Outstanding Natural Landscape or Rural Character Landscape, poles must be finished in colours with a light reflectance value of less than 16%.	P

30.5.6	Telecommunications, radio communication, navigation or meteorological communication activities	Activity Status
30.5.6.7	**Poles** Exceeding the maximum height for the zones identified in Rule 30.5.6.6 OR any pole located in a. any identified Outstanding Natural Feature; b. the Arrowtown Residential Historic Management Zone; c. Arrowtown Town Centre; d. Queenstown Special Character Area; e. Significant Natural Area; f. Sites containing a Heritage Feature; and g. Heritage Overlay Areas.	D
30.5.6.8	**Antennas and ancillary equipment** Provided that for panel antennas the maximum width is 0.7m, and for all other antenna types the maximum surface area is no greater than 1.5m^2 and for whip antennas, less than 4m in length. Where located in the Rural Zone within the Outstanding Natural Landscape or Rural Landscape Classification, antennae must be finished in colours with a light reflectance value of less than 16%.	P
30.5.6.9	**Antennas and ancillary equipment** Subject to Rule 30.5.6.10 provided that for panel antennas the maximum width is between 0.7m and 1.0m, and for all other antenna types the surface area is between 1.5m^2 and 4m^2 and for whip antennas, more than 4m in length. Control is reserved to all of the following: a. location; b. appearance, colour and visual effects	C
30.5.6.10	**Any antennas located in the following:** a. any identified Outstanding Natural Feature; b. the Arrowtown Residential Historic Management Zone ; c. Arrowtown Town Centre; d. Queenstown Special Character Area; e. Significant Natural Areas; and f. Heritage, Features and Heritage Overlay Areas.	D
30.5.6.11	**Small Cell Units** Provided that the small cell unit is not located within a Heritage Precinct.	P

30.5.6	Telecommunications, radio communication, navigation or meteorological communication activities	Activity Status
30.5.6.12	**Microcells** A microcell and associated antennas, with a volume of between 0.11m^3 and 2.5m^3 provided that the microcell is not located within a Heritage Precinct. Control is reserved to: a. appearance; b. colour; and c. visual effects.	C
30.5.6.13	**Small Cell Units and Microcells** **30.5.6.13.1** A microcell and associated antennas, with a volume more than 2.5m^3. OR **30.5.6.13.2** A small cell unit located within a Heritage Precinct.	D

30.6 Rules - Non-Notification of Applications

30.6.1 Any application for resource consent for the following matters does not require the written approval of other persons and will not be notified or limited-notified:

30.6.1.1 Controlled activities except for applications when within 45m of the designated boundary of Transpower New Zealand Limited's Frankton Substation.

30.6.1.2 Discretionary activities for Flood Protection Works.

Appendix 3: Chapter 36 as Recommended

36 NOISE

QUEENSTOWN LAKES DISTRICT COUNCIL

36.1 Purpose

The purpose of this chapter is to manage the effects of noise in the District. Noise is part of the environment. While almost all activities give rise to some degree of noise, noise can cause adverse effects on amenity values and the health and wellbeing of people and communities. Adverse effects may arise where the location, character, frequency, duration, or timing of noise is inconsistent or incompatible with anticipated or reasonable noise levels.

The Resource Management Act 1991 (RMA) requires every occupier of land and every person carrying out an activity to adopt the best practicable option to ensure noise does not exceed a reasonable level. The RMA also defines noise to include vibration. "Reasonable" noise levels are determined by the standard of amenity and ambient noise level of the receiving environment and the Council provides direction on this through the prescription of noise limits for each Zone. Noise is also managed by the Council through the use of relevant New Zealand Standards for noise. Land use and development activities, including activities on the surface of lakes and rivers, should be managed in a manner that avoids, remedies or mitigates the adverse effects of noise to a reasonable level.

In most situations, activities should consider the control of noise at the source and the mitigation of adverse effects of noise on the receiving environment. However, the onus on the reduction of effects of noise should not always fall on the noise generating activity. In some cases it may be appropriate for the noise receiver to avoid or mitigate the effects from an existing noise generating activity, particularly where the noise receiver is a noise sensitive activity.

Overflying aircraft have the potential to adversely affect amenity values. The Council controls noise emissions from airports, including take-offs and landings, via provisions in this District Plan, and Designation conditions. However, this is different from controlling noise from aircraft that are in flight. The RMA which empowers territorial authorities to regulate activities on land and water affecting amenity values, does not enable the authorities to control noise from overflying aircraft. Noise from overflying aircraft is controlled under section 29B of the Civil Aviation Act 1990.

With the exception of ventilation requirements for the Queenstown and Wanaka town centres contained in Rule 36.7, and noise from water and motor-related noise from commercial motorised craft within the Queenstown Town Centre Waterfront Sub-Zone (which is subject to Rule 36.5.13) noise received within town centres is not addressed in this chapter, but rather in the Queenstown, Wanaka and Arrowtown Town Centre Zone chapters. This is due to the town centre-specific complexities of noise in those zones, and its fundamental nature as an issue that inter-relates with all other issues in those zones. Noise generated in the town centres but received outside of the town centres is managed under this chapter, except that noise from music, voice and loudspeakers in the Wanaka and Queenstown Town Centres (excluding the Queenstown Town Centre Transition Sub-Zone), need not meet the noise limits set by this chapter.

36.2 Objectives and Policies

36.2.1 Objective - The adverse effects of noise emissions are controlled to a reasonable level to manage the potential for conflict arising from adverse noise effects between land use activities.

Policies

36.2.1.1 Avoid, remedy or mitigate adverse effects of unreasonable noise from land use and development.

36.2.1.2 Avoid, remedy or mitigate adverse noise reverse sensitivity effects.

36.3 Other Provisions

36.3.1 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 and Rural Character
25 Earthworks	26 Historic Hertiage	27 Subdivision
28 Natural Hazards	*29 Transport*	30 Energy and Utilities
31 Signs	32 Protected Trees	33 Indigenous Vegetation
34 Wilding Exotic Trees	35 Temporary Activities and Relocated Buildings	37 Designations
Planning Maps		

36.3.2 Interpreting and Applying the Rules

36.3.2.1 Any activity that is not Permitted requires resource consent. Any activity that does not specify an activity status for non-compliance but breaches a standard, requires resource consent as a Non-complying activity.

36.3.2.2 Sound levels shall be measured and assessed in accordance with NZS **6801:2008** Acoustics - Measurement of Environmental Sound and NZS **6802:2008** Acoustics - Environmental Noise, except where another Standard has been referenced in these rules, in which case that Standard should apply.

36.3.2.3 Any activities which are Permitted, Controlled or Restricted Discretionary in any section of the District Plan must comply with the noise standards in Tables 2, 3, 4 and 5 below, where that standard is relevant to that activity.

36.3.2.4 In addition to the above, the noise from the activities listed in Table 1 shall be Permitted activities in all zones (unless otherwise stated). For the avoidance of doubt, the activities in Table 1 are exempt from complying with the noise standards set out in Table 2.

36.3.2.5 Notwithstanding compliance with Rules 36.5.13 (Helicopters) and 36.5.14 (Fixed Wing Aircraft) in Table 3, informal airports shall also be subject to the rules in the chapters relating to the zones in which the activity is located.

36.3.2.6 Sound from non-residential activities, visitor accommodation activities and sound from stationary electrical and mechanical equipment must not exceed the noise limits in Table 2 in each of the zones in which sound from an activity is received. The noise limits in Table 2 do not apply to assessment locations within the same site as the activity.

36.3.2.7 The noise limits contained in Table 2 do not apply to sound from aircraft operations at Queenstown Airport or Wanaka Airport.

36.3.2.8 Noise standards for noise received in the Queenstown, Wanaka and Arrowtown Town Centre, Local Shopping and Business Mixed Use zones are not included in this chapter. Please refer to Chapters 12, 13,14, 15 and 16. The noise standards in this chapter still apply for noise generated within these zones but received in other zones, except that noise from music, voices, and loud speakers in the Wanaka and Queenstown Town Centres (excluding the Queenstown Town Centre Transition Sub-Zone) need not meet the noise limits set by this chapter.

36.3.2.9 The standards in Table 3 are specific to the activities listed in each row and are exempt from complying with the noise standards set out in Table 2.

32.3.2.10 The following abbreviations are used in the tables:

P	Permitted	C	Controlled	RD	Restricted Discretionary
D	Discretionary	NC	Non-Complying	PR	Prohibited

36.4 Rules - Activities

Table 1 - Permitted Activities

Rule Number	Permitted Activities	Activity Status
36.4.1	Sound from vehicles on public roads or trains on railway lines (including at railway yards, railway sidings or stations).	P
36.4.2	Any warning device that is activated in the event of intrusion, danger, an emergency or for safety purposes, provided that vehicle reversing alarms are a broadband directional type.	P
36.4.3	Sound arising from fire stations (including rural fire stations), fire service appliance sirens and call-out sirens for volunteer brigades.	P
36.4.4	Sound from temporary military training activities.	P
36.4.5	In the Rural Zone and the Gibbston Character Zone, sound from farming and forestry activities, and bird scaring devices, other than sound from stationary motors and stationary equipment.	P
36.4.6	Sound from telecommunications cabinets in road reserve.	P
36.4.7	Sound from emergency and backup electrical generators: a. operating for emergency purposes or; b. operating for testing and maintenance for less than 60 minutes each month during a weekday between 0900 and 1700. For the purpose of this rule backup generators are generators only used when there are unscheduled outages of the network (other than routine testing or maintenance provided for in (b) above).	P

36.5 Rules - Standards

Table 2 - General Standards

Rule Number	General Standards				Non-compliance Status
	Activity or sound source	Assessment location	Time	Noise Limits	
36.5.1	Rural Zone (Note: refer 36.5.14 for noise received in the Rural Zone from the Airport Zone - Queenstown). Gibbston Character Zone Airport Zone - Wanaka	Any point within the notional boundary of a residential unit.	0800h to 2000h	50 dB $L_{Aeq(15\ min)}$	NC
			2000h to 0800h	40 dB $L_{Aeq(15\ min)}$ 75 dB L_{AFmax}	NC
36.5.2	Low, Medium, and High Density and Large Lot Residential Zones (Note: refer 36.5.14 for noise received in the Residential Zones from the Airport Zone - Queenstown). Arrowtown Residential Historic Management Zone Rural Residential Zone Rural Lifestyle Zone Waterfall Park Zone Millbrook Resort Zone - Residential Activity Areas only Jacks Point Zone- Residential Activity Areas only	Any point within any site.	0800h to 2000h	50 dB $L_{Aeq(15\ min)}$	NC
			2000h to 0800h	40 dB $L_{Aeq(15\ min)}$ 75 dB L_{AFmax}	NC
36.5.3	Airport Zone - Queenstown	At any point within the zone.	Any time	No limit	P
36.5.4	Jacks Point Zone - Village Activity Area only	Any point within any site.	0800h to 2200h	60 dB $L_{Aeq(15\ min)}$	NC
			2200h to 0800h	50 dB $L_{Aeq(15\ min)}$ 75 dB L_{AFmax}	NC

Table 3 - Specific Standards

Rule Number	Specific Standards				Non-compliance Status
	Activity or sound source	Assessment location	Time	Noise Limits	
36.5.5	**Certain Telecommunications Activities in Road Reserve** The Resource Management (National Environmental Standards for Telecommunications Facilities "NESTF") Regulations 2008 provide for noise from telecommunications equipment cabinets located in the road reserve as a permitted activity, subject to the specified noise limits. The noise from the cabinet must be measured in accordance with NZS 6801: 2008 Acoustics – Measurement of environmental sound, the measurement must be adjusted in accordance with NZS 6801: 2008 Acoustics – Measurement of environmental sound to a free field incident sound level, and the adjusted measurement must be assessed in accordance with NZS 6802: 2008 Acoustics – Environmental noise.	**36.5.5.1** Where a cabinet located in a road reserve in an area in which allows residential activities, the noise from the cabinet must be measured and assessed at 1 of the following points: a. if the side of a building containing a habitable room is within 4 m of the closest boundary of the road reserve, the noise must be measured: i. at a point 1 m from the side of the building; or ii. at a point in the plane of the side of the building; b. in any other case, the noise must be measured at a point that is: i. at least 3 m from the cabinet; and ii. within the legal boundary of land next to the part of the road reserve where the cabinet is located.	0700h to 2200h	50 dB $L_{Aeq(5\ min}$	Refer NESTF
			2200h to 0700h	40 dB $L_{Aeq(5\ min)}$	
			2200h to 0700h	65 dB L_{AFmax}	
		36.5.5.2 Where a cabinet is located in a road reserve in an area in which does not allow residential activities, the noise from the cabinet must be measured and assessed at 1 of the following points: a. if the side of a building containing a habitable room is within 4 m of the closest boundary of the road reserve, the noise must be measured: i. at a point 1 m from the side of the building; or ii. at a point in the plane of the side of the building; b. in any other case, the noise must be measured at a point that is: i. at least 3 m from the cabinet; and ii. within the legal boundary of land next to the part of the road reserve where the cabinet is located.	Any time	60 dB $L_{Aeq(5\ min)}$	
			2200h to 0700h	65 dB L_{AFmax}	

Rule Number	Specific Standards				Non-compliance Status
	Activity or sound source	Assessment location	Time	Noise Limits	
36.5.6	**Wind Turbines** Wind farm sound must be measured and assessed in accordance with NZS 6808:2010 Acoustics - Wind Farm Noise	At any point within the notional boundary of any residential unit.	Any time	40 dB $L_{A90(10\ min)}$ or the background sound level $L_{A90(10\ min)}$ plus 5 dB, whichever is higher	NC
36.5.7	**Audible Bird Scaring Devices** The operation of audible devices (including gas guns, audible avian distress alarms and firearms for the purpose of bird scaring, and excluding noise arising from fire stations). In relation to gas guns, audible avian distress alarms and firearms no more than 15 audible events shall occur per device in any 60 minute period. Each audible event shall not exceed three sound emissions from any single device within a 1 minute period and no such events are permitted during the period between sunset and sunrise the following day. The number of devices shall not exceed one device per 4 hectares of land in any single land holding, except that in the case of a single land holding less than 4 hectares in area, one device shall be permitted.	**36.5.7.1** At any point within a Residential Zone or the notional boundary of any residential unit, other than on the property in which the device is located.	Hours of daylight but not earlier than 0600h	65 dB L_{AE} shall apply to any one event	NC
		36.5.7.2 In any public place.	At any time	90 dB L_{AE} is received from any one noise event	
36.5.8	**Frost fans** Sound from frost fans.	At any point within the notional boundary of any residential unit, other than residential units on the same site as the activity.	At any time	55 dB $L_{Aaeg\ (15\ min)}$	NC

Rule Number	Specific Standards				Non-compliance Status
	Activity or sound source	Assessment location	Time	Noise Limits	
36.5.9	**Vibration** Vibration from any activity shall not exceed the guideline values given in DIN 4150-3:1999 Effects of vibration on structures at any buildings on any other site.	On any structures or buildings on any other site.	Refer to relevant standard	Refer to relevant standard	NC
36.5.10	**Helicopters** Sound from any helicopter landing area must be measured and assessed in accordance with NZ 6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas. Sound from helicopter landing areas must comply with the limits of acceptability set out in Table 1 of NZS 6807. In assessing noise from helicopters using NZS 6807: 1994 any individual helicopter flight movement, including continuous idling occurring between an arrival and departure, shall be measured and assessed so that the sound energy that is actually received from that movement is conveyed in the Sound Exposure Level (SEL) for the movement when calculated in accordance with NZS 6801: 2008. For the avoidance of doubt this rule does not apply to Queenstown Airport and Wanaka Airport. Advice Note: See additional rules in Rural Zone Chapter at 21.10.1 and 21.10.2.	At any point within the notional boundary of any residential unit, other than residential units on the same site as the activity. **Note: The applicable noise limit in this rule and in rule 36.5.11 below for informal airports/landing strips used by a combination of both fixed wing and helicopters shall be determined by an appropriately qualified acoustic engineer on the basis of the dominant aircraft type to be used.*	At all times	50 dB L_{dn}	NC
36.5.11	**Fixed Wing Aircraft** Sound from airports/landing strips for fixed wing aircraft must be measured and assessed in accordance with NZS 6805:1992 Airport Noise Management and Land Use Planning. For the avoidance of doubt this rule does not apply to Queenstown and Wanaka Airports. Advice Note: See additional rules in Rural Zone Chapter at 21.10.1 and 21.10.2.	At any point within the notional boundary of any residential unit and at any point within a residential site other than residential units on the same site as the activity. **Note: The applicable noise limit in this rule and in rule 36.5.10 above for informal airports/landing strips used by a combination of both fixed wing and helicopters shall be determined by an appropriately qualified acoustic engineer on the basis of the dominant aircraft type to be used.*	At all times	55 dB L_{dn}	NC

Rule Number	Specific Standards				Non-compliance Status
	Activity or sound source	Assessment location	Time	Noise Limits	
36.5.12	**Construction Noise** Construction sound must be measured and assessed in accordance with NZS 6803:1999 Acoustics - Construction Noise. Construction sound must comply with the recommended upper limits in Tables 2 and 3 of NZS 6803. Construction sound must be managed in accordance with NZS 6803.	At any point within any other site.	Refer to relevant standard	Refer to relevant standard	D
36.5.13	**Commercial Motorised Craft** Sound from motorised craft must be measured and assessed in accordance with ISO 2922:2000 and ISO 14509-1:2008.	25 metres from the craft.	0800 to 2000h 2000h to 0800h	77 dB L_{ASmax} 67 dB L_{ASmax}	NC
36.5.14	Sound from the Airport Zone - Queenstown received in the Residential Zones, and the Rural Zone, excluding sound from aircraft operations that are subject to the Queenstown Airport Designation No.2.	At any point within the Residential Zone and at any point within the notional boundary in the Rural Zone.	0700h to 2200h 2200h to 0700h	55 dB $_{Aeq(15\ min)}$ 45 dB $_{Aeq(15\ min)}$ 70 dB $_{AFmax}$	RD Discretion is restricted to the extent of effects of noise generated on adjoining zones.

36.6 Airport Noise

36.6.1 Sound Insulation Requirements for the Queenstown and Wanaka Airport - Acceptable Construction Materials (Table 4).

The following table sets out the construction materials required to achieve appropriate sound insulation within the airport Air Noise Boundary (ANB) as shown on the planning maps.

Table 4

Building Element	Minimum Construction	
External Walls	Exterior Lining	Brick or concrete block or concrete, or 20mm timber or 6mm fibre cement
	Insulation	Not required for acoustical purposes
	Frame	One layer of 9mm gypsum or plasterboard (or an equivalent combination of exterior and interior wall mass)
Windows/Glazed Doors	Double-glazing with 4 mm thick panes separated by a cavity at least 12 mm wide	
Pitched Roof	Cladding	0.5mm profiled steel or masonry tiles or 6mm corrugated fibre cement
	Insulation	100mm thermal insulation blanket/batts
	Ceiling	1 layer 9mm gypsum or plaster board
Skillion Roof	Cladding	0.5mm profiled steel or 6mm fibre cement
	Sarking	None Required
	Insulation	100mm thermal insulation blanket/batts
	Ceiling	1 layer 1mm gypsum or plasterboard
External Door	Solid core door (min 24kg/m2) with weather seals	

Note: The specified construction materials in this table are the minimum required to meet the Indoor Design Sound Level. Alternatives with greater mass or larger thicknesses of insulation will be acceptable. Any additional construction requirements to meet other applicable standards not covered by this rule (eg fire, Building Code etc) would also need to be implemented.

36.6.2 Ventilation Requirements for the Queenstown and Wanaka Airport

The following applies to the ventilation requirements within the airport Outer Control Boundary (OCB) and Air Noise Boundary (ANB).

Critical Listening Environments must have a ventilation and cooling system(s) designed, constructed and maintained to achieve the following:

a. an outdoor air ventilation system. The ventilation rate must be able to be controlled by the occupant in increments as follows:

   i. a low air flow setting that provides air at a rate of between 0.35 and 0.5 air changes per hour. The sound of the system on this setting must not exceed 30dB LAeg(30s) when measured 2m away from any grille or diffuser;

   ii. a high air flow setting that provides at least 5 air changes per hour. The sound of the system on this setting must not exceed 35 dB LAeg(30s) when measured 2m away from any grille or diffuser.

b. the system must provide, either by outdoor air alone, combined outdoor air and heating/cooling system or by direct room heating / cooling:

   i. cooling that is controllable by the occupant and can maintain the temperature within the Critical Listening Environment at no greater than 25°C; and

   ii. heating that is controllable by the occupant and can maintain the temperature within the Critical Listening Environment at no less than 18°C ;and

   iii. the sound of the system when in heating or cooling mode must not exceed 35 dB LAeg(30s) when measured 2m away from any grille or diffuser.

c. a relief air path must be provided to ensure the pressure difference between the Critical Listening Environments and outside is never greater than 30Pa;

d. if cooling is provided by a heat pump then the requirements of (a)(ii) and (c) do not apply.

Note: Where there is an existing ventilation, heating and/or cooling system, and/or relief air path within a Critical Listening Environment that meets the criteria stated in the rule, the existing system may be utilised to demonstrate compliance with the rule.

36.7 Ventilation Requirements for other Zones (Table 5)

The following table (Table 5) sets out the ventilation requirements in the Wanaka and Queenstown Town Centre Zones, the Local Shopping Centre Zone and the Business Mixed Use Zone.

Table 5

Room Type	**Outdoor Air Ventilation Rate (Air Changes Room Type per Hour, ac/hr)**	
	Low Setting	**High Setting**
Bedrooms	1-2 ac/hr	Min. 5 ac/hr
Other Critical Listening Environments	1-2 ac/hr	Min. 15 ac/hr
Noise from ventilation systems shall not exceed 35 dB LAeq(1 min), on High Setting and 30 dB LAeq(1 min), on Low Setting. Noise levels shall be measured at a distance of to 2 m from any diffuser.		
Each system must be able to be individually switched on and off and when on, be controlled across the range of ventilation rates by the occupant with a minimum of 3 stages.		
Each system providing the low setting flow rates is to be provided with a heating system which, at any time required by the occupant, is able to provide the incoming air with an 18 °C heat rise when the airflow is set to the low setting. Each heating system is to have a minimum of 3 equal heating stages.		
If air conditioning is provided to any space then the high setting ventilation requirement for that space is not required.		

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 14

Report and Recommendations of Independent Commissioners Regarding Whole of Plan, Chapter 2 (Definitions) and Chapter 28 (Natural Hazards)

Commissioners

Denis Nugent (Chair)

Trevor Robinson

CONTENTS

PART A: INTRODUCTORY MATTERS

1. PRELIMINARY MATTERS

1.1. Terminology in this Report

1. Throughout this report, we use the following abbreviations:

Act	Resource Management Act 1991 as it stood prior to 19 April 2017
Council	Queenstown Lakes District Council
Clause 16(2)	clause 16(2) of the First Schedule to the Act
NPSET 2008	National Policy Statement for Electricity Transmission 2008
NZTA	New Zealand Transport Authority
ODP	the Operative District Plan for the Queenstown Lakes District as at the date of this report
ONF	Outstanding Natural Feature(s)
ONL	Outstanding Natural Landscape(s)
PDP	Stage 1 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015
Proposed RPS	the Proposed Regional Policy Statement for the Otago Region as modified by decisions on submissions and dated 1 October 2016
Proposed RPS (notified)	the Proposed Regional Policy Statement for the Otago Region dated 23 May 2015
QAC	Queenstown Airport Corporation
RPS	the Operative Regional Policy Statement for the Otago Region dated October 1998
UCES	Upper Clutha Environmental Society
Stage 2 Variations	The variations, including changes to the existing text of the PDP, notified by the Council on 23 November 2017

1.2. Topics Considered:

2. There were three topics of this hearing:
   a. Whole of Plan submissions;
   b. Chapter 2 (Definitions);
   c. Chapter 28 (Natural Hazards).

3. The hearing of these matters collectively comprised Hearing Stream 10.

4. Whole of Plan submissions were classified as such by reason of the fact that they did not relate to a specific part or parts of the PDP. In effect, this was the opportunity for submissions that did not fall neatly into any one of the previous hearing streams to be heard.

5. Chapter 2 of the PDP sets out definitions of terms used in the PDP. Some 256 separate terms are defined in Chapter 2.

6. Chapter 28 is the Chapter of the PDP related to natural hazards. It has five subheadings:
   a. 28.1 – Purpose;
   b. 28.1 – Natural hazard Identification;
   c. 28.3 – Objectives and policies;
   d. 28.4 – Other relevant provisions;
   e. 28.5 – Information requirements.

1.3. Hearing Arrangements:

7. The hearing of Stream 10 took place over four days. The Hearing Panel sat in Queenstown on 14-16 March 2017 inclusive and in Wanaka on 17 March 2017.

8. The parties we heard on Stream 10 were:

Council:
- Sarah Scott (Counsel)
- Amy Bowbyes
- Amanda Leith
- Craig Barr

Federated Farmers of New Zealand[1]:
- Phil Hunt

Bunnings Limited[2]:
- Daniel Minhinnick (Counsel)
- Elizabeth Davidson
- Tim Heath
- Kay Panther Knight

Cardrona Station Limited[3], Ayrburn Farm Estate Limited[4] and Arcadian Triangle Limited[5]:
- Warwick Goldsmith (Counsel)

Real Journeys Limited[6] and Te Anau Developments Limited[7]:
- Fiona Black

Otago Regional Council[8]:

1 Submission 600/Further Submission 1132
2 Submission 746
3 Submission 407
4 Submission 430
5 Submission 836/Further submission 1255
6 Submission 621/Further submission 1341
7 Submission 607/Further submission 1342
8 Submission 798

- Ralph Henderson

Remarkables Park Limited[9] and Queenstown Park Limited[10]:
- Tim Williams

Pounamu Holdings 2014 Limited[11]:
- Scott Freeman

- Niki Gladding[12]

- Leigh Overton[13]

UCES[14]:
- Julian Haworth

9. We also received written material from the following parties who did not appear:
   a. Chorus New Zealand Limited[15], Spark New Zealand Trading Limited[16] and Vodafone New Zealand Limited[17] (a representation penned by Matthew McCallum-Clark).
   b. QAC[18] (a statement of evidence of Kirsty O'Sullivan).
   c. Ministry of Education[19] (a statement of evidence of Julie McMinn).
   d. Southern District Health Board[20] (a statement of evidence of Julie McMinn).
   e. Aurora Energy Limited[21] (a memorandum of Bridget Irving (Counsel)).
   f. Transpower New Zealand[22] (a representation penned by Jess Bould).
   g. New Zealand Police[23] (a letter from Michael O'Flaherty (counsel)).
   h. New Zealand Transport Agency[24] (a letter from Tony MacColl).
   i. Z Energy Limited, BP Oil Company Limited and Mobil Oil Company Limited[25] (statement by Mark Laurenson).

10. In addition, we received additional written material from parties who did appear:
   a. Mr Young provided written submissions on behalf of Queenstown Park Limited and Remarkables Park Limited, but did not appear at the hearing.
   b. Ms Black provided further comments to the Hearing Panel on definitions on behalf of Real Journeys Limited and Te Anau Developments Limited.

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9 Submission 806
10 Submission 807
11 Submission 552
12 Further Submission 1170
13 Submission 465
14 Submission 145 and Further Submission 1034
15 Submission 781
16 Submission 191
17 Submission 197
18 Submission 433/Further Submission 1340
19 Submission 524
20 Submission 678
21 Submission 635
22 Submission 805/Further Submission 1301
23 Submission 57
24 Submission 719
25 Collectively Submission 768 and Further Submission 1182

c. A Memorandum of Counsel (Mr Minhinnick) on behalf of Bunnings Limited dated 17 March 2017.

1.4. Procedural Issues:

11. The hearing proceeded in accordance with the procedural directions applying to the PDP hearings generally, summarised in Report 1. The only material variation from those directions was the number of parties (summarised above) who sought leave to table evidence and/or representations in lieu of appearance and in the filing of additional material for Real Journeys/Te Anau Developments Limited and for Bunnings Limited summarised above, providing further information following their respective appearances.

12. We also note that, following a discussion during presentation of the Council case, counsel advised in her submissions in reply that in a limited number of cases, Ms Leith had recommended changes to definitions considered in previous hearings, but the submitters at those earlier hearings had not received notice of the Stream 10 hearing. Counsel considered this could raise natural justice issues. We agreed with that view and consequently directed that the submitters in this category should have the opportunity to make written submissions on Ms Leith's recommendations[26]. No party took up that opportunity.

13. The Stage 2 Variations were notified on 23 November 2018. They include changes- both deletions and amendments - to a number of the definitions in Chapter 2.

14. Clause 16B(1) of the First Schedule to the Act provides that submissions on any provision the subject of variation are automatically carried over to hearing of the variation.

15. Accordingly, for those Chapter 2 definitions the subject of the Stage 2 Variations, we have 'greyed out' the relevant definition/ part definition (as notified) in the revised version of Chapter 2 attached as Appendix 1 to this Report, in order to indicate that those definitions did not fall within our jurisdiction.

1.5. Statutory Considerations:

16. The Hearing Panel's Report 1 contains a general discussion of the statutory framework within which submissions and further submissions on the PDP should be considered, including matters that have to be taken into account, and the weight to be given to those matters.

17. The nature of the matters raised in submissions on the Whole of Plan sector of the hearing, and on Definitions means that the statutory considerations noted in Report 1 are of limited relevance or assistance to us. We have nevertheless had regard to those matters as relevant. The statutory considerations come much more clearly into focus in relation to Chapter 28 (Natural Hazards) and we will discuss those matters in greater detail in that context.

18. Related to the above, as is the case for previous reports, we have not undertaken a separate section 32AA analysis of the changes to the PDP recommended in this report. Rather, our reasons for our recommendations in terms of the statutory tests contained in section 32 are incorporated in this report.

[26] Refer the Chair's Memorandum dated 7 August 2017

PART B: WHOLE OF PLAN:

2. PRELIMINARY

19. Mr Barr's Section 42A Report discussed the whole of plan submissions under 8 issues, as follows:
    a. Issue 1 – The PDP does not accord with the requirements of the RMA;
    b. Issue 2 – Staged review;
    c. Issue 3 – Reduction of prescription and use of an effects based approach
    d. Issue 4 - Extent of discretion;
    e. Issue 5 - "Appropriately qualified or experienced" expert reports;
    f. Issue 6 – Default activity status for unlisted activities;
    g. Issue 7 – Avoidance of conflicts between water based activities and surrounding activities; and
    h. Issue 8 – Cost of infrastructure to council.

20. We will follow the same format.

21. Mr Barr also noted a number of submissions as either being out of scope or already addressed in another hearing stream. We accept Mr Barr' recommendations on these submissions in the absence of any conflicting evidence, and do not address those submissions further. Mr Barr also noted that errors or minor issues identified in the PDP[27] had already been addressed under Clause 16(2), meaning no recommendation was required from us.

22. In one case, Mr Barr provided his reasoning in the schedule of submitters. This is in relation to submissions[28] seeking a policy that established wilding exotic trees be removed as a condition of consent for subdivision, use or development of land in residential or rural living zones. Mr Barr recommended rejection of that submission on the basis that the trees might already be the subject of resource consent or existing use rights, and that subdivision does not always confer development rights. These are all valid reasons, but more importantly to our mind, the submitter provided no evidence of the cost of such action, that might be weighed against the benefits. We recommend the submission be rejected.

23. At this high level, a number of submissions categorised as 'whole of plan' submissions were catchall submissions, seeking to make it clear that they sought consequential or alternative relief, as required, without identifying what that consequential or alternative relief might be. Such submissions are routinely made by submitters in First Schedule processes out of an abundance of caution. We do not regard it as necessary to explicitly seek consequential or alternative relief to the same effect. The Hearing Panel has treated primary submissions as not being restricted to the precise relief sought. We therefore do not categorise these catchall submissions as in fact asking for any particular relief, and on that basis, we recommend they be rejected.

24. In the case of both consequential and alternative relief, while we recommend rejection of the submission on a 'whole or plan' basis, that is without prejudice to the recommendations other Hearing Panels have made in the context of particular parts of the PDP.

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27 By Council submission (383) and that of NZTA 719)

28 Submissions 177 and 514 (D Fea)

25. Lastly, a number of submissions noted in the submission schedules were not valid submissions, because they sought no relief (or no clear relief) in terms of changes to the PDP (or retention of its existing provisions). We have made no recommendation in respect of such 'submissions'.

3. WHOLE OF PLAN ISSUES

3.1. Accordance with the requirements of the RMA:

26. The submissions Mr Barr addressed under this heading[29] were generally expressed complaints about the inadequacy of the PDP with reference to Section 5 of the Act, Part 2 of the Act and Section 32 of the Act. None of the submitters in question appeared before us to explain why the PDP was flawed in the relevant respect.

27. Mr Barr noted a number of other submissions[30] seeking that the PDP be put on hold (or withdrawn and renotified) until a proper/further Section 32 analyses had been undertaken. Many of the submissions were focused on particular aspects of the PDP but, again, other than UCES, none of submitters in question sought to explain to us why they held this view. As Mr Barr noted, the more specific relief has in each case been addressed in other hearings.

28. In Report 7[31], we discuss the fact that a submission criticising the section 32 analysis needs to be accompanied by a request for a change to the PDP to be of any value – as we have no jurisdiction over the section 32 analysis the Council has undertaken, only over the PDP itself.

29. We agree with Mr Barr's comment that viewed on their own, without regard to the more specific relief sought by submitters, these general submissions are problematic because of the difficulty potentially interested parties would have in identifying, still less responding, to the relief as sought.

30. To the extent that the submitters were specific, through seeking deletion of whole chapters of the PDP, we would have required cogent evidence and analysis before concluding that was warranted.

31. In the event, the only submitter to appear and argue for such wide-ranging relief was UCES. We will address that submission later, in a separate section.

32. To the extent, however, that other submissions sought relief on the basis generally that the PDP did not accord with the requirements of the RMA, we do not find those submissions to have been made out at the higher level at which the submissions were pitched.

33. There are of course many aspects of the PDP where the respective Hearing Panel has concluded that more specific submissions on the flaws of the PDP have some merit, but those points have been addressed in those other reports.

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29 He instanced Submissions 414, 670, 715 and 811: Supported by FS1097, FS1145 and FS1255; Opposed by FS1071, FS1073, FS1103, FS1108, FS1114, FS1116, FS1192, FS1218, FS1219, FS1224, FS1225, FS1237, FS1247, FS1250, FS1252, FS1277, FS1283, FS1292, FS1293, FS1299, FS1316 and FS1321

30 Submissions 145, 338, 361, 414, and 850; Supported by FS1097, FS1118, FS1229, FS1255 and FS1270; Opposed by FS1071, FS1097, FS1114, FS1155, FS1162, FS1289 and FS1347

31 By the Council submission (383) and that of NZTA (719)

3.2. Staged Review

34. Under this heading, Mr Barr noted submissions[32] opposing the staged review process being undertaken in respect of the PDP. The submitters sought variously that the entire District Plan be put on hold or rejected until the remaining chapters are included in the review and that it be withdrawn and renotified with a transport chapter.

35. While, as noted in other reports, the staged review process has introduced considerable complexity into the hearing process, we agree with Mr Barr's conclusion that these are not submissions on the PDP that we can properly entertain. Section 79 of the Act provides that Regional Policy Statements, Regional Plans and District Plans may be reviewed in whole or in part. The resolutions of Council determining what matters are reviewed is the exercise of a statutory discretion that would need to be challenged, if it is to be challenged at all, in either the High Court or (possibly) the Environment Court. Our role is to make recommendations on matters the Council has chosen to review (and not subsequently withdrawn pursuant to clause 8D of the First Schedule of the Act).

36. Accordingly, we do not have jurisdiction to consider the submissions in question. They must necessarily be rejected.

37. Mr Barr identifies a related submission on the part of Remarkables Park Limited[33] supporting the exclusion of the Remarkables Park Zone from the PDP and seeking that the PDP be amended to clarify the exclusion.

38. As Mr Barr notes, this submission has effectively been overtaken by the Council's resolution to withdraw the Remarkables Park Zone land from the PDP[34] (and thereby remove it from our jurisdiction). This has necessitated amendment to some Chapters of the Plan referring to that Zone. Those matters are addressed in other hearing reports.

3.3. Reduction of Prescription and Use of an Effects Based Approach

39. Mr Barr notes the submission of Remarkables Park Limited[35] in this regard. That submission seeks reduction of prescription and enabling of an effects-based assessment of activities. It also criticises the "*direct and control*" approach to tourism, commercial, residential and industrial activities.

40. The Hearing Panel's Report 3 discusses similar criticisms made of the "*strategic chapters*" and reference should be made to that report because, as Mr Barr noted in his Section 42A Report[36] the very nature of chapters providing strategic direction is that they might be expected to be more guiding and strategic in nature (i.e. directive) than first generation district plans, such as the ODP, many of which were further along the spectrum towards effects-based planning.

41. With that Hearing Panel having recommended that the strategic chapters be retained we think it follows inevitably that the PDP will be less effects-based than was the ODP. We discussed this point with Mr Barr who agreed that while the ODP was a hybrid, it sat more at the effects-based end, of the spectrum whereas the PDP was more at the "*command and control*" end,

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32 Submissions 249 and 414: Supported by FS1097 and FS1255; Opposed by FS1071, FS1090 and FS1136

33 Submission 807

34 Refer Council Resolutions of 29 September 2016 and 25 May 2017

35 Submission 807

36 At paragraph 8.2

but in his view, only to a point. He drew our attention, in particular, to the general policy approach as enabling effects-based assessment, albeit with exceptions.

42. We agree also with that characterisation.

43. Looked at more broadly, we consider that the general approach in a District Plan needs to take account of the characteristics of the district and the issues that it faces. The Hearing Panel on Chapters 3-4 and 6 concluded that the issues that Queenstown Lakes District is facing require a greater degree of direction to assist achievement of the purpose of the Act than was perhaps the case in the second half of the 1990s, when the ODP was being framed[37]. We agree with that conclusion at the high level at which the submission is pitched. That is not to say that a case cannot be made for specific provisions to be more effects-based, but that needs to be determined on a case by case basis (and has been in earlier hearing reports).

44. Accordingly, we recommend that Submission 807 be rejected at this higher level.

3.4. Extent of Discretion:

45. Under this heading, Mr Barr drew our attention to Submissions 243[38] and 811[39] that suggest that too much within the PDP, in the submitters view, is discretionary, providing too little certainty for the community.

46. There is a certain irony given that the criticism in these submissions is, in effect, the inverse of the point raised in Submission 807 addressed under the immediately preceding heading. A plan that is at the "*command and control"* end of the spectrum has very little discretion and considerable certainty. It also has a corresponding lack of flexibility.

47. An effects-based plan has considerable flexibility (at least as to the nature of the activities that can be established) and usually, considerable discretion.

48. As noted in the previous section of this Report, the PDP lies more at the command and control end of the spectrum than the ODP, but not entirely so. We regard this as a positive feature. We do not support an extreme position providing complete certainty, and we do not think it is the most appropriate way, at a very general level, to assist achievement of the purpose of the Act.

49. As with the previous section, we note, that there are elements of the Plan that might be able to be criticised as providing too great an ambit of discretion, but the issue needs to be considered at that more specific level (as has occurred under earlier hearing reports). Accordingly, we recommend that Submissions 243 and 811 be rejected on this point.

3.5. Appropriately qualified or experienced Expert Reports:

50. Under this heading, Mr Barr notes four submissions[40] requesting deletion of provisions in the PDP that require a report from "*an appropriately qualified and experienced"* person, or alternatively clarification as to what that entails.

51. Mr Barr identified that the PDP referred to "*qualified"* persons, "*qualified and experienced"* persons, "*suitably qualified"* persons "*suitably qualified and experienced"* persons and

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37 Refer Report 3 at Section 1.9

38 Supported by FS1117; Opposed by FS1224

39 Opposed by FS1224

40 Submissions 607, 615, 621 and 624: Supported by FS1105, FS1137 and FS1160

"*appropriately qualified"* persons, at various points. We should note in passing that we do not regard the difference between "*suitably"* and *appropriately"* as being material in this context. Usually, these adjectives were used in conjunction with a specified discipline. Mr Barr observed that in earlier reports, the respective Staff Reporting Officer had recommended that reference to experience be deleted in each case with one exception (in Chapter 32). Mr Barr recommended that for consistency, reference to experience should be deleted in all cases.

52. None of the submitters on the point sought to amplify their submissions in evidence before us.

53. We discussed with Mr Barr whether, notwithstanding his recommendation, experience might continue to be a relevant factor and best be judged by some arbitrary nominated period of years following qualification, as is the case, for instance, for some roles requiring experience in legal practice[41]. Mr Barr did not favour that option and he amplified his views in reply. He suggested that any nominated period of years would be inherently arbitrary and that operating for a nominated period of years in a certain field does not always carry with it either proficiency or expertise in that field.

54. The point remains live because the provisions of the PDP recommended by the Hearing Panel continue to make reference to experience in particular fields as being both relevant and required[42]. We also consider that in many fields, experience allied to formal qualifications is desirable. Indeed, in some fields, experience is a relevant qualification, either on its own, or allied to some formal qualification. We accept Mr Barr's point that experience is not synonymous with skill, but as Mr Barr also observed in his reply evidence, generally, some experience is better than none.

55. It follows that we do not agree with those submissions seeking that as a general rule, reference to experience should be deleted, but we agree that it would be helpful if the PDP provided greater clarity as to how much experience is sufficient. Although arbitrary, specifying experience in terms of a nominated period of years is the only objective way to capture what is required. The difficulty, however, is that no one period of years would be adequate in all contexts. What is appropriate for an arborist (in the context of Chapter 32) is probably not appropriate for an archaeologist (in the context of Chapter 26).

56. Accordingly, rather than attempt to provide an overall solution, we consider that the best approach is for the Hearing Panels recommending text referring to appropriately/suitably experienced persons in particular fields to identify where possible, the nature and extent of experience sufficient to qualify a person in that particular field.

3.6. Default activity status for unlisted activities:

57. This issue was raised in a submission by Arcadian Triangle Limited[43] seeking that in relation to non-complying activity status applied to unlisted activities in many zones, the default consent status for any activity not otherwise specified or listed be "*permitted",* as is the case under the ODP.

58. Mr Barr noted that while, in some zones (most obviously the residential and rural zones) the default activity status is "*non-complying",* in other zones such as the business zones[44],

41 See for instance Section 15 of the District Court Act 2016

42 See e.g. recommended Chapter 26 at section 26.2.1

43 Submission 836: Supported by FS1097, FS1341 and FS1342

44 Chapters 12-17

activities not listed are "*permitted"*. He was of the view that, where the PDP had made the default activity status non-complying, this was appropriate and should not be reversed as a matter of general principle.

59. When Mr Barr appeared before us, we sought to test the extent to which the permitted activity default status in the ODP in fact governs the situation. Mr Barr's advice was that permitted activity status seldom applied in either the Rural General or the urban zones in practice, and that the permitted activity default was therefore potentially illusory. When Counsel for Arcadian Triangle Limited (Mr Goldsmith) appeared before us, he agreed with Mr Barr's assessment that the ODP permitted activity default would seldom apply in practice, but said that the PDP had solved that problem (by deleting the 'nature and scale' standard that most activities triggered). Mr Goldsmith argued that the non-complying default status in many chapters of the PDP was unduly restrictive. He relied, in particular, on the presumption in section 9 of the Act that a land use activity can be undertaken unless constrained by a relevant rule in a District Plan. Mr Goldsmith also pointed to what he argued were anomalies in the default activity status between the Jack's Point and Millbrook Zones (where activities not listed in the PDP are permitted) and the Waterfall Park Zone (where the default activity status is non-complying).

60. Mr Goldsmith also argued that non-complying activity status should not be afforded to activities that are not known, because there has been no section 32 evaluation that justifies non-complying status for such activities.

61. Although not resiling from his argument that the default activity status should be "*permitted"*, Mr Goldsmith contended in the alternative that if the default were anything other than permitted, it should be "*discretionary",* as that would enable a full assessment, but not create a precedent.

62. In his reply evidence, Mr Barr discussed Mr Goldsmith's reasoning and concluded that where the PDP had identified the activity status for unspecified activities as being non-complying, that was appropriate.

63. We agree with Mr Barr's reasoning. As the PDP demonstrates, it is not appropriate to determine at a high level what the default activity status should be for unlisted activities. The activity status adopted has to be the most appropriate way to achieve the objectives applying to each zone.

64. We also do not accept the arguments presented by Mr Goldsmith as to why non-complying status is necessarily an inappropriate default status given the way in which the PDP has been structured. As already discussed, the PDP is deliberately more directive and less effects-based than the ODP. It seeks to provide greater certainty by nominating the activity status of a range of different activities that are anticipated in the various zones provided in the PDP. The corollary of that approach is that if activities are not listed, they are generally not anticipated and not intended to occur in that zone. That does not mean that a case cannot be mounted for unlisted activities to occur in any zone (unless they are nominated as prohibited). But in our view, it is appropriate that they be subject to rigorous testing against the objectives and policies governing the relevant zone, to determine whether they are nonetheless appropriate. In some cases, discretionary activity status may be an appropriate framework for that testing to occur, but in our view, non-complying status would generally be the more appropriate activity status given the way the PDP has been structured.

65. Accordingly, we do not recommend acceptance of the Arcadian Triangle submission.

3.7. Avoidance of conflicts between water based activities and surrounding activities:

66. Under this heading, Mr Barr referred us to a submission by Real Journeys Limited[45] seeking that a new policy be inserted into either the rural chapter or within a new water chapter to avoid surface water activities that conflicted with adjoining land uses, particularly those of key tourism activities.

67. Mr Barr referred us to the provisions of Chapter 21 bearing on the issue and to the evidence for Real Journeys heard in that hearing stream.

68. He referred, in particular, to the evidence of Real Journeys Limited emphasising the importance of the District's waterways for various purposes. In his view, it was inappropriate for the PDP to impose rules or to have a policy framework relating to the provision of water resources, this being a regional council function. More generally, Mr Barr was of the view that the breadth and location of the objectives, policies and rules for activities on the surface water are appropriate and he recommended that the additional policy sought by Real Journeys Limited should be rejected as not offering any additional value.

69. When Real Journeys Limited appeared before us, Ms Black did not give evidence on this aspect of Real Journeys' submissions. By contrast, the representative of Federated Farmers (Mr Hunt, appearing in lieu of Mr David Cooper) supported Mr Barr's recommendation, emphasising the water quality and quantity related policies in the regional plans of Otago Regional Council.

70. Hearing Panels in both Stream 1B and Stream 2 have considered the extent to which separate provision needs to be made for management of water resources and activities on the surface of the District waterways, making recommendations in that regard[46].

71. Given the absence of any evidence in support of the submission at this hearing, we do not find any need for a higher level approach across the whole of the Plan. We agree with Mr Barr's recommendation that while the Council has a role in the integrated management of land and water resources, we should properly take cognisance both of the role of and the policy framework established by Otago Regional Council for the management of water resources in relevant Regional Plans.

72. We likewise agree with Mr Barr that there is no basis for the policy sought in the Real Journey's submission.

3.8. Cost of Infrastructure to Council:

73. Under this heading, Mr Barr referred us to the submission for Remarkables Park Limited[47] seeking that all references to the cost of infrastructure to Council be deleted on the basis that this is something that should be addressed under the Local Government Act 2002. Mr Barr advised us that his search of the notified text of the PDP and the provisions in the right of reply versions of each Chapter had identified only one reference to the cost of infrastructure to Council, that being in the context of notified objective 3.2.2.1.

74. The Hearing Panel for Chapter 3 has recommended[48] that the objectives of Chapter 3 be reformulated in a way that does not now refer directly to the cost of Council infrastructure.

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45 Submission 621

46 Refer Report 3 at Section 8.8 and Report 4A at Section 3.4

47 Submission 807

48 Refer Report 3 at Section 2.5

We note also that the recommendations of the Stream 4 Hearing Panel considering Chapter 27 (Subdivision) have sought to emphasise that that levying of development contributions for infrastructure occurs under the Local Government Act 2002, in parallel with the operation of the PDP[49].

75. Accordingly, while we recommend this submission be accepted, we do not think any further amendment to the PDP is required to respond to it.

3.9. UCES – Plan Structure:

76. As already noted, UCES was the sole submitter that appeared before us in support of a submission seeking large scale restructuring of the PDP. UCES's submission[50] was that, with certain exceptions, the general approach and text of the ODP, particularly as it relates to activities in Rural Zones, should be retained. When Mr Haworth appeared in support of this submission, he presented a marked up version showing how, in the Society's view, the ODP and PDP should be melded together, thereby responding to the comment in Mr Barr's Section 42A Report that those submitters seeking very general relief created natural justice issues, because of the inability of others to understand the implications of what it is that they seek. The Society clearly spent considerable time on the appendix to Mr Haworth's pre-circulated evidence, but we are afraid that Mr Haworth rather missed the point Mr Barr was making. The fact that Mr Haworth appeared before us on the very last day of hearings on the text of the PDP rather tended to emphasise the fact that if the objective was to solve a natural justice problem, it would not assist potentially affected parties to learn exactly what the Society had in mind so late in the process. It needed to be clear when the Society's submission was lodged in 2015.

77. Considering UCES's submission on its merits, as Mr Haworth's submissions/evidence made clear, much of the Society's concerns turned on the role and content of the Strategic chapters of the PDP. The Stream 1B Hearing Panel has already considered the UCES argument on those points in considerable detail, concluding that suitably reframed, those Chapters form a valuable role in the structure of the PDP and should be retained[51].

78. With the Stream 1B Hearing Panel having reached that conclusion, the die is effectively cast in terms of the overall structure of the PDP. As already noted, it is the existence and content of the Strategic Chapters that shifts the PDP more towards being a directive document than, as currently, the effects-based approach of the ODP.

79. In summary, Mr Haworth did not give us reason to doubt the wisdom of the recommendations of the Stream 1B Hearing Panel and if the Strategic Chapters are to remain substantially as proposed in the notified PDP, it is not consistent to approach the balance of the PDP in the overall manner in which UCES seeks.

80. That is not to say that there are not specific aspects of the PDP where the language and/or approach of the ODP might be adopted in addition to, or in substitution for, the existing text of the PDP, but such matters need to be addressed on a provision by provision basis, as they have been in previous Hearing Panel Reports.

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49 Refer Report 7 at Section 3.1

50 Opposed by FS1090, FS1097, FS1162, FS1313 and FS1347

51 Refer Report 3 at Section 2

81. Accordingly, even if we had felt able to discount the natural justice issues Mr Barr identified, we would recommend rejection of the UCES submission on the point.

82. Before leaving the UCES submission, we should note that Mr Haworth also presented an argument based on the provisions of the Resource Legislation Amendment Bill 2015 related to public notification of subdivision applications. Mr Haworth argued that because the effect of the Amendment Bill, once passed, would be that any subdivision classified as a controlled, restricted discretionary or discretionary activity would be considered on a non-notified basis in the absence of special circumstances, all rural subdivisions should be made non-complying in the District Plan.

83. Mr Haworth's argument effectively repeated the argument that he had already presented in the Stream 4 (Subdivision) hearing.

84. The Stream 4 Hearing Panel has already considered Mr Haworth's argument in the light of the Bill subsequently having been enacted[52] and made recommendations on the point[53].

85. Mr Haworth did not present any additional arguments that suggested to us that we should reconsider those recommendations.

3.10. Summary of Recommendations

86. The nature of the matters canvassed in this part of our report does not lend itself to ready summary. Suffice it to say, we do not recommend any material overall changes to the PDP for the reasons set out above. Our recommendations in relation to specific submissions are summarised in Appendix 3 to this report.

[52] As the Resource Legislation Amendment Act 2017

[53] Refer Report 7 at Section 7

PART C: DEFINITIONS

4. NOTES TO DEFINITIONS:

87. As notified, Chapter 2 had the following notes:

"2.1.1 The following applies for interpreting amendments to text:

- ~~*Strikethrough*~~ *means text to be removed.*
- *Underline means new text to be added.*

2.1.2 The definitions that relate to Tangata Whenua that have been removed now sit within Chapter 5.

2.1.3 Any definition may also be amended in Stage 2 of the District Plan review."

88. The Stream 1 Hearing Panel queried the strikethrough/underlining in Chapter 2 as part of a more wide-ranging discussion of the staged nature of the District Plan review. The advice from counsel for the Council to that Hearing Panel[54] was that the strike through/underlining purported to show the changes from the definitions in the ODP, but this was an error and a clean version of the Chapter should have been notified. In April 2016, that correction was made, and the three notes in the notified Chapter 2 deleted, by Council pursuant to Clause 16(2).

89. Presenting the Section 42A Report on Chapter 2, Ms Leith suggested that what was the second note would merit amplification in a new note. She suggested that it read as follows:

"Definitions are also provided within Chapter 5: Tangata Whenua (Glossary). These defined terms are to be applied across the entire Plan and supplement the definitions within this Chapter."

90. We have no difficulty with the concept that a cross reference might to be made to the glossary in Chapter 5. We consider, however, that both the notified note and the revised version suggested by Ms Leith mischaracterised the nature of that glossary. They are not 'definitions'. Rather, the glossary provides English translations and explanations of Maori words and terms used in the Plan and we think, for clarity, that should be stated.

91. Accordingly, we recommend that Ms Leith's proposed note be amended to read:

"Chapter 5: - Tangata Whenua (Glossary) supplements the definitions within this chapter by providing English translations – explanations of Maori words and terms used in the plan."

92. A related point arises in relation to the QLDC corporate submission[55] requesting that all references to Maori words within Chapter 2 are deleted and that instead, reliance be placed on the Chapter 5 Glossary. In Ms Leith's consideration of this submission[56] she observed that the notified Chapter 2 included four Maori 'definitions' – of the terms 'hapū', 'iwi', 'koiwi tangata' and 'tino rangatiratanga'. Ms Leith observes that the term 'iwi' has the same definition at both the Chapter 5 Glossary and in Chapter 2. We agree that the Chapter 2 definition might therefore appropriately be deleted.

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54 Refer Counsel's Opening Submissions in Stream 1 dated 4 March 2016 at Schedule 3.

55 Submission 383

56 Section 42A Report at Section 26

93. Ms Leith observed that the term 'hapū' is defined slightly differently between the Chapter 5 Glossary and Chapter 2. To us, if anything, this is all the more reason to delete the Chapter 2 definition in preference for the updated Chapter 5 'definition' that, understandably, tangata whenua submitters will have focussed on.

94. Ms Leith's advice was that 'koiwi tangata' is only found within Chapter 37 – Designations. We discuss the application of the Chapter 2 definitions to designations shortly. In summary, for the reasons below, we agree with Ms Leith's recommendation that the defined term should be deleted.

95. Lastly, Ms Leith advised that while 'tino rangatiratanga' is not contained in the Glossary, the word 'rangatiratanga' is. Given the overlap, and that the definitions are essentially the same, we agree with Ms Leith's recommendation that the Chapter 2 definition should be deleted.

96. The Oil Company submitters[57] sought in their submission a statement in Chapter 2 that reliance will be placed on definitions in the Act where there are such 'definitions' and no alternative is provided through the Plan. Ms Leith supported this submission and, in her Section 42A Report, supported inclusion of a more comprehensive note to the effect that the definitions in Chapter 2 have primacy over definitions elsewhere, that in the absence of a Chapter 2 definition, the definitions in the Act should be used, and that the ordinary dictionary meaning should apply where neither provides a definition. Mr Laurenson's tabled statement agreed with that suggestion. We discussed with Ms Leith the desirability of referring to dictionary definitions given that while this is obviously the interpretative starting point, a dictionary will often give multiple alternative meanings or shades of meaning for the same word and different dictionaries will often have slightly different definitions for the same word. In her Reply Evidence, Ms Leith returned to this point and referred us to the approach taken in the Auckland Unitary Plan that refers one to a contextual analysis undertaken in the light of the purpose of the Act and any relevant objectives and policies in the Plan. She suggested augmenting the note at the commencement of Chapter 2 accordingly.

97. In our view, as amended, this particular note was getting further and further from the jurisdictional base provided by the Oil Companies' submission and that it needed to be pared back rather than extended.

98. We also admit to some discomfort in seeking to circumscribe the interpretation process.

99. The starting point is to be clear what the definitions in the Chapter apply to. Ms Leith suggested a note stating that the definitions apply throughout the Plan whenever the defined term is used. We inquired of counsel for the Council as to whether we could rely on the fact that this is literally correct, that is to say that on every single occasion where a defined term is used, it is used in the sense defined. While that is obviously the intention, we observed that section 1.3 of the PDP used the term "*Council"* to refer to councils other than QLDC (the defined term). The existence of at least one exception indicates a need for some caution and we suggested that it might be prudent to use the formula typically found in legislation[58] that definitions apply "*unless the context otherwise requires"*. Ms Leith adopted that suggestion in her reply.

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57 Submission 768

58 See e.g. Section 2(1) of the Act

100. More substantively, counsel for the Council observed in opening submissions that the defined terms in Chapter 2 did not apply to the designation chapter[59]. We discussed with counsel whether there was anywhere in the notified Plan that actually said the Chapter 2 definitions did not apply to designations, and if not, why that should be the case. Initially, Counsel referred us to Section 176(2) of the Act as justifying that position[60]. We thought that this was a somewhat slender basis on which to form a view as to how designations should be interpreted, but Ms Scott also observed that a number of the designations had been rolled over from the ODP (and we infer, potentially from still earlier planning documents). We agree that to the extent that defined terms have changed through successive District Plans, it cannot be assumed that the designation would use the term in the sense set out in Chapter 2 of the PDP.

101. Ms Leith amplified the point in her reply evidence drawing our attention to the limited number of cases where designations in Chapter 37 in fact refer to the definitions in Chapter 2 and the problem that where the Council is not the relevant requiring authority, any amendments to definitions used in designations would need to be referred to (and agreed by) the requiring authority.

102. Accordingly, we think that there is merit in the Staff recommendation that designations be specifically referenced as an exception, that is to say that Chapter 2 definitions apply to designations only if the designation states that. We have drawn that intended approach to the attention of the Hearing Panel considering Chapter 37 (Designations).

103. In summary, we therefore agree with the form of note suggested in Ms Leith's reply with some minor rewording as follows:

"Unless the context otherwise requires, the definitions in this chapter apply throughout the plan whenever the defined term is used. The reverse applies to the designations in Chapter 37. The definitions in Chapter 2 only apply to designations where the relevant designation says they apply."

104. With that note, reference in a second note to the definitions in Chapter 2 having primacy over other definitions elsewhere is unnecessary. We think that the second note suggested by Ms Leith can accordingly be limited to state:

"Where a term is not defined in the plan, reliance will be placed on the definition in the Act, where there is such a definition."

105. Ms Leith suggested to us that a third note should be added to say that where a definition includes reference to another defined term in this Chapter, this definition should be relied upon in the interpretation of the first definition. As Ms Leith explained it in her Section 42A Report[61] this was intended to address the many instances of interrelated definitions. We think, however, that the note is unnecessary. If, as stated in the first note, the definitions in Chapter 2 apply throughout the Plan when a defined term is used, unless the context requires otherwise, that necessarily applies to the interpretation of Chapter 2 because it is part of the Plan.

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59 Opening submissions at paragraph 4.1

60 Section 176(2) states that the provisions of a District Plan apply to land that is subject to a designation only to the extent that the land is used for a purpose other than the designated purpose

61 At paragraph 7.5

106. Ms Leith also suggested inclusion of a note stating that where a word or phrase is defined, the definition applies also to any variations of the word or phrase including singular for plural and vice versa.

107. We discussed with Ms Leith whether the suggested note needed to be more precise as to what was meant by "*variations"*. We read the intent as seeking to capture section 32 of the Interpretation Act 1999 – so that a definition would be read to include different parts of speech and grammatical forms - and wondered whether it should not say that more clearly. Ms Leith undertook to ponder the point and in her reply evidence, she recommended that the note she was proposing to add be simplified to refer just to singular and plural versions of words. We agree with that (Section 32 of the Interpretation Act will apply irrespective), but suggest that the wording of a note might be simplified from that suggested by Ms Leith, so it would read as follows:

"Any defined term includes both the singular and the plural."

108. We discussed with counsel whether it would be helpful to identify defined terms in the text through methods such as italics, underlining or capitalisation. Ms Leith responded in her reply evidence that use of such methods can result in Plan users interpreting that the defined term is of greater importance in a provision, which is not necessarily desirable. She also noted that capitalisation can be problematic as it can be confused with terms that are capitalised because they are proper nouns. We record that Arcadian Triangle Limited[62] suggested that greater consistency needed to be employed as regards the use of capitalisation so that either all defined terms are capitalised, or none of them are.

109. We agree with that suggestion in principle although Ms Leith suggested adding a separate list of acronyms used in the Plan to Chapter 2. We think that is helpful, but most acronyms are capitalised so that would be an exception to the general rule.

110. It follows that where terms are currently capitalised in the body of Chapter 2 (and elsewhere), they should be decapitalised unless they are proper nouns. We have made that change without further comment, wherever we noted it as being necessary, and have recommended to other Hearing Panels that they do the same.

111. We have, however, formed the view that it would be helpful to readers of the PDP if defined terms are highlighted in the text. While we accept Ms Leith's point that the approach has its dangers, the potential for readers of the PDP not to appreciate terms are used in a sense they may not have anticipated is, we think, rather greater. The revised chapters of the PDP recommended by other Hearing Panels reflect that change, which we consider to be of no substantive effect given the ability, where necessary, to debate whether context requires a different meaning.

112. Ms Leith suggested a further note to the effect that notes included within the definitions are purely for information or guidance and do not form part of the definition. She referred us to Submission 836 as providing a jurisdictional basis for this suggested amendment. That submission (of Arcadian Triangle Limited) is limited to the notes to the definition of "*residential flat"* but we think that the submitter makes a sound general point. Elsewhere in her Section 42A Report, Ms Leith referred to some notes being fundamental to the meaning of the defined term (so that accordingly, they should be shifted into the definition). She recognised, however, that this posed something of a problem if Clause 16(2) was being relied on as the

[62] Submission 836: Supported by FS1097

jurisdictional basis for the change (if the presence or absence of a 'note' makes a fundamental difference, it is difficult to classify their incorporation in the definition as a minor change).

113. We have approached the definitions on the basis that the Arcadian Triangle submission is correct and advice notes are solely for information purposes and cannot have substantive effect. If a definition cannot be read coherently without reference to the advice note, that suggests the definition is defective and needs work. If there is no submission to provide a basis for a substantive change to the definition, then it needs to be the subject of variation.

114. Coming back to the notes at the commencement of Chapter 2, we therefore agree with Ms Leith's recommendation that there should be a note stating:

"Any notes included within the definitions listed below are purely for information or guidance purposes only and do not form part of the definition."

115. Lastly, Ms Leith suggested a note stating:

"Where a definition title is followed by zone or specific notation, the application of the definition shall only be limited to the specific zone or scenario described."

116. She explained that this was a consequential point arising from her recommending that definitions contained within Chapter 26 (historic heritage) be shifted into Chapter 2, but remain limited in their application to Chapter 26.

117. We drew to Ms Leith's attention the fact that chapter specific definitions had also been recommended within Chapters 12 and 13. In her reply, Ms Leith accepted that the same conclusion should follow, that those definitions should be imported into Chapter 2 as a consequential change and be subject to the suggested note.

118. We agree with that suggestion and with the substance of the suggested note. We think, however, that as Ms Leith framed it, it appeared to be an instruction with substantive effect rather than a note. We therefore suggest that it be reworded as follows:

*"*Where *a definition title is followed by a zone or specific notation, the intention is that the application of the definition is limited to the specific zone or scenario described."*

119. We note that it does not necessarily follow that a copy of the relevant definitions should not also be in the Chapter to which they relate, but that is a matter for the Hearing Panels considering submissions on those chapters to determine.

120. We note also that where definitions with limited application have been shifted/copied into Chapter 2 with no substantive amendment (other than noting the limitation) we have not discussed them further.

5. GENERAL ISSUES WITH DEFINITIONS

121. There are a number of general issues that we should address at the outset of our consideration of the Chapter 2 definitions. The first arises from the fact that defined terms (and indeed some new definitions of terms), have been considered by the Hearing Panels addressing submissions on the text of the PDP.

122. We canvassed with counsel for the Council the appropriate way for us to address definitions in this category. While we have the responsibility of making recommendations on the final form on Chapter 2, our consideration of the Chapter 2 definitions should clearly be informed by the work that other Hearing Panels have undertaken on the definition of terms. We have accordingly asked each Hearing Panel to report to us on their recommendations as to new or amended definitions that should be in Chapter 2. Where we have no evidence to support a substantive change from another Hearing Panel's recommendations, we have almost invariably adopted those recommendations. In some cases, we have recommended non-substantive grammatical or formatting changes. We do not discuss those definitions further in our Report. Similarly, where another Hearing Panel has considered submissions on a defined term (or seeking a new definition) and recommended rejection of the submission, we have not considered the matter further in the absence of further evidence.

123. Where we have had evidence on terms that have been considered in earlier hearings, we have considered that evidence, along with the reasoning of the Hearing Panel in question, and come to our own view**.**

124. In the specific instance where Ms Leith recommended changes to definitions that had been considered in earlier hearings, counsel for the Council identified, and we agreed, that this created a natural justice problem, because submitters heard at those earlier hearings had not had the opportunity to make submissions on the varied position of Council staff. Accordingly, as already noted[63], we directed that the submitters in question should have the opportunity to make written submissions to us. In the event, however, no further submissions were filed within the allotted time and thus there was no additional material to consider.

125. The second general point which we should address is the fact that as notified, Chapter 2 contained a number of definitions that were in fact just cross references to the definition contained in legislation[64]. We suggested, and Ms Leith agreed, that it would be of more assistance to readers of the PDP if the actual definition were set out in Chapter 2. Having said that, there are exceptions where the definition taken from a statute is not self-contained, that is to say, it cannot be read without reference to other statutory provisions. We consider that in those circumstances, it is generally better to utilise the notified approach of just cross referencing the statutory definition. We also consider that where a definition has been incorporated from either the Act, or another Statute, that should be noted in a footnote to the definition so its source is clear. We regard inserting definitions from statutes and footnoting the source as a minor change under Clause 16(2). Accordingly, our suggested revision of Chapter 2 makes those changes with no further comment. Similarly, where we have chosen to retain a cross reference to a statutory definition, we have not commented further on the point.

126. In one case (the definition of 'national grid') the definition in the regulations has an internal cross reference that we consider can easily by addressed by a non-substantive amendment, as discussed below.

127. The next general point is that in her Section 42A Report, Ms Leith identified[65] that a number of definitions contained within Chapter 2 are of terms that are not in fact used within the PDP and/or which are only applicable to zones that are not included within the PDP (either because

63 Refer Section 1.4 above

64 See for example the definition of "*reserve*".

65 At paragraph 27.1

they were never part of Stage 1 of the District Plan review or because they have subsequently been withdrawn). She recommended deletion of these definitions and of any references to such zones within definitions. We agree. Given that the purpose of Chapter 2 is to define terms used in or relevant to the PDP, deletion of definitions which do not fall within this category is, by definition, a minor change within the ambit of Clause 16(2). Again, our recommended revised Chapter 2 in Appendix 1 shows such deletions without further comment[66]. In some cases, terms we would have recommended be deleted on this basis are the subject of the Stage 2 Variations. In those cases, they are greyed out, rather than deleted.

128. It follows also that where submissions[67] sought new definitions, sought retention of definitions of terms not used in the PDP, or amendments to definitions that apply only in zones not the subject of the PDP, those submissions must necessarily be rejected.

129. Another general consideration relates to definitions that are currently framed in the form of rules. The definition of "*domestic livestock"* for instance is expressed in the language of a rule. It purports to state numerical limits for particular livestock in particular zones. Such definitions are unsatisfactory. Rules/standards of this kind should be in the relevant zone rules, not buried in the definitions. We will address each definition in this category on a case by case basis. Where we find that we do not have jurisdiction to correct the situation, we will make recommendations that the Council address the issue by way of variation.

130. Our next general point relates the notified definition of "*noise"* which reads as follows: *"*Acoustic *terms shall have the same meaning as in NZS 6801:2008 Acoustics – Measurement of environmental sound and NZS 6802:2008 Acoustics – Environmental noise.*

L_{dn}:

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66 The terms deleted from Appendix 1 on this basis are:
'Amenity Tree Planting'; 'Amenity Vegetation; Automotive and Marine Supplier (Three Parks and Industrial B Zones)'; 'Back Lane Site (Three Parks Zone)'; 'Balcony'; 'Block Plans (Tree Parks Zones)'; 'Boundary Fencing'; Building (Remarkables Park Zone)'; 'Bus Shelters (Mount Cardrona Special Zone)'; 'Comprehensive Residential Development'; 'Condominiums'; 'Development (Financial Contributions)'; 'Design Review Board'; 'Elderly Persons Housing Unit'; 'Farming and Agricultural Supplier' (Three Parks and Industrial B Zones); 'Farm Yard Car Park'; 'Food and Beverage Outlet (Three Parks Zone)'; ''Front Site'; 'Garden and Patio Supplier (Three Parks and Industrial B Zones)'; Ground Level (Remarkables Park Zone)'; 'Habitable Space (Three Parks Zone)'; 'Hazardous Wastes'; 'Historic Equipment'; 'Home Occupation (Three Parks Zone)';'Large Format Retail (Three Parks Zone)'; 'Manufacturing of Hazardous Substances'; 'Multi Unit Development'; 'Night Time Noise Boundary Wanaka'; 'North Three Parks Area'; 'Office Furniture, Equipment and Systems Suppliers (Three Parks and Industrial B Zones)'; 'On-Site Workers (Three Parks and Industrial B Zones)'; 'Outline Development Plan';' Place of Assembly'; 'Place of Entertainment'; 'Relocatable'; 'Retention Mechanism'; 'Rural Selling Place'; 'Sandwich Board'; 'Secondary Rear Access Lane'; 'Secondary Unit'; 'Secondhand Goods Outlet (Three Parks and Industrial B Zones)'; 'Specialty Retail (Three Parks Zone)'; 'Stakeholder Deed'; 'Step In Plan'; 'Storey (Three Parks Zone)'; 'Tenancy (Three Parks Zone)'; 'Visually Opaque Fence'; 'Yard Based Service Activity'; 'Yard Based Supplier (Three Parks and Industrial B Zones)'; 'Zone Standards'

67 E.g. submission 836: Neither supported nor opposed in FS1117

Means the day/night level, which is the A-frequency-weighted time-average sound level, in decibels (dB), over a 24-hour period obtained after the addition of 10 decibels to the sound levels measured during the night (2200 to 0700 hours).

$L_{Aeq(15\ min)}$:
Means the A-frequency-weighted time-average sound level over 15 minutes, in decibels (dB).

L_{AFmax}:
means the maximum A-frequency-weighted fast-time-weighted sound level, in decibels (dB), recorded in a given measuring period.

Noise Limit:
Means a $L_{Aeq(15\ min)}$ or L_{AFmax} sound level in decibels that is not to be exceeded.

In assessing noise from helicopters using NZS 6807: 1994 any individual helicopter flight movement, including continuous idling occurring between an arrival and departure, shall be measured and assessed so that the sound energy that is actually received from that movement is conveyed in the Sound Exposure Level (SEL) for the movement when calculated in accordance with NZS 6801: 2008.

131. This 'definition' is unsatisfactory. Among other things, it does not actually define the term 'noise'.

132. In her reply evidence, Ms Leith noted that the reporting officer and the acoustic expert giving evidence for Council in the context of Chapter 36 – Noise had not raised any concerns with the above definition or recommended any amendments, and that there was only one submission[68] on it, seeking deletion of the day/night level (which was not supported). Accordingly, while Ms Leith recognised that the definition was somewhat anomalous, she did not recommend any change to it. Ms Leith also identified that while the definition of "*sound"* in Chapter 2 cross references the relevant New Zealand Standards and states that the term has the same meaning as in those standards, the Standards do not in fact define the term "*sound".* Again, however, Ms Leith did not recommend any amendment.

133. We disagree. The definition of "*noise"* is a combination of:
   a. A note that reference should be made to the relevant New Zealand Standards when considering acoustic terms.
   b. A definition of some terms, not including 'noise'; and
   c. A rule as to how particular noise (from helicopters) should be assessed.

134. In our view, the aspects of this definition that constitute a note should be shifted into the notes to Chapter 2, and be reframed as such – rather than being expressed in the language of a rule.

135. Accordingly, we suggest that the notes at the start of Chapter 2 have added to them the following:
"Acoustic terms not defined in this chapter are intended to be read with reference to NZS 6801:2008 Acoustics – Measurement of environmental sound and NZS 6802:2008 Acoustics – environmental noise".

136. The terms that are actually defined within the definition of "*noise"* should be set out as separate definitions of their own. The Hearing Panel on Chapter 36 did not recommend that

[68] Submission 243: Opposed by FS1224 and FS1340

Ms Brych's submission[69] be accepted and accordingly, we have no basis on which to recommend removal of the definition of Ldn.

137. Lastly, on this point, we recommend to the Chapter 36 Hearing Panel that the helicopter rule/assessment standard should be incorporated in Chapter 36.

138. The 'definition' of 'sound' should likewise be deleted, because the cross reference it contains is impossible to apply. It is therefore of no assistance as it is.

139. As another general point, we note that there is no consistency as to definition formatting. Some definitions have bullets, some have numbering systems, and where the latter, the numbering systems differ.

140. We think it is desirable, on principle, for all subparts of definitions to be numbered, to aid future reference to them. Our revised Chapter 2 therefore amends definitions with subparts to insert a consistent numbering system. We regard this as a minor non-substantive change, within Clause 16(2).

141. Lastly at a general level, we do not propose to discuss submissions seeking the retention of existing definitions if there is no suggestion, either in other submissions or by Ms Leith, that the definition should be changed.

6. DEFINITIONS OF SPECIFIC TERMS

142. We now turn to consider the content of Chapter 2 following the notes to definitions. Where suggested changes fall within the general principles set out above, we do not discuss them further. Accordingly, what follows is a discussion of those terms that were:
   a. The subject of submissions heard in this hearing stream;
   b. The subject of recommendations by Ms Leith; or
   c. In a small number of cases, where we identified aspects of the definition that require further consideration.

6.1. Access

143. As notified, this definition included reference to 'common property' *"as defined in Section 2 of the Unit Titles Act 2010"*. Consistent with the general approach to cross references to definitions in legislation discussed above, Ms Leith suggested deleting the reference to the Unit Titles Act and inserting the actual definition of common property from that Act. Because the end result is the same, these are non-substantive amendments within the scope of Clause 16(2).

144. We agree with Ms Leith's approach, with one minor change. We think it would be helpful to still cross reference the Unit Titles Act in the definition of 'access' but suggest the cross reference be put in brackets. As above, the proposed additional definition of 'common property' should be footnoted to source that definition to the Unit Titles Act 2010.

6.2. Access leg:

145. In the marked-up version of Chapter 2 attached to her Section 42A Report, Ms Leith suggested deletion of the initial reference in the notified definition to this relating to rear lots or rear sites. As far as we could ascertain, there is no discussion of this suggested change in the body

[69] Submission 243

of the Report and no submission which would provide jurisdiction for it. We have some concerns as to whether deletion of reference to rear lots or rear sites falls within Clause 16(2). On the face of the matter, it has the effect that the definition is broadened to apply to every site, because every site will have a strip of land included within the lot or site which provides legal physical access to the road frontage. On that basis, we do not agree with the suggested amendment. However, we think the cross reference to rear lots and rear sites might appropriately be shifted to the term defined, using the convention applied to other defined terms.

6.3. Access Lot:

146. Ms Leith recommended that this definition be deleted because the term is not used within the PDP. We discussed with her whether this might be an exception, where it was nevertheless useful to include the definition, given that the term is commonly used in subdivision applications.

147. In her reply evidence, the text[70] reiterates the position that the definition should be deleted, to be consistent with her other recommendations. However, her marked up version of Chapter 2 has a note appended to this definition saying that the definition is necessary as the term is frequently used on survey plans.

148. For our part, we think there is value in having the definition of access lot for the reason just identified. In addition, while the term 'access lot' is not used in the PDP, Chapter 27 refers to 'lots for access'[71].

149. Accordingly, we recommend that the notified definition of access lot be retained in Chapter 2.

6.4. Accessory Building:

150. Ms Leith recommends that the opening words to this definition, "*in relation to any site"* be deleted. Again, we could not locate any discussion of this particular amendment in the Section 42A Report but, on this occasion, we think that it falls squarely within clause 16(2) of the First Schedule – it is self-evident that the term relates to activities on a site. Having deleted the opening words, however, we think that a minor grammatical change is required where the definition refers to "*that site"* in the second line. Consequential on the suggested amendment, the reference in the second line should be to "*a site"*.

6.5. Activity Sensitive to Aircraft Noise (ASAN):

151. Ms Leith recommended two changes to this definition, both stemming from the staff recommended amendments considered in the Stream 6 hearing relating to Chapters 7-11 (Urban Residential Zones).

152. The first is to utilise the same definition for activities sensitive to road noise and the second to substitute reference to any "*education activity"* for *"educational facility"*. The latter change reflects the staff recommendation to delete the definition of 'educational facility'. The Stream 6 Hearing Panel identifies the commonality of issues raised by the effects of aircraft and road noise in its report[72] and we agree that it is useful to combine the two with one definition. We discuss the deletion of 'educational facility' later in this report, but we agree that consequential on our recommendation to delete that definition, the cross reference to it

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70 At paragraph 6.1

71 E.g. recommended Rule 27.6.2 (Report 7)

72 Refer Report 9A at Section 36.1

needs to be amended in this context. Accordingly, we recommend acceptance of the suggested amendments.

6.6. Activities Sensitive to Aircraft Noise (ASAN) Wanaka:

153. Ms Leith recommended deletion of this definition, consequent on a recommendation to that effect to the Stream 8 Hearing Panel considering Chapter 17 (Airport Mixed Use Zone).

154. The Stream 8 Hearing Panel concurs that this would remove duplication and aid clarity[73]and for our part, we heard no evidence that would suggest that we should take a different view. Accordingly, we recommend that this definition be deleted.

6.7. Adjacent and Adjoining:

155. In her Section 42A Report[74], Ms Leith drew our attention to the use of the terms 'adjacent' and 'adjoining' in the PDP. As Ms Leith observes, 'adjoining land' is defined as:

"In relation to subdivision, land should be deemed to be adjoining other land, notwithstanding that it is separated from the other land only by a road, railway, drain, water-race, river or stream."

156. Ms Leith was of the view that it was desirable that this definition be expanded to apply in situations other than that of subdivision, to provide for the consistent implication of the term 'adjoining' between land use and subdivision consent applications. We agree that this is desirable. Chapter 27 uses the term 'adjoining land' in a number of places. Where necessary, it is qualified to refer to "*immediately adjoining"* lots[75]. It makes sense to us that a consistent approach should be taken across subdivision and land use provisions, which are frequently combined. We also agree, however, that with no submission on the point, there is no jurisdiction to make substantive changes to this definition.

157. Accordingly, we accept Ms Leith's suggestion that we recommend that this be considered further by Council, either at a later stage of the District Plan process or by way of District Plan variation. In the interim, we recommend that consistent with the formatting of other definitions, the limited purpose of the definition be noted in the defined term, and that it be expressed as a definition and not a rule. Appendix 1 shows the suggested changes.

158. Ms Leith considered, at the same time the use of the term 'adjacent' in the context of the PDP. She referred us to dictionary definitions aligning 'adjacent' with 'adjoining'. She did not consider it was necessary to define the term given its natural ordinary meaning. We agree with that recommendation also.

6.8. Aircraft:

159. Ms Leith recommended that an additional sentence be inserted on the end of this definition to exclude remotely piloted aircraft weighing less than 15kg. Again, this recommendation reflects a suggested amendment considered and accepted by the Stream 8 Hearing Panel[76].

160. As with the previous definition, we heard no evidence that would cause us to take a different view. Accordingly, we recommend that the definition be amended to include the sentence:

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73 Refer Report 11 at Section 63.3

74 A Leith, Section 42A Report at Section 29

75 E.g. Recommended Rule 27.5.4

76 Refer Report 11 at Section 63.4

"Excludes remotely piloted aircraft that weigh less than 15kg."

6.9. Aircraft Operations:

161. As notified, this definition was expressed to include the operation of aircraft during landing, take-off and taxing, but excluding certain specified activities. The Stream 8 Hearing Panel has considered submissions on it and recommends no change to the notified version. Ms Leith, however, recommended that the definition be converted from 'including' these matters to 'meaning' these matters. In other words, they are to be changed from being inclusive to exclusive.

162. We could not identify any specific discussion of this suggested change in the Section 42A Report. Shifting a definition from being inclusive to exclusive would normally have substantive effect and therefore fall outside Clause 16(2). However, in this case, the only conceivable activity involving aircraft not already specified is when they are in flight and section 9(5) excludes the normal operation of aircraft in flight from the control of land uses in the Act. Accordingly, we consider that this is a minor change that provides greater clarity as to the focus of the PDP. We therefore recommend that Ms Leith's suggestion be adopted.

6.10. Air Noise Boundary:

163. Ms Leith recommended deletion of this definition consequent on a recommendation to the Stream 8 Hearing Panel considering Chapter 17. The Stream 8 Hearing Panel agreed that the definition was redundant and should be deleted[77]. We heard no evidence that would cause us to take a different view.

164. Accordingly, we recommend that this definition be deleted.

6.11. Airport Activity:

165. Ms Leith recommended a series of changes to this definition consequent on changes recommended to the Stream 8 Hearing Panel considering Chapter 17, together with non-substantive formatting changes. The most significant suggested changes appear to be in the list of buildings that are included. In some respects, the ambit of the definition has been expanded (to include flight information services), but in a number of respects, the number of buildings qualifying as an airport activity have been reduced (e.g. to delete reference to associated offices). The Stream 8 Hearing Panel concurred with the suggested amendments[78] and we heard no evidence that would cause us to take a different view. In particular, although the Oil Companies[79] sought that the notified definition be retained, the tabled statement of Mr Laurenson for the submitters supported the suggested amendments. Accordingly, we recommend that the definition be amended to incorporate the changes suggested by Ms Leith and shown in Appendix 1 to this Report.

166. We should note that in Ms Leith's section 42A Report, she recorded that the intention of the Reporting Officer on Chapter 17 was to make the now bullet pointed list of specified airport activities exclusive, rather than inclusive, by suggesting deletion of the words "*but not limited to"*[80].

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77 Refer Report 11 at Section 63.6

78 Refer Report 11 at Section 63.8

79 Submission 768

80 A Leith, Section 42A Report, paragraph 30.2

167. To our mind, it is perfectly clear that a definition like that of 'Airport activity' which provides an initial definition and says that various specified matters are included is not intended to be exhaustive. The words "*but not limited to"* add only emphasis. They do not change the meaning. If the Council desires to alter an existing definition that is expressed inclusively, to be exclusive, in the absence of a submission on the point, that would generally be a substantive change that will need to be achieved by way of variation. The same point arises in relation to the definition of the 'airport related activity', which we will discuss shortly.

6.12. Airport Operator:

168. Ms Leith recommended this definition be deleted as it is not used in the PDP. Ms O'Sullivan from QAC[81]noted in her tabled evidence that it was used in a designation (of Wanaka Airport Aerodrome Purposes) and suggested that it would be appropriate to retain it.

169. This raises the question addressed earlier and more generally regarding the inter-relationship between the designations in Chapter 37 and the Chapter 2 definitions. For the reasons we discussed above, we take a different view to the Stream 8 Hearing Panel (which recommended to us that the definition be retained[82]) and find that if this term needs to be defined for the purposes of a designation, that is a matter for the Stream 7 Hearing Panel to address.

170. We therefore recommend it be deleted from Chapter 2.

6.13. Airport Related Activity:

171. Ms Leith made a series of suggested changes to this definition largely reflecting recommendations to the Stream 8 Hearing Panel. The additional changes recommended by Ms Leith are for non-substantive formatting matters. The effect of the recommended changes was to shift many of the activities formally identified as 'airport activities' to being 'airport related activities'. The Stream 8 Hearing Panel concurred with the suggested changes[83] and, for our part, we heard no evidence to suggest we should take a different view.

6.14. All Weather Standard

172. In her Section 42A Report, Ms Leith recommended that this term be deleted on the basis that it was not used within the PDP. She reconsidered that recommendation in her reply evidence, having noted that it was used within the definition of 'formed road'. On that basis, she recommended that the notified definition be retained. We agree, for the same reason.

6.15. Bar:

173. Ms Leith recommended a rejigging of this definition to delete the initial reference in the notified definition to any hotel or tavern, placing that reference into the term defined. We agree with the suggested reformulation, save that a minor consequential change is required so that rather than referring in the first sentence to '*the'* hotel or tavern, the definition should refer to '*a'* hotel or tavern.

6.16. Biodiversity Offsets:

174. This is a new definition flowing from the recommendation to the Stream 2 Hearing Panel, considering Chapter 33 – Indigenous Vegetation & Biodiversity. The Stream 2 Hearing Panel concurred with this recommendation and we heard no evidence that would cause us to take a different view. Accordingly, we recommend the definition be inserted in the form suggested by Ms Leith and shown in Appendix 1 to this Report.

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81 Submission 433

82 Refer Report 11 at Section 63.10

83 Refer Report 11 at Section 63.11

6.17. Boundary:

175. Ms Leith recommended that this definition be amended by deleting the note in the notified version referring the reader to the separate definitions of '*internal boundary'* and '*road* boundary'. Ms Leith described it in her marked up version of Chapter 2 as a non-substantive amendment. We agree with that. We agree both with that classification and consider that the note was unnecessary. We therefore recommend that the note in the notified version of this definition be deleted.

6.18. Building:

176. Ms Leith recommended that shipping containers be added as an additional exception and that reference be to residential units rather than residential accommodation in this definition, consequent on recommendations to the Stream 5 Hearing Panel considering Chapter 35 – Temporary Activities and Relocated Buildings. The second is a consequential change that we have no issue about, but the Stream 5 Hearing Panel queried the jurisdiction to insert the first, making no recommendation.

177. Although the Oil Companies[84] sought that the notified definition be retained, Mr Laurenson's tabled statement described the suggested changes as minor, and indicated agreement with Ms Leith's recommendations.

178. The notified definition includes an explicit extension of the statutory definition of 'building' to include, among other things, shipping containers used for residential purposes for more than 2 months. The clear implication is that shipping containers would not otherwise be considered a 'building'. We are not at all sure, however, that is correct. The reporting officer on Chapter 35, Ms Banks, thought they were[85] and we tend to agree with that (as a starting premise at least).

179. That would suggest to us that including an exclusion for shipping containers, irrespective of use and albeit for 2 months only, is a substantive change to the definition.

180. We are not aware of any submission having sought that exemption. Accordingly, we conclude that we have no jurisdiction to accept Ms Leith's recommendation in that regard.

181. The same problem does not arise with Ms Leith's recommendation that the introduction to the last bullet refer both to the statutory definition and the specified exemptions. We regard that as a non-substantive clarification. Ms Leith also suggests some minor grammatical changes for consistency reasons that we have no issues with.

182. Queenstown Park Ltd[86] sought in its submission that the definition excludes gondolas and associated structures. Giving evidence for the submitter, Mr Williams recorded that the effect of the definition referring to the Building Act 2004, rather than its predecessor (as the ODP had done) was to remove the ODP exclusion of cableways and gondola towers, but gave no evidence as to why this was not appropriate. Rather, because he went on to discuss and agree with the recommendation of Mr Barr to the Stream 2 Hearing Panel that 'passenger lift systems' be specifically defined, we infer that Mr Williams agreed with the analysis in Ms Leith's Section 42A Report that the submission has been addressed in a different way.

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84 Submission 768

85 See Banks Reply Evidence in relation to Chapter 35 at 10.4

86 Submission 806

Certainly, Mr Williams gave us no reason why we should not accept Ms Leith's recommendation in this regard.

183. Accordingly, we recommend that the only amendments to this definition be the consequential change to refer to 'residential unit' noted above, Ms Leith's suggested clarification of the role of the final bullet, and her suggested minor grammatical changes.

6.19. Building Supplier (Three Parks and Industrial B Zones):

184. Ms Leith recommended two sets of amendments to this definition. The first is to delete the reference in the term defined to the Three Parks and Industrial B Zones, arising out of a recommendation to and accepted by[87] the Stream 8 Hearing Panel considering Chapter 16-Business Mixed Use Zone. Given that the Three Parks and Industrial B Zones are not part of the PDP, were it not for inclusion of the term in Chapter 16, we would have recommended deletion of the definition. Accordingly, we agree with the suggested change.

185. The second suggested amendment is a reformatting of the definition. Currently it switches between identifying different types of building suppliers (glaziers and locksmiths), and identification of the goods a building supplier will supply. Ms Leith suggests focussing it on the latter and making appropriate consequential amendments. We agree with that suggested minor reformatting.

186. Lastly, the structure of the definition is an initial description of what a building supplier is, continuing "*and without limiting the generality of this term, includes…"*. The phrase "*without limiting the generality of this term"* adds nothing other than emphasis, and in our view should be deleted.

187. Accordingly, we recommend that the revised definition of 'building supplier' should be as follows:

"Means a business primarily engaged in selling goods for consumption or use in the construction, modification, cladding, fixed decoration or outfitting of buildings includes suppliers of:

a. glazing;
b. awnings and window coverings;
c. bathroom, toilet and sauna installations;
d. electrical materials and plumbing supplies;
e. heating, cooling and ventilation installations;
f. kitchen and laundry installations, excluding standalone appliances;
g. paint, varnish and wall coverings;
h. permanent floor coverings;
i. power tools and equipment;
j. locks, safes and security installations; and
k. timber and building materials."

6.20. Cleanfill and Cleanfill Facility:

188. In her Section 42A Report, Ms Leith recommended that definitions of these terms be added to Chapter 2, responding to the submission of HW Richardson Group[88]. The point of the submission relied on is that the definition of 'cleanfill' from Plan Change 49 should be included in the PDP. Although the submission was limited to 'cleanfill', Ms Leith identified that the

87 Refer Report 11 at Section 49

88 Submission 252

definition of earthworks she separately recommended be amended to align with the outcome of Plan Change 49 (accepting submission 768 in this regard) refers to both cleanfill and cleanfill facilities. She regarded addition of a definition of cleanfill facilities (from Plan Change 49) as being a consequential change. The tabled statement of Mr Laurenson for the Oil Companies[89], however, noted that the definitions of 'cleanfill' (and consequently 'cleanfill facility') could be interpreted to include a range of substances that should not be considered to fall within that term, such as contaminated soils and hazardous substances. Mr Laurenson also drew attention to Ministry for the Environment Guidelines exempting such materials from the definition of 'cleanfill'.

189. In her reply evidence[90], Ms Leith accepted Mr Laurenson's point. She noted that Submission 252 did not provide scope to introduce definitions of 'cleanfill' and 'cleanfill facility' reflecting the Ministry's guidance, and recommended that the best approach was not to define those terms, thereby leaving their interpretation, when used in the definition of earthworks, at large pending review of the Earthworks Chapter of the District Plan, proposed to occur in Stage 2 of the District Plan Review process.

190. We agree with Ms Leith's revised position, substantially for the reasons set out in her reply evidence. It follows that we recommend that Submission 252 (seeking inclusion of the definition of 'cleanfill' from Plan Change 49) be rejected. We note that the Stage 2 Variations propose introduction of new definitions of both 'clean fill' and 'cleanfill facility'.

6.21. Clearance of Vegetation (includes indigenous vegetation):

191. Ms Leith recommended insertion of reference to "*soil disturbance including direct drilling"* in this definition, reflecting in turn, recommendations to the Stream 2 Hearing Committee considering Chapter 33 – Indigenous Vegetation and Biodiversity. That Hearing Panel accepted that recommendation, but has also recommended additional changes; to delete the reference to indigenous vegetation in brackets in the term defined and to introduce reference to oversowing[91]. We heard no evidence that would cause us to take a different view on any of these points. Accordingly, we recommend that the definition be amended as shown in Appendix 1 to this Report.

6.22. Community Activity:

192. Ms Leith recommended two amendments to this definition. The first is to broaden the notified reference to "*schools"* to refer to *"daycare facilities and education activities"*, reflecting recommendations to the Stream 6 Hearing Panel considering Chapter 7 – Low Density Residential Zone. We note that this suggested change was supported by the tabled evidence for the Ministry of Education of Ms McMinn[92] and we agree with it (as did the Stream 6 Hearing Panel). The second suggested change responded to the submission of New Zealand Police[93] by amending the previous reference to "*Police Stations"* to refer to "*Police Purposes"*. We can readily understand the rationale for that amendment[94] although the Council may wish to consider whether reference to Fire Stations should similarly be broadened by way of variation since presumably the same logic would apply to New Zealand Fire Services Commission as to New Zealand Police.

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89 Submission 768

90 A Leith, Reply Evidence at 20.4

91 Report 4A at Section 47.2

92 Submission 524

93 Submission 57

94 Refer the tabled letter/submission of Mr O'Flaherty for NZ Police emphasising the restriction on the scope of police activities otherwise.

193. Lastly, we note that in the course of the hearing, we discussed with Ms Leith the rationale for excluding recreational activities from this definition. Ms Leith frankly admitted that this was something of a puzzle. While the intention may have been to exclude commercial recreational activities, use of land and buildings for sports fields and Council owned swimming pools would clearly seem to be community activities, in the ordinary sense. We drew this point to the Council's attention in our Minute of 22 May 2017 as an aspect where a variation might be appropriate given the lack of any submission providing jurisdiction to address the point.

194. Given those jurisdictional limitations, we recommend that the definition be amended in line with Ms Leith's evidence, as shown in Appendix 1 to this Report.

6.23. Community Facility:

195. Ms Leith recommended that this definition be deleted, consequent on a recommendation to the Stream 6 Hearing Panel considering Chapter 7 – Low Density Zone. The point was also considered in the Stream 4 hearing and the Stream 4 Hearing Panel considering Chapter 27 (Subdivision) recommends that the definition be deleted.

196. The tabled evidence of Ms McMinn for the Ministry of Education queried the staff planning recommendation in relation to Chapter 7 and whether staff in that context had actually recommended the definition be deleted.

197. Be that as it may, it appeared to us that the Ministry's concern related to use of the term"community *facility"* in any new subzone, that will necessarily be the subject of a future plan process. It can accordingly be considered at that time.

198. Likewise, the tabled evidence of Ms McMinn for Southern District Health Board[95] drew our attention to the desirability of retaining the term 'community facility' in order that the PDP might clearly provide for Frankton Hospital at its existing location should the Community Facility Sub-Zone be reintroduced as part of Stage 2 of the District Plan review process.

199. It seems to us that, as with her concern on behalf of the Ministry of Education, this is an issue that should be addressed as part of a later stage of the District Plan review. The Council will necessarily have to consider, should it reintroduce the Community Facility Sub-Zone, what additional terms need to be defined for the proper administration of those provisions. We do not believe it is appropriate that we seek to anticipate the consequences of Council decisions that are yet to be made.

200. We therefore recommend deletion of this definition.

6.24. Community Housing:

201. Ms Leith recommended that this definition be amended by decapitalising the terms previously themselves the subject of definitions. Although she did not specifically identify this change as responding to the Arcadian Triangle submission referred to earlier, her recommendation is consistent with that submission and we agree with it. We therefore recommend a like change in the marked version of Chapter 2 annexed in Appendix 1.

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95 Submission 678

6.25. Critical Listening Environment:

202. The only change recommended by Ms Leith to this definition is correction of a typographical error pointed out in the evidence of Ms O'Sullivan for QAC[96] and also noted by the Stream 8 Hearing Panel; substitution of "*listening"* for "*living"* in the last line. We regard this as a minor change, correcting an obvious error.

6.26. Domestic Livestock:

203. The notified version of this definition read:

"*Means the keeping of livestock, excluding that which is for the purpose of commercial gain:*

- *In all Zones, other than the Rural General, Rural Lifestyle and Rural Residential Zones, it is limited to 5 adult poultry, and does not include adult roosters; and*

- *In the Rural General, Rural Lifestyle and Rural Residential Zones it includes any number of livestock bred, reared and/or kept on a property in a Rural Zone for family consumption, as pets, or for hobby purposes and from which no financial gain is derived, except that in the Rural Residential Zone it is limited to only one adult rooster per site.*

Note: Domestic livestock not complying with this definition shall be deemed to be commercial livestock in a farming activity as defined by the Plan."

204. This definition needs to be read together with the definition of 'commercial livestock':

"*Means livestock bred, reared and/or kept on a property for the purpose of commercial gain, but excludes domestic livestock."*

205. The definition of 'farming activity' is also relevant:

"*Means* the *use of land or buildings for the primary purpose of the production of vegetative matters and/or commercial livestock…"*

206. There were two submissions on the definition of 'domestic livestock'. The first, that of Ms Brych[97], sought that the definition refer to the livestock rather than their keeping. The second, that of Arcadian Triangle Limited[98], made a number of points:

a. There is an inconsistency between the two bullet points in that the second refers to livestock on a property and, per site, whereas the first bullet does not do so.
b. The use of reference in the second bullet point variously to "*a property"* and "*per site"* is undesirable given that the second is defined, whereas the first is not.
c. Similar controls should be imposed on adult peacocks to those in relation to adult roosters.
d. The words in the note "*as defined by the Plan"* are unnecessary and should be deleted.

207. Ms Leith agreed with Ms Brych's submission that the inconsistency of terminology as between 'commercial livestock' and 'domestic livestock' was undesirable and should be corrected.

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96 Submitter 433

97 Submission 243: Opposed by FS1224

98 Submission 836

208. Ms Leith also agreed with the points made in the Arcadian Triangle submission, and recommended amendments to address those issues. Ms Leith also recommended minor changes to the references to zones, to bring them into line with the PDP terminology.

209. More fundamentally, Ms Leith observed that this is one of the definitions that is framed more as a rule than as a definition. Although she did not identify all the consequential changes that would be required, her recommendation was that the operative parts of the definition (i.e. those that appear more as a rule), might appropriately be shifted into the relevant zone. In her reply evidence, Ms Leith identified that the term 'domestic livestock' only appears in the Rural and Gibbston Character Zones. Her view was that given the absence of any submission, that would need to be rectified by way of variation.

210. In our view, there are even more fundamental problems with this definition that largely stem from the absence of any definition as to what animals come within the concept of 'livestock'. The Collins English Dictionary[99] defines livestock as *"cattle, horses, poultry, and similar animals kept for domestic use but not as pets – esp. on a farm or ranch".*

211. Dictionary.com gives the following definition:

"The horses, cattle, sheep, and other useful animals kept or raised on a farm or ranch".

212. Lastly, Oxford Living Dictionaries[100] defines 'livestock' as "*farm animals regarded as an asset".*

213. These definitions suggest that the concept of 'livestock' on property that is not farmed is something of a contradiction in terms.

214. The subtle differences between these definitions raise more questions than they answer given the implication of the second bullet point in the notified definition that livestock includes animals kept as pets or for hobby purposes. We are left wondering whether a single horse kept for casual riding as a hobby, if held on a property not within the Rural, Rural Lifestyle or Rural Residential Zones, would be considered livestock falling outside the definition of 'domestic livestock', and therefore be deemed to be 'commercial livestock', and consequently a 'farming activity'.

215. Or perhaps even more problematically, a household dog of which there are presumably many located within the District's residential zones.

216. Similarly, is it material that a dog might be considered 'useful' or an 'asset' on a farm, even if it is kept as a pet within a residential zone, so that a resource consent is required for a border collie (for instance), but not a miniature poodle?

217. Ms Leith's recommendation that peacocks be specifically referred to tends to blur the position further; peacocks would not normally (we suggest) be considered 'farm animals'.

218. We discussed with Ms Leith whether control of poultry in residential zones, for instance, should not better be undertaken through the Council bylaw process. That would obviously be an alternative option considered in the course of any section 32 analysis. In addition, as pointed out in our 22 May 2017 Minute, the existing definition treats the Gibbston Character

99 1979 edition

100 www.oxforddictionaries.com

Zone as a effectively a non-rural zone. Ms Leith thought that that was an error, but we lack the scope to recommend a change to the definition that would address it.

219. These considerations prompt us to the view that while, as an interim step, we should recommend the amendments suggested by Ms Leith, responding to the submissions on this definition and to the minor errors she has identified, we recommend that the Council consider regulation of animals, as a land use activity, afresh, determining with significantly greater clarity than at present, what animals it seeks to regulate through the District Plan and determining appropriate standards for the number of those animals that is appropriate for each zone in the relevant chapters of the PDP (not the definitions). Defining what is considered 'livestock' would seem to be a good starting point.

6.27. Earthworks:

220. As already noted (in the context of our discussion of 'cleanfill' and 'cleanfill facility' Ms Leith recommended amending the definition of earthworks to adopt the definition established through Plan Change 49, thereby responding to the submission of the Oil Companies[101]. Ms Leith's recommendation has been overtaken by the Stage 2 Variations which propose amendments to this definition and thus we need not consider it further.

6.28. Earthworks within the National Grid Yard:

221. In her Reply Evidence[102], Ms Leith noted the tabled representation of Ms Bould reiterating the evidence on behalf of Transpower New Zealand Limited[103] seeking a new definition of 'earthworks within the national grid yard'. This submission and evidence was considered by the Stream 5 Hearing Panel which has determined that no new definition is required for the purposes of the implementation of Chapter 30[104].

222. Ms Bould raised the point that the definition of 'earthworks' does not capture earthworks associated with tree planting. However, Ms Leith observed that the recommended rules in Chapter 30 specifically exclude such earthworks and so the recommended new definition would not provide the desired relief, and would in fact be inconsistent with the rules recommended in Chapter 30. We note also the Stream 5 Hearing Panel's conclusion[105] that the recommended rules were essentially as proposed by Transpower's planning witness. Accordingly, we do not accept the need for the suggested definition.

6.29. Ecosystem Services:

223. Ms Leith recorded that there were two submissions on this definition, one from the Council in its corporate capacity[106], and the other from Ms Brych[107].

224. The Council's submission sought substantive changes to the definition, adopting a definition provided by Landcare Research.

225. Ms Brych sought that the definition should be re-written to cover more than just the services that people benefit from.

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101 Submission 768
102 A Leith, Reply at 22.1
103 Submission 805
104 Refer Report 8, Section 5.15
105 Ibid
106 Submission 383
107 Submission 243

226. Ms Leith observed that the notified definition is practically identical to the definition in the Proposed RPS which is now beyond appeal in this respect. While, as a matter of law, we are not required to give effect to the proposed RPS, there appears no utility in contemplating amendments to take this definition to a position where it is inconsistent the definition we now know will form part of the future operative Regional Policy Statement.

227. As regards Ms Brych's submission, Ms Leith provided additional commentary in her reply evidence to the effect that while a wide range of flora and fauna benefit from ecosystem services, that term is usually identified in the PDP alongside 'nature conservation values', 'indigenous biodiversity' and 'indigenous fauna habitat'. She was of the view, and we agree, that the PDP therefore already addresses those other attributes in another way. Ms Brych did not appear to support her submission, or to explain why we should accept it in preference to adopting the Proposed RPS definition.

228. Accordingly, we recommend acceptance of Ms Leith's revised definition which varies from the notified version only by way of the minor wording and formatting changes shown in Appendix 1.

6.30. Educational Facilities:

229. Ms Leith recommended deletion of this definition and substitution of a new definition for 'education activity', reflecting an officer recommendation we now know the Stream 6 Hearing Panel has accepted**.** Ms Leith also recommended a minor grammatical amendment to the definition of education activity. We heard no evidence that would suggest that we should not accept these recommendations[108] or take a different view. Accordingly, we recommend deletion of the definition of 'education facility' and insertion of the suggested definition of 'education activity'.

6.31. Electricity Distribution Corridor and Electricity Distribution Lines:

230. Ms Leith recommended two new definitions, consequent on recommendations to the Stream 5 hearing committee considering Chapter 30 – Energy and Utilities. The Stream 5 Hearing Panel has not recommended insertion of these definitions and accordingly, we do not accept Ms Leith's recommendation either.

231. We note, however, that the Stream 5 Hearing Panel recommends a new definition of 'electricity distribution', responding to a submission of Aurora Energy[109], and intended to include those electricity lines that do not form part of the National Grid, reading as follows:

"Means the conveyance of electricity via electricity distribution lines, cables, support structures, substations, transformers, switching stations, kiosks, cabinets and ancillary buildings and structures, including communication equipment, by a network utility operator."

232. We heard no evidence to cause us to take a different view, accordingly, we recommend inclusion of the suggested new definition[110].

6.32. Energy Activities:

233. Ms Leith recommended a definition of this term be inserted consequent on recommendations to the Stream 5 Hearing Panel considering Chapter 30. That Hearing Panel recommends that the suggested definition be varied to delete the initial reference to the generation of energy

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108 Ms McMinn supported that recommendation in her evidence for Ministry of Education

109 Submission 635

110 Refer Report 8 at Section 6.6

and to make it exclusive, rather than inclusive. We adopt the recommendation of the Stream 5 Hearing Panel[111] with the minor change recommended by Ms Leith – decapitalising the bullet pointed terms.

6.33. Environmental Compensation:

234. Ms Leith recommended a new definition of this term, consequent on a recommendation to the Stream 2 Hearing Panel considering Chapter 33 – Indigenous Vegetation & Biodiversity. The Stream 2 Hearing Panel accepted the suggested new definition[112] and we heard no evidence to cause us to disagree.

6.34. Exotic:

235. Initially, Ms Leith recommended only a minor formatting change to this definition in her section 42A Report (consistent with the recommendations of the Stream 5 Hearing Panel that considered submissions on the term). We discussed with her, however, what the reference in the suggested definition to species indigenous "to that part of the New Zealand" means.

236. Putting aside the typographical error, which part?

237. In her reply evidence Ms Leith suggested that the definition should be clarified to refer to species not indigenous to the District. Having reflected on the point, we admit to some discomfort with the suggested revision of the definition because we consider it has potentially significant effect given the implication that what is exotic is (by definition) not indigenous. We have not previously seen a definition of indigenous flora and fauna that was more specific than New Zealand as a whole. We also wonder whether it is practical to determine whether species are indigenous to Queenstown-Lakes District, or whether they might have been imported from other parts of New Zealand, potentially as far away as Cromwell or Tarras, and indeed, whether that should matter.

238. Adopting a narrower definition than one relating to New Zealand as a whole is also, in our view, potentially inconsistent with section 6(c) of the Act. Both the Operative and the Proposed RPS likewise define "*indigenous"* as relating to New Zealand as a whole.

239. Last but not least, the definition of 'indigenous vegetation' in Chapter 2 similarly takes a New Zealand wide focus. We cannot understand how vegetation could be both exotic and indigenous for the purposes of the PDP.

240. This reasoning suggests to us that we should leave well-enough alone.

241. Accordingly, the only amendments we recommend to this definition are to adopt the formatting change Ms Leith recommended (shifting reference to trees and plants into the defined term) and to correct the typographical error in the second line, deleting the word "*the"*.

6.35. External Appearance:

242. Ms Leith recommended a reformatting change to this definition, shifting reference to buildings into the defined term. We consider this is a minor change that aids understanding and we support that recommendation.

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111 Among other things, suggesting that energy might be generated contradicts the first law of thermodynamics

112 Refer Report 4A, Section 51.2

6.36. Factory Farming:

243. Ms Leith recommended that this definition be amended so that rather than including the three bullet pointed matters it should "mean" those three matters i.e. converting the definition from being inclusive to exclusive. In her Section 42A Report, Ms Leith explained that the definition is unclear whether the list is intended to be exhaustive or not. She recommended that this be made clear[113].

244. As far as we can establish, there is no submission seeking this change. Rather the contrary, the submissions of Federated Farmers of New Zealand[114] and Transpower New Zealand[115] both sought that the existing definition be retained. Those submissions were before the Stream 2 Hearing Panel that does not recommend any change to the existing definition.

245. Ms Leith did not explain the basis on which she determined that the definition of 'factory farming' was intended to be exclusive and it is not obvious to us that that is the intention. Accordingly, we regard this as a substantive change falling outside Clause 16(2) and we do not accept it. We therefore recommend that the definition remain as notified, other than by way of the minor grammatical change suggested by Ms Leith (decapitalising the first word in each of the bullet points).

6.37. Farm Building:

246. Ms Leith recommended a minor grammatical change to this definition (shifting the location of the word "*excludes")*. We agree that the definition reads more easily with the suggested change and we recommend that it be amended accordingly.

6.38. Flat Site:

247. Ms Leith recommended that a definition for this term be inserted, consequent on a recommendation to the Stream 6 Hearing Panel that has the effect that the definition of 'flat site' previously found in notes to rules in Chapters 7, 8 and 9 is converted to a definition in Chapter 2[116]. The Stream 6 Hearing Panel accepts the desirability of distinguishing between flat and sloping sites[117]. Ms Leith also suggested a minor grammatical change that we believe improves the definition. We heard no evidence seeking to contradict Ms Leith's recommendation. Accordingly, we recommend that the slightly varied definition Ms Leith also suggested be inserted, as shown in Appendix 1 to this Report.

6.39. Floor Area Ratio:

248. Ms Leith recommended deletion of this definition consequent on a recommendation to the Stream 6 Hearing Panel. The Stream 6 Hearing Panel accepted that recommendation[118] and we had no reason to take a different view.

6.40. Formed Road:

249. Federated Farmers[119] sought that this definition be amended to distinguish between publicly and privately owned roads in the District.

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113 Refer Section 42A Report at 30.4

114 Submission 600: Supported in FS1209 and FS1342; Opposed in FS1034

115 Submission 805

116 Refer Report 9A, Section 37.1

117 Refer the discussion in Report 9A at Section 37.1

118 Report 9A at Section 36.8

119 Submission 600: Supported in FS1209; Opposed in FS1034 and FS1040

250. Ms Leith referred us to the definition of 'road' which, in her view, means that a 'formed road' must necessarily be a formed public road. When Federated Farmers appeared before us, its representative accepted Ms Leith's analysis, as do we. Accordingly, we recommend that the submission be rejected.

6.41. Ground Level:

251. As notified, this definition had the effect that where historic ground levels have been altered by earthworks carried out as part of a subdivision under either the Local Government Act 1974 or the Act, ground level is determined by a reference to the position following that subdivision, but otherwise, any historic changes in actual ground level do not affect the ground level for the purposes of the application of the PDP.

252. This position was the subject of two submissions. Nigel Sadlier[120] sought that the definition be retained as proposed. We note in passing that that submission was itself the subject of a further submission[121] seeking to alter the definition. The Stream 1B Hearing Panel discussed the permissible scope of further submissions in Report 3. We refer to and rely on the reasoning in that report[122], concluding, therefore, that this is not a valid further submission that we can entertain.

253. The second submission of this definition is that of Arcadian Triangle Limited[123]. This submission focussed on the third bullet point of this definition which, as notified, read as follows:

> *""Earthworks carried out as a part of a subdivision" does not include earthworks that are authorised under any land use consent for earthworks, separate from earthworks approved as part of a subdivision consent*."

254. The submission makes the point that for a period prior to Plan Change 49 becoming operative on 29 April 2016, the Council routinely required subdividers to obtain land use consent for earthworks associated with their subdivision (following a policy decision to this effect). This bullet point accordingly had the potential to alter ground levels for future purposes where they have been changed as a result of earthworks that were actually associated with subdivision. The submitter sought that the bullet point apply to the position after 29 April 2016. Ms Leith agreed with the point made by the submitter and recommended that the relief sought be granted.

255. Ms Leith also recommended (as minor changes) that three of the notified notes to this definition should be relocated into the definition itself, and that a statement at the end of the notified definition that it did not apply to the Remarkables Park Zone or the Industrial B Zone should be deleted.

256. We agree with Ms Leith's recommendations, as far as they go but we have a fundamental problem with the definition insofar as it requires an inquiry as to what the ground level was prior to earthworks being carried out "*at any time in the past*". We discussed with Ms Leith the futility, for instance, of seeking to establish what changes gold miners operating in the 1860s made to the pre-existing ground level and whether it would be more practical to

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120 Submission 68

121 Of Erna Spijkerbosch – FS1059

122 Report 3 at Section 1.7

123 Submission 836

nominate a specific date before which any changes to the pre-existing ground level could be ignored.

257. Ms Leith provided us with further information in her evidence in reply. Apparently, the original definition of 'ground level' in the ODP nominated the date of the ODP's public notification as just such a reference point but this posed problems because establishing ground level at that date (10 October 1995) was found to be difficult and in some cases impossible. Plan Change 11B was promulgated to address the issue and the notified definition in the PDP reflects the resolution of appeals through the Environment Court. Given that the current definition appeared to be the combination of much previous assessment and consideration, she did not recommend any additional amendments to it.

258. Ms Leith did not refer us to an Environment Court decision settling appeals on Plan Change 11B and we could not locate one ourselves. We infer that the resolution of appeals may have been by way of consent order.

259. Be that as it may, and with due respect to the Court, it appears to us to be illogical to address a problem caused by the inability to establish ground levels at a date in 1995, by putting in place a regime requiring knowledge of ground levels at all times in the past, that is to say tens if not hundreds of years before 1995.

260. The obvious solution, it seems to us, is to nominate a reference point when there was adequate knowledge of ground levels across the District, possibly in conjunction with provision for an earlier date if public records provide adequate certainty as to the historic ground level. For this reason, the Chair included this definition as one of the points recommended for variation in his 22 May 2017 Minute.

261. In the meantime, however, we have no jurisdiction to recommend a material change to the definition of 'ground level' from that recommended by Ms Leith. Appendix 1 therefore reflects those changes only.

6.42. Hanger:

262. Ms Leith recommended a change to this definition (to insert the word "means") consequent on a recommendation to the Stream 8 Hearing Panel considering Chapter 17 – Airport Zone. The Stream 8 Hearing Panel concurred[124] and we had no basis to take a different view.

6.43. Hazardous Substance

263. This definition was the subject of a submission from the Oil Companies[125] supporting the existing definition. Ms Leith recommended only minor formatting changes that do not make any difference to the meaning of a definition. We accept her recommendations in that regard. The relevant changes are as shown in Appendix 1 to this report.

6.44. Height:

264. Ms Leith recommended a minor formatting change to this definition and deletion of reference to assessment of height in the Three Parks Zone, recognising that that zone is not part of the PDP. We agree with Ms Leith's suggestions on both points and the revised definition in Appendix 1 to this Report shows the relevant changes.

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124 Refer Report 11 at Section 63.1

125 Submission 768

6.45. Heritage Landscape:

265. We recommend deletion of this definition, consequent on the recommendation of the Stream 3 Hearing Panel concerning Chapter 26 – Historic Heritage that this term not be used in Chapter 26[126].

6.46. Home Occupation:

266. Ms Leith recommended an amendment to this definition to delete the final sentence, stating the position applying in the Three Park Zone, given that that Zone is not part of the PDP. We agree with that recommendation for the reasons set out above.

6.47. Hotel:

267. This definition was the subject of a submission[127] pointing out that there appeared to be a word missing. Ms Leith accepted the point and recommended a minor change to correct the error, together with minor reformatting changes. We accept Ms Leith's suggestions and the revised version of the definition in Appendix 1 shows the relevant changes.

6.48. Indigenous Vegetation:

268. Ms Leith recommended a change to this definition consequent on a recommendation to the Stream 2 Hearing Panel considering Chapter 33 – Indigenous Vegetation & Biodiversity. The Stream 2 Hearing Panel agreed with that recommendation (to refer to vascular and non-vascular plants) and we had no evidence to suggest that we should take a different view.

6.49. Indoor Design Sound Level:

269. In Appendix 1, we have corrected the reference to L_{dn}, to reflect the defined term.

6.50. Informal Airport:

270. Ms Leith recommended a minor non-substantive change to the note to this definition.

271. We agree that her suggested change shown in Appendix 1 to this Report provides greater clarity and recommend it accordingly.

6.51. Internal Boundary:

272. Ms Leith recommended that the note referring the reader to other definitions is unnecessary. We agree and recommend that it be deleted.

6.52. Kitchen Facility:

273. Ms Brych[128] suggested in her submission that this definition is not very clear but did not identify either the particular problem with it, or how it might be amended to address any issue. Ms Leith was unsure as to what was not clear, as were we. Accordingly, we do not recommend any change to the definition.

6.53. Landside:

274. Ms Leith recommended a minor change consequent on a recommendation to the Stream 8 Hearing Panel considering Chapter 17- Airport Zone. That Panel agreed and we have no basis to disagree with the suggested revision shown in Appendix 1 to this Report.

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126 Refer Report 5 at Section 3

127 Christine Brych – Submission 243: Opposed by FS1224

128 Submission 243; Opposed by FS1224

6.54. Liquor:

275. Consistent with the general approach we suggested to her, Ms Leith recommended that this definition set out in full the defined term rather than cross referencing the definition in the Sale and Supply of Alcohol Act 2012. However, on this occasion, the definition is so detailed that we think the cross reference to the legislation from which it is taken is appropriate.

276. Accordingly, we recommend that the notified definition be retained.

6.55. Lot:

277. Ms Leith recommended a minor formatting change (to shift the reference to subdivision into the defined term). We agree that this is clearer and recommend the amendment shown in Appendix 1 to this Report.

6.56. Low Income:

278. Ms Leith recommended minor formatting changes to remove unnecessary capitals in this definition. We agree and Appendix 1 shows the relevant changes.

6.57. MASL:

279. Ms Leith recommended that this definition be shifted to the separate section she recommended containing acronyms used in the PDP. While, as defined, it is indeed an acronym (standing for metres above sea level), reference to it raises a more substantive issue.

280. Given the continuous and ongoing rise in sea levels, use of the literal meaning of MASL as a fundamental reference point in the PDP is unsatisfactory. The Chair's 22 May 2017 memorandum recommended that Council promulgate a variation to define sea level as 100 metres above Otago Datum in order to provide a reference point that will not shift over time. We have no scope to make that change ourselves in the absence of any submission, but anticipating a possible variation, we recommend in the interim that 'MASL' remain in the first section of Chapter 2, rather than being shifted into a separate section of acronyms.

6.58. Mast:

281. In her tabled evidence for QAC, Ms O'Sullivan drew our attention to a potential issue with the definitions of 'mast' and 'antenna', because both of those terms are framed as being specific to telecommunications. Ms O'Sullivan's concern was that the rules in Chapter 30 governing installation of masts and antenna would not, therefore, address structures used for radio communications, navigation or metrological activities – all matters of obvious importance to QAC.

282. Ms O'Sullivan accepted that QAC had not filled a submission with respect to these definitions but drew our attention to the issue in case we could identify scope to address the point.

283. Ms Leith's initial view was that there was no scope to broaden the definitions. We canvassed various possible options in discussions with Ms Leith, but she remained of the view that there was no scope through submissions to recommend these changes.

284. We think that Ms O'Sullivan's concern might be slightly overstated because the ordinary natural meaning of telecommunications includes communications by way of radio waves and to the extent that navigation and metrological facilities on masts and antenna communicate data, they might similarly be considered to fall within the existing definitions. To the extent that this is not the case, however, we have insufficient evidence to conclude that broadening

the definitions to provide more clearly for these facilities would be a minor change for the purposes of Clause 16(2). Accordingly, we conclude that this is a matter which should be addressed by the Council by a way of variation, as Ms Leith recommended to us.

6.59. Mineral Exploration:

285. Ms Leith recommended a new definition for this term consequent on recommendations to the Stream 2 Hearing Panel considering Chapter 21 – Rural Zone

286. The Stream 2 Hearing Panel agreed with that recommendation. Ms Leith, however, suggested two changes to the definition considered by the Stream 2 Hearing Panel. The first is non-substantive in nature (deleting "any" in the third line). The second, however, is more problematic, in our view. The definition recommended to, and accepted by the Stream 2 Hearing Panel had the concluding words "*and to explore has a corresponding meaning"*. Ms Leith suggested that this be deleted on the basis that the definition relates to exploration. While this is correct, the extra words provide for a change of grammatical form (from a noun to a verb) and make it clear that the definition applies to both. We think for our part that that is helpful and we disagree with Ms Leith's recommendation in that regard. Appendix 1, accordingly, only shows the minor change noted above from the version recommended by the Stream 2 Hearing Panel.

6.60. Mineral Prospecting:

287. Ms Leith recommended a new definition of this term be inserted consequent on a recommendation to the Stream 2 Hearing Panel considering Chapter 21 – Rural Zone. That Hearing Panel concurred. Ms Leith has suggested only a minor grammatical change (decapitalising the initial word in each bullet point). We had no evidence to suggest substantive changes to the definition from that recommended by the Stream 2 Hearing Panel, but we agree that the minor grammatical change suggested by Ms Leith is appropriate. Appendix 1 to this Report shows the revised definition.[129]

288. As a consequential change, the existing definition of 'prospecting' should be deleted.

289. Before leaving this term, however, we should note the concern expressed by the Stream 2 Hearing Panel that the way the definition is expressed (being inclusive rather than exclusive) does not accord with the apparent intent – that it describe a low impact activity. The Panel suggested that Council needed to revise it in a future variation. We concur.

6.61. Mini and Micro Hydro Electricity Generation:

290. Ms Leith recommended a minor amendment to insert the word "*means"* at the start of the defined term. The suggested amendment does not alter the meaning, but is consistent with how other defined terms are framed. We accordingly recommend that change.

6.62. Mining Activity:

291. Ms Leith recommended a substantive change to this definition consequent on a recommendation to the Stream 2 Hearing Panel, considering Chapter 21 – Rural Zone, subject only to minor reformatting changes. This recommendation has been overtaken by the Stage 2 Variations, which propose amendments to the notified definition and thus we need not consider it further, although we note that a new definition of 'mining' has been inserted into our recommended revised Chapter 2 consequent on the recommendation of the Stream 2 Hearing Panel.

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[129] Report 4A at Section 4.12

6.63. Minor Alterations and Additions to a Building:

292. Ms Leith suggested amendments to this definition consequent on recommendations to the Stream 6 Hearing Panel considering Chapter 10 – Arrowtown Residential Historic Management Zone and accepted by that Hearing Panel[130]. We had no basis to take a different position. The defined term is, however, specific to Chapter 10, and so it needs to be noted as such. Accordingly, Appendix 1 to this Report shows the relevant changes.

6.64. Minor Upgrading:

293. Ms Leith recommended a series of changes to this definition consequent on recommendations to the Stream 5 Hearing Panel considering Chapter 30 – Energy and Utilities. The Stream 5 Hearing Panel largely accepts that recommendation (changing only the tense of the introduction of the specified items: *"shall include"* to "*includes")*. Ms Leith adopted that recommendation subject only to minor formatting changes. Ms Bould's tabled statement for Transpower New Zealand Limited[131] drew our attention to the evidence of Ms McLeod for Transpower in the context of the Stream 5 hearing seeking provision in the definition for a 15% increase to the height of support structures. Although not apparent from Ms Bould's statement, the relief supported by Ms McLeod suggests that the proposed increase could only occur when necessary to comply with NZECP 34:2001, and so is more limited than would appear to be the case.

294. Be that as it may, Ms Bould provided us with no additional evidence not already put before the Stream 5 Hearing Panel. In addition, Ms Leith drew our attention to the difficulty in judging compliance with such a permitted activity condition and to the potential for significant increases to the height of support structures incurring incrementally over time as permitted activities[132].

295. We are unsure whether the second point is a valid concern given that the relief supported by Ms McLeod is limited to extensions necessary to provide clearance under the NZECP, but ultimately, we have no basis on which to form a different view to the Stream 5 Hearing Committee.

296. Ms Irving drew our attention to the evidence for Aurora Energy[133] in the Stream 5 Hearing in her tabled memorandum, but provided no additional evidence or argument to cause as to doubt the conclusions of the Stream 5 Hearing Panel. Accordingly, we do not recommend that the definition be extended further from that recommended by the Stream 5 Hearing Panel, other than to make it clear that it is limited in application to Chapter 30.

297. We also heard evidence from Ms Black for Real Journeys Limited[134], who sought an expansion of the definition to provide for upgrades to infrastructure other than electricity transmission. The particular point of concern to Ms Black was the need to provide from time to time for upgrades to wharves. After the conclusion of the hearing, Ms Black provided us with suggested wording for a revised definition (2 options).

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130 Report 9A at Section 36.10

131 Submission 805

132 Refer Leith reply evidence at 21.2

133 Submission 635: Supported in part in FS1301; Opposed in FS1132

134 Submission 621

298. Ms Leith did not support the suggested amendment of the 'minor upgrading' definition[135]. Ms Leith observed that the requested relief went beyond a change to the definition and would require new rules which have not been recommended in the Stream 5 Hearing Report. In our view, there would be no point providing an amended definition if the term is not used in the context of an upgrade other than electricity infrastructure.

299. In addition, we have a concern that upgrades of wharves located in sensitive rural areas such as at Walter Peak, might have significant adverse effects.

300. Last but not least, Real Journeys Limited did not seek an amendment to this definition in its submission and we could not identify any jurisdiction for the relief now sought.

301. Accordingly, our revised version of the definition in Appendix 1 is limited to the amendments referred to above.

6.65. Moderate Income:

302. Ms Leith recommended minor amendments (decapitalising words) in this definition that we agree are desirable for consistency reasons. Appendix 1 shows the suggested amendments.

6.66. National Grid:

303. Ms Leith recommended a new definition of this term, arising out of the Stream 5 Hearing in relation to Chapter 30 – Energy and Utilities. The recommended definition in that hearing suggested a cross reference to the Resource Management (National Environmental Standards for Electricity) Transmission Activities Regulations 2009 which define what the National Grid is. The Stream 5 Hearing Panel accepted the desirability of having a definition in the terms recommended, but consistent with the general approach for such cross references, Ms Leith suggested reproducing what the regulations actually say. While we agree that this is more user-friendly, the definition in the Regulations refers to the ownership of the National Grid as at the commencement of the regulations which, if retained, defeats the intention of making the Chapter 2 definition self-contained. We recommend replacing that with a cross reference to notification of the PDP. Given that Transpower has owned the National Grid at all material times, this change falls within Clause 16(2).

6.67. National Grid Corridor:

304. Ms Leith recommended deletion of this definition and its replacement by a new term (National Grid Subdivision Corridor) consequential on recommendations to the Stream 5 Hearing Panel considering Chapter 30 – Energy and Utilities. The new term is proposed to have the same definition save for a minor non-substantive amendment to the note, and a grammatical change in the second line (delete the word "*the")*.

305. The description of the area either side of national grid lines was the subject of discussion in both the Stream 4 and Stream 5 hearings. The recommendations from those Hearing Panels are that the term used in the relevant rules should be 'National Grid Corridor', that is to say, the notified defined term. Accordingly, we reject Ms Leith's recommendation in that regard. In addition, we think it is unnecessary to state (in the same note) that the term does not include underground lines – the opening words of the definition make it perfectly clear that it only relates to above ground lines. However, the amendment she suggested to what was formerly the note aids understanding of the inter-relationship between the defined term and any lines that are designated and so we recommend that 'National Grid Corridor' be amended as shown in Appendix 1.

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135 Refer A Leith, Reply at 21.3

6.68. National Grid Sensitive Activities:

306. Ms Leith recommended a revised definition for this term, reflecting recommendations to the Stream 5 Hearing Committee considering Chapter 30 – Energy and Utilities, subject to minor grammatical changes (removing capitalisation of initial words in bullets and a surplus "*the"*). The Stream 5 Hearing Panel agreed with the recommendation. We heard no evidence to suggest that we should take a different view other than a consequential change to reflect our recommendation above to delete the definition of "education facility" and in relation to Ms Leith's suggested minor additional changes. Accordingly, we recommend the revised definition in the form set out in Appendix 1.

6.69. National Grid Yard:

307. Ms Leith recommended an amendment to this definition (to replace the diagram), reflecting a recommendation to the Stream 5 Hearing Panel, together with a minor non-substantive change to the former note to the definition. The Stream 5 Hearing Panel accepted the recommendation to amend the diagram and we heard no evidence to suggest that we should take a different view. As regards the note, we consider that as with the definition of 'national grid corridor', it is preferable that the body of the definition makes clear that it relates to overhead lines, rather than that being stated in a note.

308. Accordingly, we recommend that amended definition set out in Appendix 1.

6.70. Nature Conservation Values:

309. Ms Leith recommended a revised definition for this term, reflecting a recommendation to the Stream 1B Hearing considering Chapter 3 – Strategic Direction. The Report of the Stream 1B Panel recommends a slightly different definition which refers at the end to habitats rather than landscapes and inserts reference to ecosystem services as an aspect of natural ecosystems, but otherwise accepts the staff recommendation. The only submission on this term listed for hearing in Stream 10 was that of X-Ray Trust Limited[136], which sought a definition of the term, but did not suggest how it should be worded. Accordingly, we have no basis on which to disagree with the Stream 1B Hearing Panel and recommend a revised definition in the terms set out in Appendix 1.

6.71. Navigation Facility:

310. The Airways Corporation of New Zealand Limited[137] sought a new definition for this term. Wording was provided in the submission.

311. Ms Leith's Section 42A Report however identifies that as a result of recommended amendments, the term is no longer used in Chapter 30. Accordingly, in her view, there is no utility in inserting a definition for it[138]. While that is correct, we note that the Stream 1B Hearing Panel has recommended the definition of 'regionally significant infrastructure' that refers, among other things, to 'navigation infrastructure' associated with Queenstown and Wanaka Airports. It appears to us that, therefore, there is value in defining that term.

312. The definition suggested in the Airways Corporation submission for 'navigation facility' was:

"Means any permanent or temporary device or structure constructed and operated for the purpose of facilitating navigation by aircraft or shipping."

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136 Submission 356

137 Submission 566: Supported by FS1106, FS1208, FS1253 and FS1340

138 Refer Section 42A Report at 14.5

313. While as a matter of fact, navigation infrastructure includes shipping (e.g. at the entrance to Queenstown Bay), the reference to shipping is unnecessary given the context in which the term is used in the PDP, but otherwise we think that the suggested definition is perfectly serviceable. Accordingly, we recommend the submission be accepted in part by inclusion of a new term 'navigation infrastructure' defined as:

"*Means any permanent or temporary device or structure constructed and operated for the purpose of facilitating navigation by aircraft."*

6.72. Net Area:

314. Ms Leith recommended a formatting change to this definition to shift the reference to sites or lots into the defined term, consistent with the approach to other terms in Chapter 2. This is a minor non-substantive change, but we agree that with some simplification, it improves readability. Accordingly, we recommend revision of the term as shown in Appendix 1.

6.73. Net Floor Area:

315. Ms Leith recommended a minor wording change to substitute "*means*" for "*shall be*" at the start of this definition. The end result is the same so it falls within Clause 16(2). We agree with the suggested change, which makes the definition consistent with other terms in Chapter 2.

6.74. Noise Event:

316. Ms Leith recommended correction of a typographical error in the fourth line of this definition that was also noted by the Stream 5 Hearing Panel. We agree that this is a minor error that should be corrected under Clause 16(2).

6.75. No Net Loss:

317. Ms Leith recommended a new definition for this term, reflecting a recommendation to the Stream 2 Hearing Panel considering Chapter 33 – Indigenous Vegetation & Biodiversity. The Stream 2 Hearing Panel accepted that recommendation and we heard no evidence which would provide us with a basis to take a different view. Accordingly, we recommend a new definition in the terms set out in Appendix 1.

6.76. Notional Boundary:

318. Ms Leith recommended amendment to this definition, reflecting a change recommended to the Stream 5 Hearing Panel considering Chapter 36 – Noise (to refer to "*any side"* of a residential unit rather than to "*the facade")* together with a minor grammatical change ("*any"* to "*a")*. The Stream 5 Hearing Panel agreed with the staff recommendation and we heard no evidence that would give us a basis to take a different view. We also agree that the minor additional change suggested by Ms Leith aids readability. Accordingly, we recommend a revised definition in the terms set out in Appendix 1.

6.77. Outer Control Boundary (OCB) Queenstown:

319. Ms Leith recommended deletion of this term, reflecting a recommendation to the Stream 8 Hearing Panel considering Chapter 17 – Airport Zone to consolidate this definition with that of 'Outer Control Boundary (OCB) Wanaka'. The Stream 8 Hearing Panel accepted that recommendation and we heard no evidence that would cause us to take a different view. Accordingly, we likewise recommend its deletion.

6.78. Outer Control Boundary (OCB) Wanaka:

320. Ms Leith recommended amendments to this definition that reflected some (but not all of the) changes suggested to the Stream 8 Hearing Panel considering Chapter 17. In particular, the version of the definition recommended by Ms Leith in her section 42A Report retained reference to a date which was omitted from the definition recommended to and accepted by the Stream 8 Hearing Panel. In her tabled evidence for QAC, Ms O'Sullivan pointed out that any reference to a date in this definition needed to acknowledge that the relevant dates were different as between Queenstown and Wanaka. When Ms Leith appeared, we also discussed with her the potential ambiguity referring to "*future predicted day/night sound levels*" – that might be taken to mean future predictions rather than the current prediction of the position at a future date (as intended). Ms Leith suggested amendments to address both points.

321. We think it is preferable to specify the reference date at both airports (as Ms Leith suggests) rather than leave that open (as the Stream 8 Hearing Panel's recommendation would do) to be clearer what it is that the OCBs seek to do. Accordingly, we recommend acceptance of Ms Leith's revised definition, as shown in Appendix 1.

6.79. Passenger Lift System:

322. Ms Leith recommended a new definition for this term, reflecting a recommendation to the Stream 2 Hearing Panel considering Chapter 21 – Rural Zone. The Stream 2 Hearing Panel accepted that recommendation.

323. Remarkables Park Limited[139] and Queenstown Park Limited[140] supported the suggested definition before us. We also received written legal submissions from Mr Goldsmith representing Mount Cardrona Station Limited[141] expressing concern about the way in which the suggested definition was framed. However, when Mr Goldsmith appeared before us, he advised that on further reflection, he considered the concerns expressed in his written submissions unfounded and he withdrew them.

324. We discussed with Mr Williams, the planning witness for Remarkables Park Ltd and Queenstown Park Ltd, the logic of confining the definition of 'passenger lift system' to systems that transport passengers within or to a ski area sub-zone, given that the most visible (and well-known) passenger lift system in the District (the Skyline Gondola) does neither. Mr Williams advised that from a planning perspective, there was merit in broadening the definition and addressing the need for specific provisions governing lift systems in and around ski areas through the rules of Chapter 21. In her reply evidence however, Ms Leith advised that the submission the recommendation responded to was that of Mount Cardrona Station Limited, which was limited to integration between ski area sub-zones and nearby urban and resort zones. She advised further that neither that submission, nor the other submission seeking similar relief provided jurisdiction for definition of a passenger lift system not in the context of a ski area sub-zones, and therefore there was no jurisdiction to make the change we discussed with Mr Williams.

325. We accept that analysis. We contemplated a recommendation that the PDP be varied to provide for passenger lift systems not associated with ski area sub-zones, but given the Skyline Gondola was the subject of resource consent applications to permit a major refurbishing of

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139 Submission 807

140 Submission 806

141 Submission 407: Supported in FS1097, FS1329 and FS1330

the existing facility that were before the Environment Court around the time of our hearing, we do not regard this as necessary at this point.

326. Given the lack of jurisdiction we have noted, we have no basis to recommend a change to the definition from that suggested by Ms Leith. Appendix 1 shows the suggested new definition.

6.80. Photovoltaics (PV):

327. Again, Ms Leith recommended a minor non-substantive change to improve consistency of expression in the Chapter. We agree with her suggested change, which is shown in Appendix 1.

6.81. Potable Water Supply:

328. In her Section 42A Report, Ms Leith noted (in the context of her discussion of the definition of the word 'site') her understanding that it is ultra vires to refer to future legislation within the PDP via a term such as 'replacement Acts'. Ms Leith's position reflected the legal submissions made to us by counsel for the Council. The reason why reference to future legislation is ultra vires is due to the uncertainty as to what that future legislation may contain.

329. When Ms Leith appeared before us, we inquired whether the same principle that counsel had made submissions on and she had accepted would apply to the definition of Potable Water Supply which, as notified, refers to the current drinking water standard "*or later editions or amendments* of *the Standards"*. In her reply evidence, Ms Leith confirmed that the reference to future versions of the drinking water standards was an issue and recommended that it be deleted, in conjunction with a minor consequential amendment. We agree that this is appropriate. Because the deleted phrase is ultra vires and of no effect, its removal is a minor change within Clause 16(2).

6.82. Precedent:

330. Alan Cutler[142] submitted that a definition of 'precedent' should be included in the PDP. Mr Cutler's reasons appeared to relate to the decisions of Council in relation to implementation of the ODP. Ms Leith advised, however, that the term is not used within the PDP. On that ground, and because the law on the significance of precedents in decisions under the Act is still evolving, she recommended definition not be included in Chapter 2. We agree, essentially for the same reasons, and recommend that this submission be declined.

6.83. Projected Annual Aircraft Noise Contour (AANC):

331. Ms Leith recommended a correction to the cross reference to the designation conditions, reflecting a recommendation accepted by the Stream 8 Hearing Panel considering Chapter 17 – Condition 13, not Condition 14.

332. We have no reason to take a different view and Appendix 1 reflects the suggested change.

6.84. Public Place:

333. This definition refers to the "*District Council"* when the defined term (council) should be used. Appendix 1 reflects that change.

6.85. Radio Communication Facility:

334. Ms Leith recommended a new definition for this term be inserted, accepting the submission of Airways Corporation of New Zealand Limited[143] in this regard. Ms Leith identified that although 'radio communication facility' was no longer an activity in its own right, following

142 Submission 110

143 Submission 566: Supported by FS1106, FS1208, FS1253 and FS1340

recommended amendments to the Stream 5 Hearing Panel considering Chapter 30 Energy and Utilities, the term was used in the recommended definition of 'regionally significant infrastructure' and on that account, it is useful to have it defined.

335. In her reply evidence[144], Ms Leith noted that the reference to the Radio Communications Act 1989 at the end of the definition sought by the submitter was unnecessary and recommended its deletion. We agree both that the definition of the term is desirable for the reasons set out in Ms Leith's Section 42A Report (given our recommendation to accept that aspect of the definition of "regionally significant infrastructure") and that the reference to the Radio Communications Act 1989 sought by the submitter should be deleted (not least because that Act does not actually define the term "*Radio Communication Facility")*. Accordingly, we recommend that this submission be accepted in part with a new definition as set out in Appendix 1.

6.86. Recession Lines/Recession Plane:

336. Although not the subject of submission or evidence, we noted as part of our deliberations that this definition (and the accompanying diagrams) are very difficult to understand. They appear designed for the benefit of professionals who already understand the concept of recession planes, and what the diagrams seek to achieve. While there are some aspects of the PDP where lay people may need the assistant of professional advisors, this need not be one of them. We recommend that the Council give consideration to a variation to this aspect of Chapter 2 to provide a definition and interpretative diagrams that might be better understood by lay readers of the PDP. We have attempted to formulate a more readily understood definition ourselves, which is attached to this Report as Appendix 4

6.87. Regionally Significant Infrastructure:

337. Ms Leith recommended insertion of a new definition of this term, reflecting recommendations made to the Stream 1B Hearing Panel considering Chapter 3 – Strategic Direction, supplemented by changes recommended to the Stream 5 Hearing Panel considering Chapter 30 – Energy and Utilities. Ms Leith also recommended updating the suggested cross reference to the Resource Management (National Environmental Standards for Telecommunication Facilities Regulations 2016). The Stream 1B Hearing Panel recommended several amendments to the definition of this term, which the Stream 5 Hearing Panel adopted. We have no basis to take a different view from the Hearing Panels that have already considered the matter.

338. We note that we do not consider the suggested cross reference to the Regulations noted above to be helpful as neither 'telecommunication facility' nor 'radio communication facility' are in fact defined in the Regulations. Our recommendation, reflecting the recommendations we have received from the Stream 1B (and Stream 5) Hearing Panels, is set out in Appendix 1.

6.88. Registered Holiday Home:

339. Ms Leith recommended minor grammatical changes to the definition, deletion of the first advice note and amendment of the second note. However, this definition is the subject of the Stage 2 Variations (which proposes that it be deleted) and thus we need not consider it further.

6.89. Registered Home Stay:

340. Ms Leith recommended deletion of the advice note notified with this application, for the same reason as the corresponding note in relation to 'registered holiday home'. Again, however, this definition is the subject of the Stage 2 Variations and we therefore do not need to form a view on Ms Leith's recommendations.

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144 A Leith, Reply Evidence at 9.1

6.90. Relocated/Relocatable Building:

341. Ms Leith recommended amendment to this definition, reflecting a recommendation to the Stream 5 Hearing Panel considering Chapter 35 – Temporary Activities & Relocated Buildings. The Stream 5 Hearing Panel recommends an additional change (to insert the word *"newly"),* but otherwise agrees with the recommendation[145] . We heard no evidence that would cause us to take a different view although we recommend that the capitalising and bolding of the terms 'removal' and 're-siting' be removed, to promote consistency with the use of defined terms. Appendix 1 reflects the recommended end result.

6.91. Relocation:

342. Ms Leith recommended a reformatting change to shift the initial reference to building into the defined term. We agree with that suggested change which promotes greater consistency in Chapter 2. The Stream 5 Hearing Panel also recommends removal of the words "*and re-siting'* from this definition to avoid confusion[146]. We agree with that change also. Appendix 1 shows the recommended end result.

6.92. Remotely Piloted Aircraft:

343. Ms Leith recommended a new definition for this term, reflecting a recommendation to the Stream 8 Hearing Panel considering Chapter 17 – Airport Zone. That Hearing Panel agrees with the recommendation and we had no basis on which to take a different view. Accordingly, our recommended Appendix 1 shows the suggested new definition.

6.93. Removal of a Building:

344. Ms Leith recommended a new definition of this term, reflecting a recommendation to the Stream 5 Hearing Panel considering Chapter 35 – Temporary Activities & Relocated Buildings. The Stream 5 Hearing Panel agreed with the desirability of a new definition. Ms Leith's suggested definition shifts some of the definition into the defined term and includes reference to demolition as an express exclusion. Both suggested changes are minor in nature. To promote consistency in the way other terms have been defined in Chapter 2, however, we think that the cross reference to building should be in brackets: i.e. "*Removal (Building)"*. The second suggested change provides a desirable clarification for the avoidance of doubt.

6.94. Renewable Electricity Generation Activities:

345. Ms Leith recommended minor grammatical changes (removing unnecessary capitals for separately defined terms). We agree with the suggested change which promote consistency in the reference to defined terms. Appendix 1 shows the recommended end result.

6.95. Residential Flat:

346. In her Section 42A Report[147], Ms Leith noted that although this term was discussed in the course of the Stream 2 Hearing Panel's consideration of Chapter 21 – Rural Zone and was the subject of staff recommendations on submissions, that Hearing Panel directed that the relevant submissions be transferred to this hearing. Ms Leith recommended three changes to the notified definition:

- Insert provision for an increased floor area (up to 150m²) in the Rural and Rural Lifestyle Zones;
- Remove reference to leasing;

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145 Refer Report 8 at Section 20.2

146 Ibid

147 Section 15

- Delete the second note stating that development contributions and additional rates apply.

347. In the case of the first two suggested changes, Ms Leith adopted the recommendations that had earlier been made to the Stream 2 Hearing Panel.

348. She also referred us to the reasoning contained in her own Section 42A Report to the Stream 6 Hearing Panel, considering Chapter 7 of the PDP.

349. There were a number of submissions on this term that were scheduled for hearing as part of Stream 10:
   a. Dalefield Trustee Limited[148] and Grant Bissett[149], supporting the notified definition.
   b. Christine Brych[150], seeking clarification as to whether the definition refers to the building or its use.
   c. QAC[151], seeking a limitation that a residential flat is limited to one per residential unit or one per site, whichever is less.
   d. Arcadian Triangle Limited[152], seeking to replace the limitation on gross floor area with a limitation based on the percentage occupation of the site, to delete reference to leasing or shift that reference into the advice notes and to delete the advice notes or make it clear that they are for information only.

350. Addressing the submission seeking changes to the notified definition, Ms Leith's Chapter 7 Staff Report pointed out that the term 'residential activity' is defined to mean the use of land and buildings. The term 'residential flat' in turn incorporates 'residential activity' as defined. This effectively answers Ms Brych's concern. The definition relates both to the building and the use of the building.

351. Ms Leith (again in the context of her Chapter 7 Report) suggested that there was good reason not to limit sites to a maximum of one residential unit and one residential flat. She pointed in particular to the intent of the PDP to address growth and affordability issues[153]. QAC's tabled evidence did not seek to pursue their submission and thus Ms Leith's reasoning was effectively left uncontradicted. We agree with her reasoning in that regard.

352. Ms Leith's suggested amendment to make special provision for residential flats in the Rural and Rural Lifestyle Zones reflected Mr Barr's reply evidence in the context of the Stream 2 hearing, accepting an argument Mr Goldsmith had made for Arcadian Triangle Limited that the 70m² maximum size reflected an urban context[154]. The Stream 2 Hearing Panel agreed with that recommendation, as do we. We also agree with Ms Leith's reasoning in her Chapter 7 Report that a rule that allowed residential flats to be established by reference to the size of the principal residential unit would permit over large residential flats associated with very large residential units. While arbitrary, a maximum floor area provides the appropriate degree of control[155]. Accordingly, we recommend that that aspect of the Arcadian Triangle submission may be accepted only in part.

148 Submission 330
149 Submission 568
150 Submission 243: Opposed by FS1224
151 Submission 433: Opposed by FS1097 and FS1117
152 Submission 836
153 Refer Chapter 7 Section 42A Report at 14.21
154 Refer C Barr Reply Evidence in Stream 2 Hearing at 6.4
155 Refer Chapter 7, Section 42A Report at 14.23-14.24

353. Ms Leith accepted the underlying rationale of the Arcadian Triangle submission regarding specific reference to leasing. We agree with that reasoning also. A residential flat might be leased. It might be occupied by family members. It might be occupied by visitors on an unpaid basis. We do not understand why, there is any need to refer specifically to a leasehold arrangement, and impliedly exclude other arrangements that the landowners might enter into.

354. Lastly, we agree with Ms Leith's suggested deletion of the note relating to development contributions and rates. Development contributions are levied under the separate regime provided in the Local Government Act 2002. Rates are levied under the Local Government (Rating) Act 2002. The District Plan should not presume how the separate statutory powers under other legislation will be exercised in future.

355. We also do not think there is any necessity to qualify the first note providing clarification as to the relationship between residential flats and residential units as Arcadian Triangle seeks. It does not have substantive effect – it describes the position that would result in the absence of any note.

356. In summary, we recommend that the definition of "*residential flat',* be as suggested to us by Ms Leith to the extent that differs from the recommendation we have received from the Stream 2 Hearing Panel. Appendix 1 reflects that position.

6.96. Residential Unit:

357. Ms Leith recommended deletion of the reference to dwelling in the first line of the notified definition, reflecting in turn, a recommendation to the Stream 6 Hearing Panel considering Chapter 7 – Low Density Residential. That Hearing Panel accepted that recommendation[156].

358. In her Section 42A Report, Ms Leith discussed a submission by H Leece and A Kobienia[157] seeking that rather than focussing on kitchen and laundry facilities, the definition should include flats, apartments and sleepouts on a site that are installed with ablution facilities that enable independent living. The purpose of this submission is to preserve, in particular, rural living amenity values.

359. Ms Leith's response[158] is that the 'residential unit' is the key concept to control the number and intensity of residential activities within each zone. She notes that the definition of 'residential unit' does not incorporate 'residential flats' which are intended to be a minor form of accommodation within the same ownership, but which enable self-contained living separate from the residential unit (potentially we note in a separate building). Ms Leith notes that the PDP enables 'residential flats' in order to promote housing diversity and as a result, did not agree with the submission that residential flats be included within the definition of 'residential units'.

360. Ms Leith also observes that self-contained apartments are already within the definition of 'residential units'.

361. Ms Leith discussed sleepouts, they being buildings capable of residential living that are not completely self-contained and which therefore require access to the 'residential unit'. In her

156 Refer Report 9A at Section 35.11

157 Submission 126

158 A Leith, Section 42A Report at Section 16

view, a sleepout containing only a bathroom and no kitchen could not easily be resided in for long-term purposes without a relationship to the 'residential unit' on the site. She therefore thought that they were appropriately categorised as an accessory building.

362. We canvassed with Ms Leith whether there was a potential problem with sleepouts given that, as an accessory building, they could be located within boundary setback distances. In her reply evidence, Ms Leith discussed the point further. She pointed out that there are rules that apply to accessory buildings within normal setbacks which manage potential adverse effects and that although the ODP permits establishment of sleepouts as accessory buildings now, that has not proven to be a problem in practice. Having tested Ms Leith's reasoning, and in the absence of any evidence from the submitter, we accept her recommendation that the relief sought by the submitter should be declined and that deletion of reference to dwellings in the first line should be the only amendment we recommend. The revised version of the definition in Appendix 1 reflects that position.

6.97. Re-siting:

363. Ms Leith recommended insertion of a new definition, reflecting recommendations to the Stream 5 Hearing Panel considering Chapter 35 – Temporary Activities & Relocated Buildings, but reformatted to include reference to buildings within the defined term. We heard no evidence which would cause us to take a different view about the desirability of having a new definition from the Stream 5 Hearing Panel, which accepted the officer's recommendation[159]. However, we recommend that the reference to buildings in the defined term be in brackets for consistency with other definitions in Chapter 2 with a limited subject matter. Appendix 1 shows the recommended end result.

6.98. Resort:

364. As discussed below, in the context of 'Urban Development', the Stream 1B Hearing Panel recommends a definition of this term be added, consequent on the changes it recommends to the definition of 'Urban Development'. Appendix 1 reflects the recommended addition.

6.99. Retail Sales/Retail/Retailing:

365. The definition of this term was the subject of extensive evidence and submissions on behalf of Bunnings Limited[160]. The thrust of the case advanced for Bunnings was that building suppliers should be expressly excluded from the definition of 'retail'. The rationale for the Bunnings case was that the very large format enterprises operated by Bunnings do not sit comfortably within the policy framework for retail activities which seek to consolidate retail and commercial activities in town centres. As it was put to us, the result of the existing definition of 'retail' combined with the strategic direction contained in Chapter 3 is that either large-scale trade and building suppliers like Bunnings will be forced to locate in the town centres, which will undermine the objective of locating core retail activities in those areas to create vibrant centres, or alternatively, those large scale trade and building suppliers will be precluded from locating in the District entirely.

366. We discussed the issues posed by the Bunnings submission with Mr Minhinnick, counsel for Bunnings, at some length because it appeared to us that although the submitter had identified a real issue, the suggested solution of excluding trade and building suppliers from the definition of 'retail' was unsatisfactory and, indeed, might even have precisely the opposite result from that which the submitter sought.

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159 Refer Report 8 at Section 20.2

160 Submission 746: Supported by FS1164

367. More specifically, although the evidence of Ms Davidson for Bunnings was a little coy about the percentage of Bunnings' operations represented by retail sales to the public, compared to sales to builders and other tradesmen, it was clear to us that the typical Bunnings operation has a substantial retail component. On the face of the matter, therefore, it was inappropriate to deem such operations not to be retail activities when they are retail activities[161].

368. We also noted that so called 'big box retail' is currently already provided for by the ODP in the Three Parks Area in Wanaka. Assuming the ODP provisions are not materially changed when that part of the ODP is reviewed, if trade suppliers were to be excluded from the definition of 'retail', they would consequently be excluded from establishing within the Three Parks Zone, leaving no obvious site for them in Wanaka.

369. Moreover, Bunnings had not sought a parallel amendment to the definition of 'industrial activity' and its planning witness, Ms Panther Knight, told us that in her view it would be inappropriate to amend that definition to include a Bunnings-type operation.

370. We observed to Mr Minhinnick that the Chapter 3 approach was to avoid non-industrial activities occurring within industrial zoned areas – refer notified Policy 3.2.1.2.3 - suggesting that if a Bunnings-type operation was excluded from the definition of 'retail', and did not fall within the definition of an industrial activity, there might be nowhere within the District, in practice, for it to establish. We invited the representatives of Bunnings to consider these matters and to revert to us if they could identify a more satisfactory solution.

371. Counsel for Bunnings duly filed a memorandum suggesting that, rather than excluding building and trade suppliers from the definition of 'retail', the alternative relief sought by Bunnings was to amend the definition of 'trade supplier'. We will return to the issues raised by Bunnings in the context of our discussion of that definition. Suffice it to say that, as we think Bunnings representatives themselves came to accept, we do not consider an exclusion of building and trade suppliers from the definition of 'retail' to be appropriate. We therefore agree with the recommendation of Ms Leith[162] that the submissions initially made by Bunnings to us be rejected.

6.100. Reverse Sensitivity:

372. Ms Leith recommended a new definition for this term, responding to the submissions of the Oil Companies[163] and Transpower New Zealand Limited[164]. In her Section 42A Report[165], Ms Leith recorded that the Section 42A Report on Chapter 30 – Energy and Utilities reported on Transpower's submission and recommended its rejection on the basis that the term 'reverse sensitivity' has been defined by case law, and there is therefore potential that it might be further redefined. Ms Leith observes, however, that that recommendation (and consequently the Stream 5 Hearing Panel's consideration of the point) did not consider the submission of the Oil Companies seeking a somewhat less verbose definition (than that of Transpower) and the fact that the Proposed RPS has adopted a definition of 'reverse sensitivity' which is identical to that proposed by the Oil Companies. Lastly, Ms Leith observed that no appeals were lodged against the Proposed RPS as regards that definition.

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161 Cf *Hawke's Bay and Eastern Fish and Game Councils v Hawke's Bay Regional Councils* [2014] NZHC 3191 on 'factual deeming'

162 Refer Leith Reply Evidence at 23.2

163 Submission 768: Supported by FS1211 and FS1340

164 Submission 805:Supported by FS1211; Opposed by FS1077

165 Refer A Leith Section 42A Report at section 17

373. We consider that a definition of reverse sensitivity is desirable given that the term is used in a number of different contexts in the PDP. As Ms Leith observed, given that the Proposed RPS has adopted the meaning advocated by the Oil Companies and that it has not been appealed on the point, there is good reason to do likewise in the PDP context.

374. For that reason, we recommend a new definition of reverse sensitivity accepting the Oil Companies' submission.

6.101. Road Boundary:

375. Ms Leith recommended deletion of the note to this definition as notified. We agree that the note is unnecessary and recommend that it be deleted accordingly.

6.102. Sensitive Activities – Transmission Corridor:

376. Ms Leith recommended deletion of this term, reflecting in turn, the recommendation to the Stream 5 Hearing Panel considering Chapter 30 – Energy and Utilities. The Stream 5 Hearing Panel agrees with the recommendation and we heard no evidence that would give us a basis to take a different view. Accordingly, we too recommend its deletion.

6.103. Sensitive Activities:

377. X-Ray Trust Limited[166] sought a definition of *"sensitive activities"* is included within the PDP. The submission was cross referenced to notified Objective 21.2.4 which relates to the conflict between sensitive activities and existing and anticipated activities in the Rural Zone. The submitter did not suggest how the term might be defined. Given that, we would have difficulty inserting a definition which provided anything other than the natural and ordinary meaning of the term, for natural justice reasons. If any definition could only express the natural and ordinary meaning, one has to ask whether it serves any useful purpose.

378. Ms Leith also directed us to the objectives and policies of Chapter 21 which provide clarification as to how sensitivity might be assessed in the rural context. She noted that the specific instance of sensitivity of activities within the National Grid Corridor is addressed by a separate definition.

379. In summary, we agree with Ms Leith's recommendation[167] that there is no need to define the term 'sensitive activities'.

380. We note that the submitter sought also that new definitions of 'valuable ecological remnants' and 'ecological remnants' be inserted. Those terms are only used in Chapter 43 and the Stream 9 Hearing Panel considering that Chapter did not recommend inclusion of new definitions of those terms[168]. X-Ray Trust did not provide wording to support its submission and Council has accepted the recommendations of the Stream 9 Hearing Panel (that were released in advance of the reports of other Hearing Panels). We do not consider we have any basis to recommend amendment to these definitions.

6.104. Service Station:

381. Ms Leith recommended a minor non-substantive change to this definition to separate out the exclusion in the second bullet point of the notified definition. We think that it is desirable to separate the exclusion to make the end result clearer, notwithstanding the support of the Oil

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[166] Submission 356

[167] A Leith, Section 42A Report at 18.6

[168] Refer Millbrook Recommendation Report1 September 2017 at 97

Companies[169] for the definition as notified. However, we recommend that the end result be expressed slightly differently, but still ultimately to the same effect. Appendix 1 shows our suggested revision.

6.105. SH6 Roundabout Works:

382. Ms Leith recommended acceptance of New Zealand Transport Agency[170] submission seeking that this definition be deleted as it is part of a notice of requirement. We have already discussed the relationship between Chapter 2 and Chapter 37 (Designations), essentially agreeing with the position underlying this submission. Accordingly, we recommend that the definition be deleted.

6.106. Sign and Signage:

383. Ms Leith's discussion of this issue in her Section 42A Report[171] recorded that the Council's corporate submission[172] sought that all definitions relating to signage be replaced with those recently made operative under Plan Change 48. Ms Leith analysed the Plan Change 48 definitions, identifying that the PDP definitions of 'sign and signage' and related terms differ from those in Plan Change 48 only by way of formatting. Ms Leith also noted that the only term related to signage used in the PDP is 'sign and signage'. She recommended that the related terms all be deleted. While we agree with that recommendation for those definitions within our jurisdiction, most of the definitions concerned are the subject of the Stage 2 Variations, and therefore, whether they remain in Chapter 2 will be determined in that process.

384. As regards the definition of 'sign and signage', Ms Leith recommended two changes that she described as non-substantive in nature.

385. The first suggested change is to remove the word "*includes"* in the third bullet point. We agree with that recommendation. Because the definition commences, "*means:…",* use of the word "*includes"* does not fit the form of the definition.

386. The second recommendation related to the notes to the definition addressing corporate colour schemes and cross referencing other terms. That recommendation has been overtaken by the Stage 2 Variations and thus we need not address it further.

387. Accordingly, we recommend that the term be amended to delete the words "*includes"* (in the third bullet point), and leave any consideration of the matters covered by the notified Notes to the Stage 2 Variation hearing process.

6.107. Site:

388. This term has been the subject of discussion at a number of hearings on the PDP. It is of particular importance to the provisions related to subdivision. The Reporting Officer in the Stream 4 hearing (Mr Nigel Bryce) deferred consideration of these issues until this hearing.

389. Ms Leith's discussion of the point[173] also noted a recommendation from the Reporting Officer in the Stream 6 Hearing Chapter 9 – High Density Residential (Ms Kim Banks) that the definition of 'site' be addressed either at this hearing, or by way of variation.

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169 Submission 768
170 Submission 719
171 At Section 25
172 Submission 383
173 A Leith, Section 42A Report at Section 19

390. The Stage 2 Variations now propose a new definition of 'site'. We therefore need not consider it further.

6.108. Ski Area Activities:

391. Ms Leith recommended amendments to this definition, reflecting recommendations to the Stream 2 Hearing Panel considering Chapter 21 – Rural Zone. That Hearing Panel accepted those recommendations and for our part, we had no basis for taking a different view. Accordingly, we recommend that the definition be amended as shown in Appendix 1.

6.109. Sloping Site:

392. Ms Leith recommended a new definition of this term, reflecting a recommendation made to the Stream 6 Hearing Panel considering Chapter 9 – High Density Residential, but including a minor formatting change to express the new term consistently with other definitions in Chapter 2. The Stream 6 Hearing Panel agreed with the suggested definition[174] and we had no basis to take a different view. Accordingly, Appendix 1 shows the suggested new definition in the terms recommended by Ms Leith.

6.110. Small Cells Unit

393. Ms Leith initially recommended a new definition of the term "*small cells"*, reflecting a recommendation made to the Stream 5 Hearing Panel considering Chapter 30 – Energy & Utilities. The tabled statement of Mr McCallum-Clark on behalf of the telecommunication companies[175] pointed out that the National Environmental Standard for Telecommunication Facilities 2016 provides a definition of small cells (more specifically, for "*Small Cells Unit")* and recommended that that be used in the PDP. That suggestion accords with the recommendation of the Stream 5 Hearing Panel, reflecting its recommendation that relevant rules refer to "*small cells unit".*

394. We agree with that recommendation. Appendix 1 shows the revised definition, as per the 2016 NES.

6.111. Solar Water Heating:

395. Ms Leith recommended a minor reformatting change to this definition to make it consistent with the balance of the Chapter 2 definition. We agree with her suggested change and Appendix 1 shows the recommended revised definition.

6.112. Stand-Alone Power Systems (SAPS):

396. Again, Ms Leith recommended minor reformatting/grammatical changes to make this definition consistent with the balance of Chapter 2. We agree with her suggested changes, which are shown in Appendix 1.

6.113. Structure Plan:

397. While not the subject of submission or comment from Ms Leith, we note that the Stream 4 Hearing Panel recommends a definition of 'Structure Plan' be inserted into Chapter 2, to assist interpretation of rules that Hearing Panel has recommended be inserted.

398. The suggested definition is:

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174 Refer Report 9A at Section 37.1

175 Submissions 179, 191 and 781

"Structure Plan means a plan included in the District Plan and includes Spatial Development Plans, Concept Development Plans and other similarly titled documents."

399. We have no basis to take a different view, and accordingly recommend a new definition in those terms

6.114. Subdivision and Development:

400. At this point, we note the recommendation[176] of the Stream 1B Hearing Panel considering Chapter 6 that we include a definition of 'Subdivision and Development'. We heard no evidence to suggest we should take a different view and accordingly recommend accordingly. Appendix 1 shows the suggested definition.

6.115. Support Structure:

401. Ms Leith recommended a new definition of this term reflecting a recommendation to the Stream 5 Hearing Panel considering Chapter 30 – Energy and Utilities. Mr McCallum-Clark on behalf of the telecommunication companies[177] suggested in his tabled statement that the new definition needed to include reference to telecommunication lines, as the term is used within the definition of 'minor upgrading'. Ms Leith agreed with that point in the summary of her evidence presented at the hearing. The Stream 5 Hearing Panel, however, notes that the definition sought by the relevant submitter [178] did not include reference to telecommunication lines and concluded that it did not have jurisdiction to recommend a satisfactory definition. We agree and accordingly do not accept Ms Leith's recommendation[179].

6.116. Telecommunication Facility:

402. Ms Leith recommended deletion of this term consequent on a recommendation to the Stream 5 Hearing Panel considering Chapter 30 – Energy and Utilities. The Stream 5 Hearing Panel accepts the suggested deletion[180] and we heard no evidence that would cause us to take a different view.

6.117. Temporary Activities:

403. Ms Leith recommended amendment to this term reflecting recommendations made to the Stream 5 Hearing Panel considering Chapter 35 – Temporary Activities & Relocated Buildings, together with minor grammatical/reformatting changes. The Stream 5 Hearing Panel largely accepts the suggested amendments. It considers, however, that there is no scope to expand the ambit of provision for informal airports and recommends that the final bullet point be amended to provide a limit on that provision[181]. We heard no evidence that would cause us to take a different view.

404. Accordingly, Appendix 1 shows the changes recommended by Ms Leith, save for the final bullet point, where we have adopted the Stream 5 Hearing Panel's recommendation.

6.118. Temporary Events:

405. Ms Leith Recommended insertion of a note on the end of this definition, reflecting in turn a recommendation to the Stream 5 Hearing Panel considering Chapter 35 – Temporary Activities

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176 Refer Recommendation Report 3 at Section 8.4
177 Submissions 179, 191 and 781
178 Aurora Energy: submission 635
179 Recommendation report 8 at Section 20.3
180 Report 8 at Section 6.3
181 Refer Recommendation Report 8 at Section 20.3

& Relocated Buildings. The Stream 5 Hearing Panel largely accepts that recommendation[182] and we had no basis on which to take a different view. Appendix 2 accordingly shows the term defined as per Ms Leith's recommendation.

6.119. Temporary Military Training Activity (TMTA):

406. Ms Leith recommended this new definition, reflecting in turn a recommendation to the Stream 5 Hearing Panel considering Chapter 35 – Temporary Activities & Relocated Buildings, subject only to a minor reformatting change to be consistent with other definitions. The Stream 5 Hearing Panel accepts the recommendation with minor wording changes[183]. We heard no evidence that would cause us to take a different view. Accordingly, Appendix 1 shows the new definition.

6.120. Tourism Activity:

407. Ms Leith drew to our attention[184] that a number of submitters sought a definition of this term and that the Section 42A Report on Chapter 21 – Rural Zone recommended that those submissions be rejected. Four additional submissions seeking the same relief were listed for hearing as part of Stream 10 – those of D & M Columb[185], Cardrona Alpine Resort Limited[186], Amrta Land Limited[187] and Nga Tahu Tourism Limited[188], together with the relevant further submissions. None of the other submitters in question appeared to explain to us why a definition of this term would be beneficial notwithstanding the recommendation to the Stream 2 Hearing Panel, and the submissions themselves are relatively uninformative, containing a bare request for a new definition, with suggested wording, but (apart from Submission 716) no reasons. Submission 716 suggested that differentiating tourism activities from other commercial activities would provide certainty and aid effective and efficient administration of the Plan. However, it did not explain how the suggested definition would do that, and from our observation, the suggested wording is so broadly expressed that it is difficult to conceive of many commercial activities in the district that would fall outside it.

408. Accordingly, like Ms Leith, we see no reason to conclude that a definition of 'tourism activity' should be inserted into the PDP.

6.121. Trade Supplier:

409. Ms Leith recommended a new definition of this term, reflecting in turn a recommendation to the Stream 8 Hearing Panel considering Chapter 16 – Business Mixed Use Zone. The Stream 8 Hearing Panel recommends acceptance of that position.

410. As above, Bunnings Limited[189] suggested that its submission might appropriately be addressed by an amendment to this definition reading:
"Trade suppliers are to be treated in the Plan as both retail and industrial activities, unless trade suppliers are otherwise specifically provided for."

411. This suggestion reflected a discussion we had with counsel for Bunnings Limited and with its planning witness, Ms Panther Knight to the effect that part of the problem Bunnings had was

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182 Report 8 at Section 20.4
183 Ibid
184 Section 42A Report at Section 21
185 Submission 624: Supported by FS1097
186 Submission 615: Supported by FS1097, FS1105, FS1117, FS1137, FS1153, and FS1187
187 Submission 677: Supported by FS1097, and FS1117; Opposed by FS1035, FS1074, FS1312 and FS1364
188 Submission 716: Supported by FS1097 and FS1117
189 Submission 746

that its large format operations were something of a hybrid, partly retail and partly industrial in nature.

412. Bunnings also suggested that the word "*wholly*" should be deleted from the definition recommended to the Stream 8 Hearing Panel.

413. Ms Leith considered this suggestion in her reply evidence. While she supported deletion of the word "*wholly*" in order to allow for some flexibility, she did not support the substantive change at the end of the definition, considering that that would pre-empt the content of the review of the Industrial Zone provisions that is yet to come, and indeed the review of any other chapter that might be suitable for a trade supplier, such as the Three Parks Special Zone. She also noted that the Business Mixed Zone already specifically provides for 'Trade Suppliers' and so the amendment is not required.

414. Ms Leith's concerns have some validity. While we think there is merit in the suggestion that the non-retailing component of Bunnings-type operations should be recognised, the suggested amendment to the definition reads like a rule rather than a definition. On reflection, we are also uncomfortable with defining trade suppliers to be, in part, industrial activities. On the basis of the evidence we heard from Ms Davidson for Bunnings, we think that the large format operations that Bunnings and its principal competitor (Mitre 10 – Mega) undertake are more correctly described as a mixture of retailing and wholesaling. Whether it is appropriate for such operations to be provided for in Industrial Zones is a different question that needs to be addressed in a subsequent stage of the PDP review process. Relevant to that consideration, the Stream 1B Hearing Panel has recommended that what was Policy 3.2.1.2.3 be softened so that it now provides for non-industrial activities ancillary to industrial activities occurring within Industrial Zones.

415. In summary, therefore, we accept that some amendment to the definition of 'Trade Supplier' is desirable from that recommended by the Stream 8 Hearing Panel, but suggest it be limited to altering it to read:
"Means a business that is a mixture of wholesaling and retailing goods in one or more of the following categories…"

6.122. Trail:

416. While not the subject of submission or consideration by Ms Leith, the Stream 1B Hearing Panel recommends[190] a minor non-substantive change to this definition. We have no reason to take a different view to that Hearing Panel and accordingly Appendix 1 shows the recommended amendment.

6.123. Urban Development:

417. Ms Leith recommended a substantial amendment to this definition, reflecting recommendations to the Stream 1B Hearing Panel considering Chapter 3 – Strategic Direction. The Stream 1B Hearing Panel recommends further changes to the definition of 'urban development' and insertion of a new term 'resort'.

418. The Hearing Panel's Report contains a lengthy discussion of the rationale for the suggested changes[191].

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190 See Report 3 at Section 8.7

191 Refer Report 3 at Section 3.5

419. Ms Leith referred us to the submission of MacTodd[192] which sought that the definition of 'urban development' be amended in accordance with the Environment Court's decision in *Monk v* Queenstown *Lakes District Council*[193]. MacTodd did not appear before us to explain how exactly it thought that the definition should be amended, but the Stream 1B Hearing Report considers the Environment Court's decision at some length, as well as MacTodd's submission, before arriving at its recommendation. Further consideration of MacTodd's submission does not cause us to come to a different view to the Stream 1B Hearing Panel.

420. Mr Goldsmith appeared at the Stream 10 Hearing on behalf of Ayrburn Farm Estate Limited[194] and took issue with the recommended exclusion of Millbrook and Waterfall Park Special Zones from the definition of urban development. Mr Goldsmith made it clear when he appeared before us that he was not seeking to debate the merits but wished to alert the Hearing Panel to the relevance of this point to the argument he was yet to make in the context of the Wakatipu Basin Mapping Hearing as to the location of the Arrowtown Urban Growth Boundary. He also queried the jurisdiction for excluding Millbrook and Waterfall Park.

421. The Stream 1B Hearing Report addresses both the jurisdictional issues[195] and the merits of how 'urban development' should be defined for the purposes of the PDP. Mr Goldsmith did not present us with any arguments that suggested to us that the logic of the Stream 1B Hearing Panel's recommendations is unsound and we adopt those recommendations. Accordingly, Appendix 1 has both a new definition of 'resort' and a revised definition of 'urban development'.

6.124. Urban Growth Boundary:

422. MacTodd[196] sought that this definition be amended in accordance with the Environment Court's decision in *Monk v Queenstown Lakes District Council* referred to in the context of the definition of 'urban development'. We have reviewed the *Monk* decision and while the Environment Court discusses the interrelationship between the definitions of 'urban development' and 'urban growth boundary' it does not appear to us to offer any guidance as to what the definition of the latter term should be, if it is to be amended.

423. MacTodd did not appear before us to assist us in that regard. Accordingly, we recommend that MacTodd's submission be rejected.

424. Ms Leith, however, recommended a minor change to the definition to remove the repetitive reference to boundaries in the notified definition, together with a minor grammatical change. We agree that the recommended objective reads more simply and clearly and, accordingly, adopt Ms Leith's suggestion in Appendix 1.

6.125. Utility:

425. Ms Leith recommended two changes to this definition, both arising out of recommendations to the Stream 5 Hearing Panel considering Chapter 30 – Energy and Utilities. The first is to refer to substations in the context of other infrastructure related to the transmission and distribution of electricity and the second to add reference to flood protection works. The Stream 5 Hearing Panel agrees with both recommendations and we did not hear any evidence that would cause us to take a different view.

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192 Submission 192

193 [2013] NZEnvC 12

194 Submission 430

195 The submission of Millbrook Country Club (696) clearly provides jurisdiction

196 Submission 192

426. We note the tabled memorandum of Ms Irving for Aurora Energy Ltd[197] on this point. Ms Irving suggested that the term 'utility' needed to be amended to catch a wider range of electricity distribution infrastructure. Ms Irving's point has largely been overtaken by our recommendation to insert a separate definition of 'electricity distribution' and in any event, we note that the definition has a catchall referring back to the Act's definition of 'network utility operation', which would include all of Aurora's network.

427. We do not believe therefore that further amendments are required to address Ms Irving's concerns.

428. We do suggest, however, that the words "but not limited to" be deleted as unnecessary verbiage, and that the cross reference to the definition of telecommunication facilities should be deleted, consequent on removal of that definition.

429. Accordingly, with the addition of correction of a typographical error (the first bullet point should refer to transmission singular of electricity) and the deletions just referred to, we recommend the amendments to this term endorsed by the Stream 5 Hearing Panel.

6.126. Visitor Accommodation:

430. This definition was the subject of a number of submissions. However, consideration of the issues raised by those submissions has been overtaken by the Stage 2 Variations, which propose an amended definition. We need not, therefore, consider it further.

6.127. Waste:

431. H W Richardson Group[198] sought that this definition be amended to specify that 'waste' does not include cleanfill. Ms Leith recommended that that submission be accepted as a helpful amendment to the definition[199]. We agree with that recommendation and Appendix 1 reflects the suggested change.

6.128. Waste Management Facility:

432. Ms Leith noted that this definition differs from that in Plan Change 49, related to earthworks, but considered that there was no scope to recommend substantive amendments to the PDP definition on this basis[200]. She did, however, recommend non-substantive amendments to correct typographical errors and clarify the relationship between the specified exclusions. We agree with those suggested amendments, which are shown in Appendix 1.

6.129. Wetland:

433. Ms Leith recommended deletion of the cross reference to the definition in the Act given that the balance of the notified definition in fact already sets out the Act's definition of this term. We agree that the deleted text is unnecessary and that it should therefore be deleted.

6.130. Wholesaling:

434. In her Section 42A Report, Ms Leith recommended that this definition be referenced to the Airport Zone (as well as Three Parks and Industrial B Zones as notified), consequent on a recommendation to the Stream 8 Hearing Panel. The Stream 8 Hearing Panel refers the matter to us, so that it might be considered in the context of the whole Plan.

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197 Submission 635

198 Submission 252

199 A Leith, Section 42A Report at 24.8

200 Refer A Leith, Section 42A Report at 24.9

435. Reference to the Three Parks and Industrial B Zone should be deleted, given that those zones are not part of the PDP. The reporting officer on Stream 8 (Ms Holden) identified scope for the definition to apply in the Airport Zone[201].

436. We discussed with Ms Leith whether there was a case for the definition to apply beyond the three nominated zones. In her reply evidence, she acknowledged there is merit in a broader application, but expressed the opinion that there is no scope for amending the definition further.

437. We accept Ms Leith's conclusion that there is no scope to expand the application of the definition beyond the Airport Zone, and recommend that Council consider the desirability of a variation on the point.

438. In the interim, we recommend that the definition just be referenced to the Airport Zone, as Ms Holden recommended.

6.131. Wind Electricity Generation:

439. Ms Leith recommended a minor non-substantive amendment to this definition which promotes consistency with the formatting of the other definitions in Chapter 2. We agree that that consistency is desirable. Appendix 1 therefore sets out the change suggested by Ms Leith.

7. ACRONYMS:

440. Ms Leith suggested insertion of a new Section 2.2 in Chapter 2 collecting together all of the acronyms used in the PDP. We think that this is helpful for readers of the PDP. She considered that this was a non-substantive change simply providing clarification to Plan users (and therefore within Clause 16(2)). We agree and Appendix 1 includes a new Section 2.2 with a brief opening explanation as to what it includes.

441. In the list of acronyms, the acronyms currently referring to Heritage Landscapes[202] each need to be amended consequent on the recommendation of the Stream 3 Hearing Panel that these areas be described as Heritage Overlay Areas.

442. For similar reasons, RCL should be 'Rural Character Landscape', consequent on the recommendations of the Stream 1B Panel.

443. Lastly, the acronym 'R' suggested by Ms Leith is not required, given that it is only used in the Jacks Point Structure Plan.

8. SUMMARY OF RECOMMENDATIONS ON CHAPTER 2:

444. Our recommended amendments to Chapter 2 are set out in Appendix 1 to this Report.

445. In our detailed discussion of the definitions in Chapter 2, and those that might be added to it, we have recommended that Council consider variations to the PDP to insert new/amended definitions of a number of defined terms, as follows:

a. Community Activity;

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201 Submission 433

202 GHL, MHL, SHL, SMHL

b. Domestic Livestock/Livestock;
c. Ground Level;
d. MASL;
e. Mineral prospecting
f. Recession Lines/Recession Plane;
g. Wholesaling.

446. Attached as Appendix 4 is a suggested basis for an amended definition/explanation of 'Recession Line/Recession Plane' should Council agree with our recommendation that the existing definition would benefit from clarification.

447. 'The need for Council to insert the relevant date into the definition of *'partial demolition'* before release of the Council's decisions on our recommendations is also noted.

448. As previously noted, Appendix 3 to this report contains a summary of our recommendations in relation to each submission before us.

PART D: NATURAL HAZARDS:

9. PRELIMINARY MATTERS

9.1. Background:

449. Both the Operative RPS and the Proposed RPS have a particular focus on management of natural hazards. Given the role of both documents in the decision-making process[203], we need to discuss the direction provided by those documents in some detail.

450. In her Section 42A Report Ms Bowbyes drew our attention to four objectives of the Operative RPS as follows:

11.4.1 To recognise and understand the significant natural hazards that threaten Otago communities and features.

11.4.2 To avoid or mitigate the adverse effects of natural hazards within Otago to acceptable levels.

11.4.3 To effectively and efficiently respond to natural hazards occurring within Otago.

11.4.4 To avoid, remedy or mitigate the adverse effects of hazard mitigation measures on natural and physical resources."

451. Supporting these objectives, Ms Bowbyes drew our attention to the following policies:

"11.5.1 To recognise and provide for Kai Tahu values in natural hazard planning and mitigation.

11.5.2 To take action necessary to avoid or mitigate the unacceptable adverse effect of natural hazards and the responses to natural hazards on:
(a) Human life; and
(b) Infrastructure and property; and
(c) Otago's natural environment; and
(d) Otago's heritage sites.

11.5.3 To restrict development on sites or areas restricted as being prone to significant hazards, unless adequate mitigation can be provided.

11.5.4 To avoid or mitigate the adverse effects of natural hazards within Otago through:
(a) Analysing Otago's natural hazards and identifying their location and potential risk; and
(b) Promoting and encouraging means to avoid or mitigate natural hazards; and
(c) Identifying and providing structures or services to avoid or mitigate the natural hazard; and
(d) Promoting and encouraging the use of natural processes where practicable to avoid or mitigate the natural hazard.

11.5.5 To provide a response, recovery and restoration capability to natural hazard events through:
(a) Providing civil defence capabilities;

[203] Refer Sections 75(3)(c) and 64(2)(a) of the Act respectively

(b) *Establishing procedures and responsibility to ensure quick responses to any natural hazard event; and*
(c) *Identifying agency responsibilities for assisting recovery during and after events; and*
(d) *Developing recovery measures incorporated into civil defence plans.*

11.5.6 To establish the level of natural hazard risk that threatened communities are willing to accept, through a consultative process.

11.5.7 To encourage and where practicable support community-based responses to natural hazard situations."

452. The Proposed RPS provides even more detailed guidance than did its predecessor. Ms Bowbyes drew our attention to Objective 4.1 which reads:
"Risk that natural hazards pose to Otago's communities are minimised."

453. This objective is supported by no fewer than 13 policies that we need to have regard to:

"Policy 4.1.1 Identifying natural hazards
Identify natural hazards that may adversely affect Otago's communities, including hazards of low likelihood and high consequence by considering all of the following:
a) Hazard type and characteristics;
b) Multiple and cascading hazards;
c) Cumulative effects, including from multiple hazards with different risks;
d) Effects of climate change;
e) Using the best available information for calculating likelihood;
f) Exacerbating factors.

Policy 4.1.2 Natural hazard likelihood
Using the best available information, assess the likelihood of natural hazard events occurring, over no less than 100 years.

Policy 4.1.3 Natural hazard consequence
Assess the consequences of natural hazard events, by considering all of the following:
a) The nature of activities in the area;
b) Individual and community vulnerability;
c) Impacts on individual and community health and safety;
d) Impacts on social, cultural and economic well being;
e) Impacts on infrastructure and property, including access and services;
f) Risk reduction and hazard mitigation measures;
g) Lifeline utilities, essential and emergency services, and their co-dependence;
h) Implications for civil defence agencies and emergency services;
i) Cumulative effects;
j) Factors that may exacerbate a hazard event.

Policy 4.1.4 Assessing activities for natural hazard risk:
Assess activities for natural hazard risk to people in communities, by considering all the following:

a) *The natural hazard risk identified, including residual risk;*
b) *Any measures to avoid, remedy or mitigate those risks, including relocation and recovery methods;*
c) *The longterm viability and affordability of those measures;*
d) *Flow on effects of the risk to other activities, individuals and communities;*
e) *The availability of and ability to provide, lifeline utilities, and essential and emergency services, during 'and' after a natural hazard event.*

Policy 4.1.5 Natural hazard risk

Manage natural hazard risk to people and communities, with particular regard to all of the following:

a) *The risk posed, considering the likelihood and consequences of natural hazard events;*
b) *The implications of residual risk, including the risk remaining after implementing or undertaking risk reduction and hazard mitigation measures;*
c) *The community's tolerance of that risk, now and in the future, including the community's ability and willingness to prepare for and adapt to that risk, and respond to an event;*
d) *The changing nature of tolerance to risk;*
e) *Sensitivity of activities to risk.*

Policy 4.1.6 Avoiding increased natural hazard risk

Manage natural hazard risk to people and communities by both:

a) *Avoiding activities that significantly increase risk including displacement of risk off-site; and*
b) *Avoiding activities that increase risk in areas potentially affected by coastal hazards over at least the next 100 years.*

Policy 4.1.7 Reducing existing natural hazard risk

Reduce existing natural hazard risk to people and communities, including by all of the following:

a) *Encouraging activities that:*
    i. *Reduce risk; or*
    ii. *Reduce community vulnerability;*
b) *Discourage activities that:*
    i. *Increase risk; or*
    ii. *Increase community vulnerability;*
c) *Considering the use of exit strategies for areas of significant risk to people and communities;*
d) *Encouraging design that facilitates:*
    i. *Recovery from natural hazard events;*
    ii. *Relocation to areas of lower risk;*
e) *Relocating lifeline utilities, and facilities for essential and emergency service, to areas of reduced risk, where appropriate and practicable;*
f) *Enabling development, upgrade, maintenance and operation of lifeline utilities and facilities for essential and emergency services;*
g) *Reassessing natural hazard risk to people and communities, and community tolerance of that risk, following significant natural hazard events.*

Policy 4.1.8 *Precautionary approach to natural hazard risk*

Where natural hazard risk to people and communities is uncertain or unknown, but potentially significant or irreversible, apply a precautionary approach to identifying, assessing and managing that risk.

Policy 4.1.9 *Protection features and systems that provide hazard mitigation*

Avoid, remedy or mitigate adverse effects on natural or modified features and systems, which contribute to mitigating the effects of both natural hazards and climate change.

Policy 4.1.10 *Mitigating natural hazards*

Give preference to risk management approaches that reduce the need of hard protection structures or similar engineering interventions, and provide for hard protection structures only when all of the following apply:

a) *Those measures are essential to reduce risk to a level the community is able to tolerate;*
b) *There are no reasonable alternatives;*
c) *It would not result in an increase in risk to people and communities, including displacement of risk off-site;*
d) *The adverse effects can be adequately managed;*
e) *The mitigation is viable in the reasonably foreseeable long term.*

Policy 4.1.11 *Hard protection structures*

Enable the location of hard protection structures and similar engineering interventions on public land only when either or both the following apply:

a) There is significant public or environmental benefit in doing so;
b) The work relates to the functioning ability of a lifeline utility, or a facility for essential or emergency services.

Policy 4.1.12 *Lifeline utilities and facilities for essential or emergency services*

Locate and design the lifeline utilities and facilities for essential or emergency services to:

a) Maintain their ability to function to the fullest extent possible, during and after natural hazard events; and
b) Take into account their operational co-dependence with other lifeline utilities and essential services to ensure their effective operation.

Policy 4.1.13 *Hazard mitigation measures, lifeline utilities, and essential and emergency services*

Protect the functional and operational requirements of hazard mitigation measures, lifeline utilities, and essential or emergency services, including by all of the following:

a) Restricting the establishment of those activities that may result in reverse sensitivity effects;
b) Avoiding significant adverse effects on those measures, utilities or services;
c) Avoiding, remedying or mitigating other adverse effects on those measures, utilities or services;
d) Maintaining access to those measures, utilities or services for maintenance and operational purposes;

Managing other activities in a way that does not restrict the ability of those mitigation measures, utilities or services to continue functioning."

454. *Ms Bowbyes also drew our attention to Policy 4.5.1 of the Proposed RPS, that, relevantly reads:*
"Policy 4.5.1 Managing for urban growth and development

Managing urban growth and development in a strategic and co-ordinated way, by all of the following…:

c) Identifying future growth areas and managing the subdivision, use and development of rural land outside these areas to achieve all of the following:….

v) Avoid land with significant risk from natural hazards."

455. The evidence of Mr Henderson for Otago Regional Council (adopting the pre-circulated Brief of Evidence of Mr Warren Hanley) was that the Proposed RPS had been developed against a background where, to use his words, "*the national importance placed on managing natural hazard risk has increased substantially since Otago's first RPS became operative".* Discussing the point with Mr Henderson, he confirmed our impression that it is not a matter of the natural hazard risk having changed materially, but rather one of the perception of that risk having been heightened as a result of very visible hazard events such as the Christchurch and Kaikoura earthquakes. As Mr Henderson observed, in general, hazards have always existed.

456. Be that as it may, the Proposed RPS gives a much greater degree of direction, as well as a much more explicit focus on natural hazard risk. Classically, risk is the combination of the likelihood of an event coming to pass, and its consequence(s)[204]. The operative RPS, by contrast, appears to focus solely on the consequences of natural hazards.

457. Ms Bowbyes noted in her Section 42A Report[205] that the Proposed RPS advocates for a "*more definitive and cautious approach"* with regard to natural hazard risk than that proposed in the notified PDP provisions on natural hazards.

458. Ms Bowbyes, however, noted that as at the date of hearing, the Proposed RPS was the subject of numerous appeals to the Environment Court with almost all of the provisions quoted above the subject of challenge. Ms Bowbyes drew our attention specifically to appeals focussing on the extent to which an avoidance policy is pursued in the Proposed RPS. However, when we discussed the nature and scope of the appeals on the Proposed RPS with counsel for the Council, Ms Scott confirmed our own impression (having reviewed the various notices of appeal that had been filed), that the direction the appeals seek to take the Proposed RPS provisions on natural hazards is not uniform. In particular, while the effect of the appeals Ms Bowbyes drew to our attention might be to reduce the restriction on future development posed by these provisions, if successful, other appeals might push the Proposed RPS provisions in the opposite direction. That is to say, to a more restrictive position. That suggests, among other things, that while remaining true to our statutory obligation to take the Proposed RPS into account, we also need to be alive to the potential for it to change in ways that cannot currently be predicted.

459. Having emphasised the differences between the Operative RPS and the Proposed RPS, it is also appropriate to note the areas of commonality. Specifically, both acknowledge the relevance

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204 See Orica Mining Services New Zealand Limited v Franklin District Council W032/2009 at [18]

205 At paragraph 5.20

of community opinion, although the language used is different. The Operative RPS speaks in terms of acceptability, whereas the Proposed RPS focuses on tolerability. We asked counsel for the Council whether these were the same thing in a natural hazard context. Her initial response was that the ordinary and natural meanings of the two terms are different. If correct, that would pose somewhat of a conundrum for us. As a matter of law, we are bound to give effect to the Operative RPS and while that does not mean that the PDP must use identical language to the Operative RPS, if there were indeed a meaningful difference between the terminology of the two documents, we would necessarily have to adopt the approach of the Operative RPS.

460. For ourselves, we are not at all sure that counsel's initial response (that there is a difference in the ordinary dictionary meaning) is correct and, having reflected on it, she agreed that if the relevant policies of the Operative RPS substituted "*tolerable"* for "*acceptable"* and "*intolerable"* for "*unacceptable"* in each case, the meaning would not change.

461. That was also the view of Mr Henderson, giving evidence for Otago Regional Council. He thought that they were similar concepts, but supported use of the language in the Proposed RPS because tolerability was now the term used in the planning literature.

462. We accept that there is no material difference between the terminology, and take the view that it is preferable to align the wording of the PDP with the Proposed RPS given that that represents Otago Regional Council's current thinking.

463. We also discussed with Mr Henderson an apparent contradiction in his evidence which stated at one point[206] that tolerance for risk might vary from community to community, depending on the nature of the risk profile and the resources of the community to manage it, and at another,[207] that he would be concerned if the PDP suggested different criteria for natural hazard risk management might be employed in Queenstown Lakes District to that in the balance of the Otago Region.

464. Mr Henderson sought to reconcile the two positions by stating a general desire that hazard response be "*relatively consistent"* within a range. However, he accepted that where a district has few options to meet development demand, that might drive choices that other districts with a greater range of options might not take. More specifically, Mr Henderson agreed that if Queenstown Lakes District has high demand for development and few choices as to how to accommodate that demand (manifestly an accurate statement of the position) the District's community might make choices as to what natural hazards have to be tolerated, and those choices might be different to another district with lower levels of development demand and greater options as to how demand might be accommodated.

465. We have approached our consideration of submissions and further submissions on Chapter 28 on that basis.

466. We will return to both the Operative RPS and the Proposed RPS provisions in the context of our more detailed discussion of the objectives and policies of Chapter 28 that follows. The last point of general background, however, that we need to note relates to the potential relevance of iwi management plans to our consideration of submissions and further submissions on Chapter 28. As Report 1 notes, any relevant planning document recognised by an iwi authority and lodged with the Council must be taken into account under Section 74(2A) of the Act.

206 Paragraph 22

207 Paragraph 24

467. In her reply evidence, Ms Bowbyes drew our attention to provisions in two such iwi management plans. Specifically, in "*The Cry of the People, Te Tangi Tauira: Ngai Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008,* Policy 12 of Section 3.1.1. supports development and improvement of contingency measures to recognise increased natural hazard risk, among other things, as a result of unpredictable weather patterns. Ms Bowbyes drew to our attention the link between this policy and the provisions of Chapter 28 relating to flood hazards and recommended changes she had suggested regarding the impacts of climate change.

468. Ms Bowbyes also drew our attention to section 3.5.7 of this Plan emphasising the relevance of natural hazards to determination of the appropriateness of subdivision at particular locations.

469. Secondly, Ms Bowbyes drew our attention general policy 54 in section 5.3.4 of *Kai Tahu ki Otago* Natural *Resource Management Plan 2005* which has a similar emphasis on aligning land uses to the type of land and climatic conditions.

470. Policy 43 of that document further seeks to discourage activities on riverbanks that have the potential to cause or increase bank erosion. More generally, Policy 10 promotes sustainable land use within the Clutha/Mata-au Catchment, which encompasses the entire district.

471. Ms Bowbyes was of the view that Chapter 28 already accounts for these various provisions in its objectives and policies. We agree with that view, although obviously, any suggested amendments need to be weighed with these provisions in mind, along with the other higher order documents and considerations that have to be factored in.

472. In addition to the matters that are relevant to the decision-making process external to the PDP, our consideration of submissions and further submissions also needs to take account of the recommendations of the Stream 1B Hearing Panel that considered the extent of strategic direction provided in Chapters 3 and 4 relevant to natural hazards.

473. We note in particular, that that Hearing Panel's recommendation that renumbered Objective 3.2.1 promotes as an outcome that urban development among other things, "*minimise[s] the natural hazard risk, taking into account the predicted effects of climate change"*.

474. We also note recommended Policy 4.2.2.2 which links allocation of land within urban growth boundaries to "*any risk of natural hazards, taking into account the effects of climate change"*.

475. Our ability to respond appropriately to both the legislative directions of the Act and to the direction provided in Chapters 3 and 4 is dependent, of course, on the notified provisions of Chapter 28, and the scope provided for amendment of those provisions by the submissions lodged in accordance with the provisions of the First Schedule. It is therefore, to those detailed provisions that we now turn.

9.2. Natural Hazard Provisions – General Submissions:

476. Ms Bowbyes drew our attention to five submission points regarding the treatment of particular hazards in the PDP[208]. The first of these submissions is that of J & E Russell and ML Stiassny[209] which sought the inclusion of new provisions acknowledging the presence of the Cardrona Gravel Aquifer, including a rule framework for earthworks and residential

[208] Refer Section 42A Report at Section 10

[209] Submission 42: Opposed by FS1300

development on land potentially affected by the aquifer. Ms Bowbyes confirmed in a discussion with us that the concern the submission is targeting is one of flood hazards.

477. Ms Bowbyes analysed the provisions of the earthworks chapter of the ODP, introduced by way of Plan Change 49. Her view was that those provisions are appropriate to address the matters raised in the submission and that no amendments are necessary to Chapter 28. We agree. To the extent the submitters may have a different view, they will be free to pursue the issue further when the earthworks provisions of the PDP are considered as part of the Stage 2 Variation hearing process. The submitter did not appear before us to take the matter further.

478. The second submission Ms Bowbyes drew to our attention is that of the Glenorchy Community Association Committee[210] which sought that Otago Regional Council and the Council update the natural hazards database with flooding information on the Bible Stream and remove any flood classification that is incorrect. Ms Bowbyes noted that the natural hazards database is held outside the PDP. We agree that it follows that this submission does not relate to the provisions of the PDP and the submission is accordingly not within the scope of the District Plan review.

479. Next, Ms Bowbyes drew our attention to three submissions relating to fire risk: those of Otago Rural Fire Authority[211] (two submissions) and of Leigh Overton[212].

480. As regards the first Otago Rural Fire Authority submission, this relates to a request that the PDP permit residents to remove flammable vegetation within the "*priority zones"* identified in a specified homeowners manual to address the high fire danger associated with living in areas such as Mount Iron and the Queenstown Red Zone. Ms Bowbyes clarified that the Red Zone relates to parts of the district where fires and fireworks are strictly prohibited.

481. Ms Bowbyes advised us[213] that the possible changes to provisions in the Rural Chapters balancing the need for vegetation retention versus managing fire risk were considered in the context of Hearing Stream 2. Insofar as the flammable vegetation in question is indigenous in nature, these issues overlap with the matters the Stream 2 Hearing Panel has considered in relation to Chapter 33. We believe that the issue is one more properly dealt with in that context. We do not regard it is appropriate that Chapter 28 address it further.

482. The second Rural Fire Authority submission and the submission of Mr Overton, however, are a different category. Both seek greater recognition for identification and mitigation of vegetation fire risk in the planning process. Mr Overton appeared in support of his submission and we think there is merit in some of the points he made. We will return to it in the context of the detailed provisions of Chapter 28.

483. Ms Bowbyes also drew our attention to some 33 submission points from a number of submitters[214] all expressed in identical terms, and seeking:

"Reconsider the extensive number of hazard related policies, remove unnecessary tautology and ensure they are focussed on significant hazards only."

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210 Submission 564

211 Submission 849

212 Submission 465::Supported by FS1125

213 Section 42A Report at 10.17

214 Refer Submissions 632, 633, 636, 643, 672, 688, 693, 694, 696, 700, 702 and 724: Supported by FS1097; Opposed by FS1139, FS1191, FS1219, FS1252, FS1275, FS1277, FS1283, FS1316 and FS1319

484. The reasons provided in support of these submissions focus on the extent to which the Council's hazard database identifies natural hazard risk, and the inefficiency of requiring all resource consents to assess natural hazard risk, irrespective of the nature and scale of that risk. A focus on significant natural hazard risk is suggested as being more practicable

485. Ms Bowbyes discusses the significantly enlarged treatment of natural hazard issues in Chapter 28 compared to the comparable ODP provisions, concluding that the notified suite of policies is both necessary and appropriate. We agree with that assessment. The considerations that have prompted the significantly enlarged treatment of natural hazards in the Proposed RPS apply equally to the PDP. It is also significant that none of the submitters in question appeared to support the generalised criticisms of the Chapter 28 provisions.

486. Considering the third point, Ms Bowbyes drew our attention to the absence of any mapping or classification of the significance of risk that would enable provisions focussing on significant natural hazard risks only to be implemented.

487. It is also material that neither the Operative nor the Proposed RPS focus solely on significant natural hazards and while there is a need to ensure that any requirements to assess natural hazard risk are proportionate to the level of risk, Ms Bowbyes has recommended specific provisions to address that concern.

488. Accordingly, we recommend rejection of these submissions at the very general level at which they are pitched. We will return to the requirements to assess natural hazard risk as part of our more detailed commentary on submissions on the objectives and policies that follows.

10. CHAPTER 28: PROVISION SPECIFIC SUBMISSIONS:

10.1. Section 28.1: Purpose:

489. The sole submission on Section 28.1 was that of Transpower New Zealand Limited[215] seeking that where the existing text refers to "*tolerable"* levels and "*intolerable"* risk, that be substituted with "*acceptable"* and "*unacceptable"* respectively. As Ms Bowbyes noted in her Section 42A Report[216], the reasons given for this submission did not explain the relief sought. Those reasons focus on provision for mitigation of risk, which the suggested amendments would not provide.

490. As discussed earlier, we do not regard the difference in terminology to be material and given that the Proposed RPS focuses on tolerability and intolerability, we believe it preferable to align the PDP with that terminology. In summary, therefore, we recommend that this submission not be accepted.

491. We have, however, identified a minor amendment that might usefully be made to Section 28.1, to aid the reader. This is to explain the role of the chapter given that it has no rules – namely to provide policy guidance on natural hazards that might be considered in the implementation of the rules in other chapters. Appendix 2 shows the suggested amendment. We consider this falls within clause 16(2).

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215 Submission 805

216 At 12.2 and 12.3

10.2. Section 28.2 Natural Hazard Identification:

492. There are two submissions on this section of Chapter 28. The first, that of Otago Regional Council[217], supported the approach flagged in this section of the Council holding information in a natural hazard's database, outside the District Plan. No amendment was sought.

493. The one amendment sought to the section arises from the Council's Corporate submission[218] that sought a reference to a likely increase in climate extremes as a result of climate change. Ms Bowbyes recommends acceptance of that submission, albeit slightly reworded, and we agree. The recommended provisions already noted related to natural hazards in both Chapters 3 and 4 acknowledge the relevance of climate change to natural hazard management. In addition, Policy 4.2.2 of the Proposed RPS draws attention to the need to take into account the effects of climate change so as to ensure people in communities are able to adapt to or mitigate its effects.

494. Accordingly, we recommend that the Council's corporate submission be accepted and a new sentence be inserted on the end of the second paragraph of this section as shown in Appendix 2 to this Report.

495. We also recommend that in the list of natural hazards, subsidence be listed separately from alluvion and avulsion with which it has little or nothing in common, other than that they are all ground movements. We consider this a minor change within Clause 16(2).

496. Section 28.2 is also worthy of note by reason of the fact that fire is specifically listed as a relevant natural hazard. We will return to that when we discuss Mr Overton's submission further.

10.3. Objective 28.3.1:

497. There are three objectives in this section of Chapter 28. The first, Objective 28.3.1 read as notified:

"The effects of natural hazards on the community and the built environment are minimised to tolerable levels."

498. In her Section 42A Report, Ms Bowbyes drew our attention to two submissions specifically on this objective. Both sought to amend the reference to minimisation. Thus, QAC[219] sought that rather than natural hazard effects being minimised to tolerable levels, that they are

"*appropriately managed"*.

499. The Oil Companies[220] suggested retention of a reference to tolerable levels but sought amendment to the objective to state that natural hazard effects "*are avoided, remedied or mitigated".*

500. The more general submission of Otago Regional Council[221] seeking that provisions of the Proposed RPS are reflected in this chapter by provision for avoiding natural hazard risk,

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217 Submission 798
218 Submission 383
219 Submission 433: Supported by FS1097 and FS1117
220 Submission 768
221 Submission 798: Opposed by FS1182

reducing natural hazard risk and applying a precautionary approach to natural hazard risk also needs to be noted.

501. The stated rationale for the Oil Companies' submission was that 'minimise' means to reduce to the smallest level (of effect) possible, when the intention is to address effects to tolerable levels, which may or may not be the same thing. Ms Bowbyes records that the QAC submission did not provide any specific rationale for removing the term "*minimise"* other than a general statement that the notified provisions are too vague and require greater clarity and certainty. QAC did, however, comment in its submission regarding a focus on tolerance, suggesting that it is difficult to quantify and depends on the circumstances.

502. Ms Bowbyes recommended in response to those submissions that the objective be amended to refer to natural hazard risk rather than effects (for consistency within the chapter and with the Proposed RPS) and that rather than minimising risk, it "*is avoided or managed to a tolerable level*".

503. For our part, we think that the Oil Companies' submission has a point. Minimisation of risk is an outcome in itself and adding reference to what is or is not tolerable blurs the picture, because they are not necessarily the same thing. A tolerable level of risk may be somewhat greater than the minimum level of risk. Similarly, the minimum achievable level of risk may still be intolerable.

504. We found the stated rationale for the QAC submission somewhat ironic, because substituting reference to appropriate management without any indication as to what that might involve would, in our view, reduce certainty and clarity rather than improve it.

505. We did have some concerns, however, how in practice an objective focussing on tolerable levels would be applied. Among other things, tolerable to whom?

506. Because the concept of tolerability originates from the Proposed RPS, we sought to discuss these matters with Mr Henderson. His evidence was that reference to tolerability related to the community's view, as expressed primarily through the zoning of particular land. He acknowledged that there are issues about the reliability of any assessment of community tolerance obtained through the resource consent process given that the ability to make submission is not a reliable guide to community opinion, and neither Council staff nor Commissioners hearing and determining applications could purport as a matter of fact to represent the views of the community at large.

507. Ms Bowbyes also addressed this point in her reply evidence. Her view was that the person tasked with issuing a consent under delegated authority is representing the community's views in the Council's capacity as a decision-maker under the RMA. While as a matter of constitutional law, that may be the case, it does not solve the problem to us of how an individual decision-maker can satisfy themselves as to what is or is not tolerated by the community. Ms Bowbyes posed the example of flooding risk in the Queenstown town centre as well known and tolerated risk. We don't disagree about that specific risk. The lurking concern we have is with the application of the objectives and policies focussing on tolerability in less well known and obvious cases. We wonder, for instance, whether some risks are tolerated, because they are not known and/or well understood[222]

[222] Compare the risks of building on liquefaction prone land in eastern Christchurch prior to 2010.

508. Ultimately, we think the best answer was the one that Mr Henderson gave us, that tolerability has to be determined in the zoning applied to land, which will necessarily occur through a public process in which the community has the opportunity to participate.

509. Given Mr Henderson's evidence, however, we think it is important to be clear that the tolerability referred to in this objective relates to what is tolerable to the community, as opposed to what individual landowners might tolerate (particularly where those landowners are effectively making choices for their successors in title). To that extent, we accept QAC's submission. An amendment to that effect would mean, however, two references in the same objective to the "*community"*. To improve the English without changing the meaning, we suggest the first reference be to "*people".*

510. We agree with Ms Bowbyes that management of natural hazards does not lend itself to remediation as an option (as the Oil Companies suggest). While, as Ms Bowbyes identified, Section 31 of the Act includes the avoidance or mitigation of natural hazards as a council function we also think that inserting reference to avoidance or mitigation in this context raises similar issues to those raised by the Oil Companies. If the natural hazard risk is tolerable, neither avoidance nor mitigation may be required.

511. We consider the answer to that concern is to substitute "*managed"* for "*minimised"*. Certainty is provided by continued reference to what is tolerable. We think that that can be sharpened further by referring to what is tolerable to the community.

512. We agree, however, that the reference point should be natural hazard "risk" given the consistent approach of the Proposed RPS. We consider that the Otago Regional Council's submission noted above provides jurisdiction for an amendment to that effect. Ms Bowbyes considered that Policy 28.3.2.3 already gave effect to the emphasis in the Proposed RPS on the precautionary principle, because it put the onus on the applicant to produce an adequate assessment of hazard risk. We agree and note that the evidence for the Regional Council did not advance the point as an outstanding issue.

513. In summary, therefore, we recommend that the objective be amended to read:

"The risk to people and the built environment posed by natural hazards is managed to a level tolerable to the community".

514. We consider that of the alternatives available to us, this formulation most appropriately achieves the purpose of the Act.

10.4. Policy 28.3.1.1

515. As notified, this read:

28.3.1.1 Policy
Ensure assets or infrastructure are constructed and located so as to avoid or mitigate the potential risk of damage to human life, property, infrastructure networks and other parts of the environment.

516. Ms Bowbyes drew our attention to four submissions on this policy:
a. QAC[223] sought specific reference to the adverse effects of natural hazards;

[223] Submission 433: Supported by FS1097; Opposed by FS1117

b. NZTA[224] sought insertion of a practicability qualification on the operation of the policy;
c. Transpower New Zealand Limited[225] sought an enlarged practicability qualification that also acknowledges the requirements of regionally significant infrastructure;
d. Queenstown Park Limited[226] sought either deletion of reference to "*other parts of the environment"* or better definition of what parts were being referred to.

517. Ms Bowbyes did not recommend acceptance of the QAC submission. We agree with that position. While the submission is understandable given the form in which Objective 28.3.1 was notified, our recommended amendment to that objective would mean that amending the policy to refer to the effects of natural hazards would now be out of step with it.

518. We discussed with Ms Bowbyes, however, whether there needed to be some reference to natural hazards in the policy, given the context. Otherwise the policy might be read more widely than intended. In her reply evidence, she agreed that it would be desirable to be clear that it is natural hazard risk that is being referred to. We concur. To that extent therefore, we accept QAC's submission.

519. Ms Bowbyes accepted a point made by Mr Tim Williams on behalf of Queenstown Park Limited that reference in the notified policy to "*damage"* to human life was somewhat inapt, prompting a need to reconfigure the form of the policy to separate out risks to human life from other risks.

520. However, we think that some tweaking of the language is required to make it clear that the focus is on construction and location of assets and infrastructure to avoid exacerbating natural hazard risk to human life. The reality is that natural hazards pose an existing risk to human life and the focus needs to be on management of activities that increase that risk[227].

521. Ms Bowbyes recommended also acceptance of the relief sought by Transpower (and consequently the more limited relief of NZTA). In her view, the importance of regionally significant infrastructure meant that recognition of the limitations it operates under was appropriate. We agree. While it is probably not strictly necessary to make specific reference to the locational, technical and operational requirements of regionally significant infrastructure if a general practicability qualification is inserted (those requirements are on one view just examples of why it may not be practicable to avoid or mitigate a potential hazard risk), the role of regionally significant infrastructure means that it is worth being clear that that is the policy intent

522. However, we have some issues with framing that recognition in terms of an acknowledgement, because of the lack of clarity as to what that means. We think that it would be more clearly expressed if it referred to consideration of those requirements.

523. Ms Bowbyes also recommended acceptance of the Queenstown Park Limited submission on the basis that the generalised reference to "*other parts"* of the environment lacks definition and creates uncertainty. We agree with that position also.

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224 Submission 719: Supported by FS1097, FS1341 and FS1342
225 Submission 805
226 Submission 806
227 Compare Policy 4.1.6 of the Proposed RPS

524. In summary, we largely accept Ms Bowbyes' recommendations with amendments to address the points made above. The end result is, therefore, that we recommend that Policy 28.3.1.1 be amended to read:

"Ensure assets or infrastructure are constructed and located so as to avoid or mitigate:

a. The potential for natural hazard risk to human life to be exacerbated; and

b. The potential risk of damage to property and infrastructure networks from natural hazards to the extent practicable, including consideration of the locational, technical and operational requirements of regionally significant infrastructure."

10.5. Policy 28.3.1.2

525. As notified, this read:

28.3.1.2 Policy

Restrict the establishment of activities which have the potential to increase natural hazard risk, or may have an impact on the community and built environment.

526. Ms Bowbyes drew our attention to five submissions on this policy, as follows:

a. Real Journeys Limited[228], Cook Adam Trustees Limited, C&M Burgess[229], and Bobs Cove Developments Limited[230] who all sought qualification of the level of risk (to refer to "*significant natural hazard risk"*) and linking of the second part of the policy so that it relates to the first part, rather than establishes a separate and discrete restriction;

b. The Oil Companies[231] sought deletion of reference to potential risks (so the policy would refer to actual increases in risk) and insertion of reference to tolerability as a criterion for both natural hazard risk increases and impacts on the community.

527. Queenstown Park Limited[232] sought qualification of a second half of the policy so it relates to "adverse *and significant"* impacts.

528. Addressing the first submission point, Ms Bowbyes noted that the approach of the Proposed RPS at Policy 4.1.6 is to focus on significant increases in natural hazard risk and, accordingly, she recommended qualification of the policy in the manner sought. That suggestion also addresses the first part of the Oil Companies' submission, although we do not consider the deletion of reference to potential increases in natural hazard risk to be material given that, as discussed above, natural hazard risk inherently incorporates concepts of probability/likelihood within it.

529. Ms Bowbyes also recommended acceptance of the second part of the relief sought by the Oil Companies by inserting an intolerability criterion for impacts on the community and the built environment, on the basis that this would increase alignment with the Proposed RPS. We agree with both points. We also note that the wording suggested by the Oil Companies would create the linkage between the two aspects of the policy that the submissions of Real Journeys and others sought.

530. We think that this is preferable to the relief sought by Queenstown Park Limited, which sought to limit the extent of the restriction the second half of the policy creates. We note that

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228 Submission 621

229 Submission 669

230 Submission 712

231 Submission 768: Supported by FS1287

232 Submission 806

although Queenstown Park Limited appeared before us, the evidence of Mr Tim Williams did not address this policy or take issue with the relief recommended by Ms Bowbyes.

531. Accordingly, we recommend that Policy 28.3.1.2 be amended to read:

"Restrict the establishment of activities which significantly increase natural hazard risk, including where they will have an intolerable impact upon the community and built environment."

10.6. Policy 28.3.1.3:

532. As notified, this policy read:

"Recognise that some areas that are already developed are now known to be at risk from natural hazards and minimise such risk as far as possible while acknowledging that landowners may be prepared to accept a level of risk."

533. The only submission seeking a material change to this policy was that of the Oil Companies[233] who sought that reference be inserted to "*the effects"* of natural hazards and substitution of a practicability test for what is "*possible"*.

534. Ms Bowbyes supported the suggested amendment to refer to practicable minimisation of risk to avoid any unintended implication that risk has to be reduced to the point where it is negligible. We agree with her reasoning in that regard.

535. Ms Bowbyes recommended that rather than refer to the effects of natural hazards, as the Oil Companies sought, the initial reference to risk be redrafted. We agree that her suggested rewording is an improvement, as well as being consistent with the recommended objective.

536. Responding to the evidence of Mr Henderson for Otago Regional Council, Ms Bowbyes also recommended that the policy should refer to what the community is prepared to accept, rather than what landowners are prepared to accept. This is consistent with the discussion we had with Mr Henderson, referred to above. We agree with Mr Henderson's essential point, that it is inappropriate to rely on an existing landowner's readiness to accept natural hazard risks on behalf of their successors in title. We note that while Otago Regional Council did not seek amendment of this Policy specifically, it did state a clear position that it is not appropriate to have new development occurring where natural hazard risks are intolerable to the community. We therefore regard the suggested amendment as being within scope but, consistent with the general desire to promote alignment of language with the Proposed RPS, we recommend that that policy talk in terms of what the community will tolerate, rather than what it will accept.

537. In summary, therefore, we recommend that Policy 28.3.1.3 be revised to read:

"Recognise that some areas that are already developed are now known to be subject to natural hazard risk and minimise such risk as far as practicable while acknowledging that the community may be prepared to tolerate a level of risk."

10.7. Policy 28.3.1.4,

538. As notified, this policy read:

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[233] Submission 768: Supported by FS1287

"Allow Public Bodies exercising their statutory powers to carry out natural hazard mitigation activities."

539. The only submission on this policy was from Queenstown Park Limited[234], which sought that reference to "*Public Bodies"* be limited to the Regional and District Council and that the Policy be qualified to acknowledge the need to mitigate potential adverse effects resulting from hazard protection works. Ms Bowbyes recommended acceptance of both aspects of the submission. In her view, referring specifically to the Regional and District Council provided greater clarity and certainty, and that it was appropriate to acknowledge adverse effects that might result from hazard protection works. She also recommended replacing the word "*allow"* with "*enable"*, as more accurately articulating the role of the District Plan. She considered that to be a minor non-substantive change (and therefore within Clause 16(2)).

540. We were somewhat puzzled by the intent of this policy. At one level, if a public body is exercising a statutory power to undertake natural hazard mitigation activities, particularly in an emergency situation, the provisions of the District Plan are largely academic.

541. We also wondered about the restriction of the ambit of the policy, from initially referring to public bodies, to referring only to the Regional and District Council. We disagree with Ms Bowbyes' comment[235] that the ambit of the term "*public body"* is unclear and we were concerned that organisations like the Fire Service Commission and the Director of Civil Defence Emergency Management have important roles in managing civil defence emergencies that ought to be acknowledged.

542. Having reflected on our queries, Ms Bowbyes advised in her reply evidence[236] that the intent of the Policy is to address planned mitigation works undertaken by the Regional and District Councils that require a resource consent, rather than emergency mitigation works. This was helpful, because if the focus is on planned hazard mitigation works, there is then a ready case for limiting the parties who may be involved to just the Regional and District Council (as Queenstown Park Ltd suggests). Amending the policy, as Ms Bowbyes suggests, to 'enabling' the Councils to undertake activities also reinforces the point that this is in the context of resource consent applications for such works. However, Ms Bowbyes continued to recommend reference to "natural hazard mitigation activities" which would capture both emergency and unplanned works. We think the policy intent, as explained to us, needs to be expressed more clearly.

543. We also think that rather than a generalised reference to "*the Regional and District Council",* Otago Regional Council should be referred to in full (there being no other relevant Regional Council) and the defined term for the District Council be used.

544. In summary, therefore, we agree with Ms Bowbyes' suggestions and recommend that policy 28.3.1.4 be amended to read:

"Enable Otago Regional Council and the Council exercising their statutory powers to undertake permanent physical works for the purposes of natural hazard mitigation while recognising the need to mitigate potential adverse effects that may result from those works."

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234 Submission 806

235 Section 42A Report at 12.36

236 At 7.1

545. We note that the only submission on Policy 28.3.1.5 was from the Oil Companies[237], seeking that it be retained without further modification. However, it is evident to us that this policy is now entirely subsumed within Policy 28.3.1.3 as we have recommended it be amended. We therefore recommend it be deleted as a minor non-substantive change.

546. Having reviewed the policies in Section 28.3.1 collectively, we consider that with the amendments set out above and given the alternatives open to us, the resulting policies are the most appropriate means to achieve Objective 28.3.1.

10.8. Objective 28.3.2

547. Turning to Objective 28.3.2, as notified, it read:
"Development on land subject to natural hazards only occurs where the risks to the community and the built environment are avoided or appropriately managed or mitigated."

548. Ms Bowbyes drew our attention to four submissions on this objective. The first three (Real Journeys Limited[238], Cook Adam Trustees Limited, C&M Burgess[239] and Bobs Cove Developments Limited[240]) all sought that the objective refer to "*a significant natural hazard"* and that it provide that risks are "*satisfactorily avoided"*.

549. Queenstown Park Limited[241] sought that the objective be replaced with Objective 4.8.3 of the ODP which reads:
"*Avoid or mitigate loss of life, damage to assets or infrastructure, or disruption to the community of the District, from natural hazards."*

550. Ms Bowbyes considered Objective 28.3.2 an improvement on the ODP objective that Queenstown Park Limited's submission sought to substitute, partly because of the former's focus on natural hazard risk and partly because of the lack of clarity as to what the term "*disruption"* meant in the context of the ODP objective. We agree and note that when Queenstown Park Limited appeared before us, its planning witness, Mr Tim Williams, generally supported the existing wording of the objective.

551. Ms Bowbyes likewise did not support qualification of the reference to natural hazards, so that the objective would refer only to development on land the subject of a significant natural hazard. She pointed to the lack of evidential support for the submission and the lack of clarity as to what significant natural hazards encompass. She also suggested that limiting the objective to significant natural hazards would leave both the objective and underlying policies silent on the treatment of proposals subject to lower levels of natural hazard risk. We agree with these points. While there is merit in the observation in Submissions 669 and 712 that large areas in the District[242] are subject to some recorded natural hazard risk, the objective is framed sufficiently broadly to avoid overly restrictive policies applying to areas of low hazard risk.

552. Ms Bowbyes did recommend an amendment to delete the "*or mitigated"* from the end of the objective, accepting in this regard Mr Tim Williams evidence that *"management"* would

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237 Submission 768
238 Submission 621
239 Submission 669
240 Submission 712
241 Submission 806
242 It may be, given the proximity of the Alpine Fault, as well as other localised earthquake faults, that the whole District would fall within that general description

necessarily include mitigation. While we agree the notified wording is clumsy, this suggested amendment prompted us to discuss with Mr Williams whether "*avoidance"* of hazard risk would similarly be an aspect of risk management. Mr Williams had reservations about the extent of overlap. In his view, reference to management of risk had implications of enabling the activity in question and he also thought that tolerability had to be considered. Having said that, he agreed that so long as the word "*appropriate"* was retained, that would enable those considerations to be bought to the fore.

553. Ms Bowbyes agreed with Mr Williams suggestions in her reply evidence. She expressed the opinion that "*avoidance is absolute whereas management provides flexibility for a range of options to be considered, including mitigation"*.

554. We do not disagree. Indeed, it is precisely because of the absolute nature of an avoidance objective that the suggestion that it be qualified to refer to risks being "*satisfactorily avoided"* is something of a contradiction in terms to us.

555. Stepping back, precisely because the initial reference to natural hazards has such wide application, the outcome sought similarly needs to be flexible. In addition, while we think that Mr Williams may well be right that talking about managing an activity implies that it may occur, the focus of the objective is on the management of risks and we think that the objective should be expressed more simply to say that, leaving it to the policies to flesh out what appropriate management entails. This provides less direction as to the outcome sought than we would normally regard as desirable, but the breadth of the subject matter (and the ambit of the submissions on it) leaves us with little alternative in our view.

556. In summary, we consider that the most appropriate objective to achieve the purpose of the Act in this context given the alternatives open to us, is:

"Development on land subject to natural hazards only occurs where the risks to the community and the built environment are appropriately managed."

10.9. Policy 28.3.2.1:

557. As notified, Policy 28.3.2.1 stated:

28.3.2.1 Policy
Seek to avoid intolerable natural hazard risk, acknowledging that this will not always be practicable in developed urban areas."

558. This policy was the subject of three submissions:
   a. QAC[243] sought that it should be expressed more simply: *"Avoid significant natural hazard risk, acknowledging that this will not always be practicable in developed urban areas."*
   b. The Oil Companies[244] sought that reference be to intolerable effects from natural hazards and that the acknowledgement apply to all developed areas, not just urban areas.
   c. Otago Regional Council[245] opposed the policy insofar as it left open the possibility for development in areas of intolerable hazard risk.

243 Submission 433: Supported by FS1097 and FS1117
244 Submission 768: Supported by FS1287
245 Submission 798

559. In her Section 42A Report, Ms Bowbyes drew attention to Proposed RPS Policies 4.1.6 and 4.5.1 quoted above, that seek variously avoidance of activities that significantly increase risk and avoidance of development on land with a significant natural hazard risk. In her view, these provisions supported QACs submission that reference should be to significant natural hazard risk, rather than intolerable risk. We agree that it is desirable for this policy to flesh out what might be considered an intolerable risk rather than leaving that for future decisionmakers to determine, with limited ability to ascertain the community's views. She also expressed the view that there was merit in the Oil Companies' argument that the focus should not just be on urban areas.

560. The evidence for Otago Regional Council suggested that the Policy was trying to be "*all things to all situations"* and that the focus should be on significant increases in risk. Mr Henderson suggested that if that were accepted, the acknowledgement in the second half of the policy might then be deleted. Mr Henderson's evidence reflected the general submission for Otago Regional Council already noted that new development should not occur where natural hazard risks are intolerable for the community, even if managed or mitigated.

561. Ms Bowbyes recommended acceptance of Mr Henderson's position.

562. We agree that this is a practicable way forward. The Oil Companies[246] make the valid point that major natural hazards (like an earthquake along the Alpine fault) cannot be prevented at source. Similarly, to the extent that there is already a significant natural hazard risk in developed areas, that risk might be mitigated, but it is difficult to imagine how it can be avoided, whereas clearly choices are able to be made when new development is proposed in areas of significant natural hazard risk.

563. In summary, while the end result overlaps with recommended Policy 28.3.1.2, we recommend that Policy 28.3.2.1 be amended to the form suggested by Ms Bowbyes:
'Avoid significantly increasing natural hazard risk."

10.10. Policy 28.3.2.2

564. As notified this policy read:
Allow subdivision and development of land subject to natural hazards where the proposed activity does not:
- *Accelerate or worsen the natural hazard and/or its potential impacts;*
- *Expose vulnerable activities to intolerable natural hazard risk;*
- *Create an unacceptable risk to human life;*
- *Increase the natural hazard risk to other properties;*
- *Require additional works and costs that would be borne by the community.*

565. Ms Bowbyes drew our attention to the following submissions on this policy:
a. The Oil Companies[247] sought that the first word of the policy be "*enable"*, that the first bullet point refer to risks associated with the natural hazard and/or its potential impacts, the second bullet point refer to the consequences from natural hazards rather than natural hazard risk and that the fourth bullet point refer to an unacceptable level of natural hazard risk;

246 Refer the tabled evidence of Mr Laurenson
247 Submission 768: Supported by FS1287

b. Real Journey's Limited[248], Cook Adam Trustees Limited, C&M Burgess[249] and Bobs Cove Developments Limited[250] sought that the initial reference be to land subject to "*significant"* natural hazards, the word "*it"* be substituted for "*the proposed activity"*, the first bullet point refer to natural hazard risk and delete reference to potential impacts, the fourth bullet point be deleted, and the fifth bullet point refer to the "*public"* rather than the "*community"*.
c. Queenstown Park Limited[251] sought that the first bullet point refer to acceleration of hazards and impacts "*to an unacceptable level"* and the fourth bullet point refer to increases in natural hazard risk "*to an intolerable level"*.

566. In her Section 42A Report, Ms Bowbyes agreed with many of these suggestions. She did not, however, accept that reference should be made to significant natural hazards in the opening line of the policy, for the reasons discussed above[252]. Similarly, she did not agree with the suggestion that the fourth bullet point, related to increasing risk to other properties be deleted, referring us to Proposed RPS Policies 4.1.6 and 4.1.10(c) that focus on displacement of risk off-site. We agree with her reasoning on both points. We note, in particular, that focussing the policy on significant natural hazards would leave a policy gap where land is subject to non-significant natural hazards, which is the very situation it needs to address.

567. As regards Ms Bowbyes' recommendations that the balance of the submissions be accepted (subject to rewording the addition to the fourth bullet to refer to "*intolerable*" levels, for consistency with the Proposed RPS), we had a concern about this policy adopting an overtly enabling focus because it is necessarily limited in scope to natural hazard issues. There may be many other non-hazard related issues that mean that an enabling approach is not appropriate.

568. In her reply evidence Ms Bowbyes expressed the view, having reflected on the point, that an enabling policy in this context would not prevail over more restrictive policies in other chapters addressing those other issues. While we agree that that would be the sensible outcome, we are reluctant to leave the point open for an enthusiastic applicant to test. In any event, Ms Bowbyes agreed that an enabling focus in Policy 28.3.2.2 would leave gap between that and policy 28.3.2.1. She therefore recommended that it would be preferable to commence the policy "*not preclude…",* as we had suggested to her.

569. We are therefore happy to adopt her reasoning. Accordingly, we recommend that Policy 28.3.2.2 be amended to read:

28.3.2.2. *"Not preclude subdivision and development of land subject to natural hazards where the proposed activity does not:*
a. Accelerate or worsen the natural hazard risk to an intolerable level;
b. Expose vulnerable activities to intolerable natural hazard risk;
c. Create an intolerable risk to human life;
d. Increase the natural hazard risk to other properties to an intolerable level;
e. *Require additional works and costs, including remedial works, that would be borne by the public."*

248 Submission 621: Supported by FS1097
249 Submission 669
250 Submission 712
251 Submission 806
252 Refer Sections 10.5 and 10.9 above

10.11. Policy 28.3.2.3

570. As notified, this policy read:

"Ensure all proposals to subdivide or develop land that is subject to natural hazards provide an assessment covering:

- *The time, frequency and scale of the natural hazards;*
- *The type of activity being undertaken and its vulnerability to natural hazards;*
- *The effects of a natural hazard event on the subject land;*
- *The potential for the activity to exacerbate natural hazard risk both in and off the subject land;*
- *The potential for any structures on the subject land to be relocated;*
- *The design and construction of buildings and structures to mitigate the effects of natural hazards, such as the raising of floor levels;*
- *Site layout and management to avoid the adverse effects of natural hazards, including access and egress during a hazard event."*

571. Ms Bowbyes noted the following specific submissions:

a. Queenstown Park Limited[253] sought an amendment to recognise that the level of assessment should be commensurate with the level of potential risk.

b. The Oil Companies[254] sought that the last bullet point be amended to provide for management and mitigation (rather than avoidance) and a criterion referring to a tolerable level of risk. This submission also sought a minor grammatical change;

c. Real Journeys Limited[255], Cook Adam Trustees Limited, C&M Burgess[256] and Bob's Cove Developments Limited[257] suggested a range of amendments, which would result in the Policy reading as follows:

"Ensure new subdivision or land development at threat from a significant natural hazard risk (identified on the District Plan Maps) is assessed in terms of:

a. The type, frequency and scale of the natural hazard and the effects of a natural hazard event on the subject land;

b. The vulnerability of the activity in relation to the natural hazard;

c. The potential for the activity to exacerbate the natural hazard risk;

d. The location, design and construction of buildings and structures to mitigate the effects of natural hazards;

e. Management techniques that avoid or minimise the adverse effects of natural hazards."

d. Otago Regional Council[258] sought amendment to recognise that development in hazard areas had ongoing management costs that should not be met by the community;

572. Ms Bowbyes agreed with the suggestion of the Oil Companies that the policy provide for a varying standard of assessment. We agree that if, as we accept, the net should be spread wider than significant natural hazards, the extent of the assessment needs to be flexible to ensure that the costs and benefits of the requirement are properly aligned.

573. It follows that like Ms Bowbyes, we do not accept the submissions of Real Journeys Ltd and others seeking that the only natural hazards assessed are those significant natural hazards noted on the planning maps.

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253 Submission 806

254 Submission768: Supported by FS1287

255 Submission 621

256 Submission 669

257 Submission 712

258 Submission 798

574. Quite apart from the considerations already discussed regarding similar requests in relation to other policies, if accepted, that would gut the policy of any effect unless and until the planning maps had been varied to identify such hazards.

575. We also agree with Ms Bowbyes that effects beyond the subject site need to be addressed, consistent with the focus of the Proposed RPS on displacement of hazard risk off-site and that the previous policy (28.3.2.2.) already addresses the Regional Council's point.

576. Ms Bowbyes recommended we accept most of the balance of submitters' suggestions. We agree that they improve the clarity and expression of the policy.

577. Ms Bowbyes also recommended additional bullet points inserted to refer to a 100 year time horizon, consistent with the Proposed RPS (thereby responding to the more general submission of Otago Regional Council) and to the effects of climate change, to make it clear that natural hazard assessment is prospective and should not just rely on historical hazard data. We agree with both suggestions. While, as Ms Bowbyes noted in discussions with us, the existing reference to frequency and scale of natural hazards should pick up changes in hazard risk over time resulting from climate change (and for that reason, this is not a substantive change), this is a case where in our view, it is wise to explicitly acknowledge the likelihood that climatic extremes will increase with climate change (as sought in the Council's Corporate submission[259], albeit in another context).

578. Lastly, in relation to this policy, we should note the evidence of Mr Overton in relation to management of fire risk. Mr Overton advised us that there are areas of the district that are subject to fire risk and that are inaccessible to emergency services. We agree that this is a concern that requires assessment in future. Accordingly, we recommend amendment to the final bullet point to refer to ingress and egress of both residents and emergency services.

579. Given the breadth of Policy 28.3.2.3, however, and the fact that (unlike the ODP) the PDP clearly classifies fire as a natural hazard, we do not consider that fire risk needs more explicit reference either in this policy or elsewhere[260].

580. We do note, however, Ms Bowbyes' advice in her reply evidence that Council's Natural Hazard Database does not currently record areas of known vegetation fire risk, and that it needs to do so. We agree, and draw the point to Council's attention for action if it deems appropriate.

581. In summary, we recommend that Policy 28.3.2.3 be amended to read:

"Ensure all proposals to subdivide or develop land that is subject to natural hazard risk provide an assessment that meets the following information requirements, ensuring that the level of detail of the assessment is commensurate with the level of natural hazard risk:

a. The likelihood of the natural hazard event occurring over no less than a 100 year period;
b. The type and scale of the natural hazard and the effects of a natural hazard on the subject land;
c. The effects of climate change on the frequency and scale of the natural hazard;
d. The vulnerability of the activity in relation to the natural hazard;
e. The potential for the activity to exacerbate the natural hazard risk both within and beyond the subject land;
f. The potential for any structures on the subject land to be relocated;

259 Submission 383

260 Refer the submissions of Mr Overton and of Otago Rural Fire Authority discussed at Section 9.2 above

g. *The location, design and construction of buildings and structures to mitigate the effects of natural hazards, such as the raising of floor levels.*
h. *Management techniques that avoid or manage natural hazard risk to a tolerable level, including with respect of ingress and egress of both residents and emergency services during a natural hazard event."*

10.12. Policy 28.3.2.4:

582. As notified, this policy read:

28.3.2.4 Policy
"Promote the use of natural features, buffers and appropriate risk management approaches in preference to hard engineering solutions in mitigating natural hazard risk."

583. Ms Bowbyes noted the submission of the Oil Companies[261] on this point, seeking deletion of this policy. The submitters suggest that the policy might have unintended consequences for mitigation measures that are widely employed across the District and which, in the submitters view, should be supported. Ms Bowbyes did not support deletion of the policy. As she observed in her Section 42A Report[262] the policy promotes alternatives to hard engineering solutions. It does not require them. She suggested a minor amendment to make that clearer, so that the policy would commence "*where practicable, promote…."*. We note Mr Laurenson's support for that suggested change in his tabled statement for the submitters.

584. The evidence of Mr Henderson for Otago Regional Council was that this policy is not consistent with Proposed RPS Policy 4.1.10, which is much more directive regarding the circumstances in which hard protection structures might be provided for. Ms Bowbyes could not, however, find any scope to recommend this change, which would (as she observed) have the opposite effect to the relief sought by the only submitters on the policy. We asked Mr Henderson whether he could point to any submission either by Otago Regional Council, or any other party, that would support greater alignment with the Proposed RPS in this regard and he could not.

585. We consider, therefore, that Ms Bowbyes is correct, and there is no jurisdiction to move this aspect of Chapter 28 into line with the Proposed RPS. In the event that Policy 4.1.10 of the Proposed RPS remains substantively in the same form as at present, the Council would necessarily have to consider a variation to the Plan to incorporate and thereby implement the Proposed RPS, once operative.

586. In the interim, we agree with Ms Bowbyes recommended amendment, accepting the Oil Companies' submission in part. Appendix 2 reflects that change.

10.13. Policy 28.3.2.5:

587. As notified, this policy read:

"Recognise that some infrastructure will need to be located on land subject to natural hazard risk."

588. The only submissions on this policy sought its retention. However, the notified policy has been overtaken by the amendments we have recommended to Policy 28.3.1.1, which provide more explicit recognition of the impracticality of avoiding location of all activities on land subject to natural hazard risk, particularly regionally significant infrastructure. Accordingly, we

261 Submission 768
262 At 12.65

recommend that Policy 28.3.2.5 be deleted, as a consequential change, to avoid any confusion as between the role of the two policies.

589. Having reviewed the policies in Section 28.3.2 collectively, taking account of the alternatives open to us and the policies recommended in Section 28.3.1, we consider that those policies are the most appropriate means to achieve Objective 28.3.2.

10.14. Objective 28.3.3. and Policies supporting it

590. Objective 28.3.3. was not the subject of any submission seeking it be changed, and Ms Bowbyes did not recommend any amendment to it. We need consider it no further. She did, however, recommend an amendment to Policy 28.3.3.1. As notified, that policy read:

> *28.3.3.1 Policy*
> *Continually develop and refine a natural hazards database in conjunction with the Otago Regional Council, (as a basis for Council decisions on resource consent applications or plan changes and for the assessment of building consents).*

591. The Oil Companies'[263] sought deletion of this policy on the basis that the ongoing changes to the natural hazards database will have statutory effect and, consequentially, should be undertaken by way of Plan Change.

592. The Oil Companies also suggested that the database should not itself be a basis for decision, but should rather be a consideration of the decision-making process.

593. Ms Bowbyes agreed with the last point. As she noted, the role of the database is to provide an initial flag for the presence of a natural hazard which is then the subject of assessment under Policy 28.3.2.3. She therefore thought it was more appropriate to refer to the database as a consideration in the decision-making process.

594. We agree, and consider that such an amendment also better reflects the role of the database sitting outside the District Plan. Further, Ms Bowbyes advised us in her reply evidence that there is no process currently in place that provides a formal avenue for the public to influence the information uploaded to the database. She also noted that the information requirements of notified Section 28.5 highlighted that the database contains information that has been developed at different scales and advises Plan users that further detailed analysis may be required. Again, this supports a much less formal role for the database in the decision making process.

595. Having said that, we think it is valuable that the Council can signal that the database is the subject of continual development and refinement, that being a course of action within its control.

596. We note, however, that there are actually two elements to this policy. The first relates to the Council's actions developing and refining the database. The second point relates to how the database will be used by Council. We think it would be clearer if these two elements were separated into two policies. We also consider that reference to the assessment of building consents should be deleted. This occurs under separate legislation (the Building Act 2004) and the PDP should not purport to constrain how the powers conferred by that legislation will be

263 Submission 768

exercised. Given the Oil Companies sought deletion of the policy, deletion of this aspect is clearly within scope.

597. We therefore recommend that Policy 28.3.3.1 be separated into two policies and amended to read:

"Continually develop and refine a natural hazards database in conjunction with the Otago Regional Council.

When considering resource consent applications or plan changes, the Council will have regard to the natural hazards database."

598. Ms Bowbyes recommended minor non-substantive changes to the balance of the policies supporting Objective 28.3.3 including substitution of "*intolerable"* for "*unacceptable"* in Policy 28.3.3.4. We support the suggested amendments, the content of which are set out in our Appendix 2.

599. Having reviewed the policies in Section 28.3.3. collectively, we consider that given the alternatives open to us, they are the most appropriate policies to achieve the relevant objective.

10.15. Section 28.4 – Other Relevant Provisions:

600. This is a standard provision that is reproduced throughout the PDP. The Hearing Panels considering earlier chapters have recommended amendments to it to more correctly reflect the content of the PDP and the fact that once the First Schedule process is concluded, it will form part of the ODP. We recommend like amendments for the same reasons. The fact that some chapters have been inserted by the Stage 2 Variations is reflected in those chapters being in italics. Appendix 2 sets out the suggested changes.

10.16. Section 28.5 – Information Requirements:

601. As notified, this section purported to state a requirement for an assessment of natural hazard effects as part of development proposals. We discussed with Ms Bowbyes whether it was consistent with Policy 28.3.2.3. She addressed this point in Section 8 of her reply evidence. In summary, Ms Bowbyes concluded that a consequential amendment was required to Section 28.5 to make it clearer that the database is not a trigger for the need to provide a natural hazards assessment. She referred us to the Oil Companies' submission[264] as providing scope for the recommended change.

602. We agree with Ms Bowbyes assessment. Accordingly, we recommend that the text read as follows:

"The Councils natural hazards database identifies land that is affected by, or potentially affected by, natural hazards. The database contains natural hazard information that has been developed at different scales and this should be taken into account when assessing the potential natural hazard risk. It is highly likely that for those hazards that have been identified at a 'district wide' level, further detailed analysis will be required."

603. As amended, this is no longer true to label (it is no longer a statement of information requirements). We consider it now assists that reader in understanding the inter-relationship of the database with the operation of Policy 28.3.2.3. As such, we recommend that the

[264] Submission 768

amended text be shifted in order that it sits as an Advice Note to that policy. We regard this as a non-substantive formatting change.

11. SUMMARY OF RECOMMENDATIONS:

604. Appendix 2 to this report sets out our recommended amendments to Chapter 28.

605. In addition to those amendments, we note Policy 28.3.2.4 is not currently consistent with Proposed RPS Policy 4.1.10. We have no jurisdiction to recommend a substantive amendment that would align the two. Accordingly, we recommend that should Policy 4.1.10 be finalised as part of appeals on the Proposed RPS in a form that continues to be inconsistent with Policy 28.3.2.4, Council promulgate a variation to align the two.

606. We also draw Council's attention to the desirability of updating its hazards database to include areas of known vegetation fire risk[265].

607. Lastly, Appendix 3 sets out a summary of our recommendations in relation to submissions on Chapter 28.

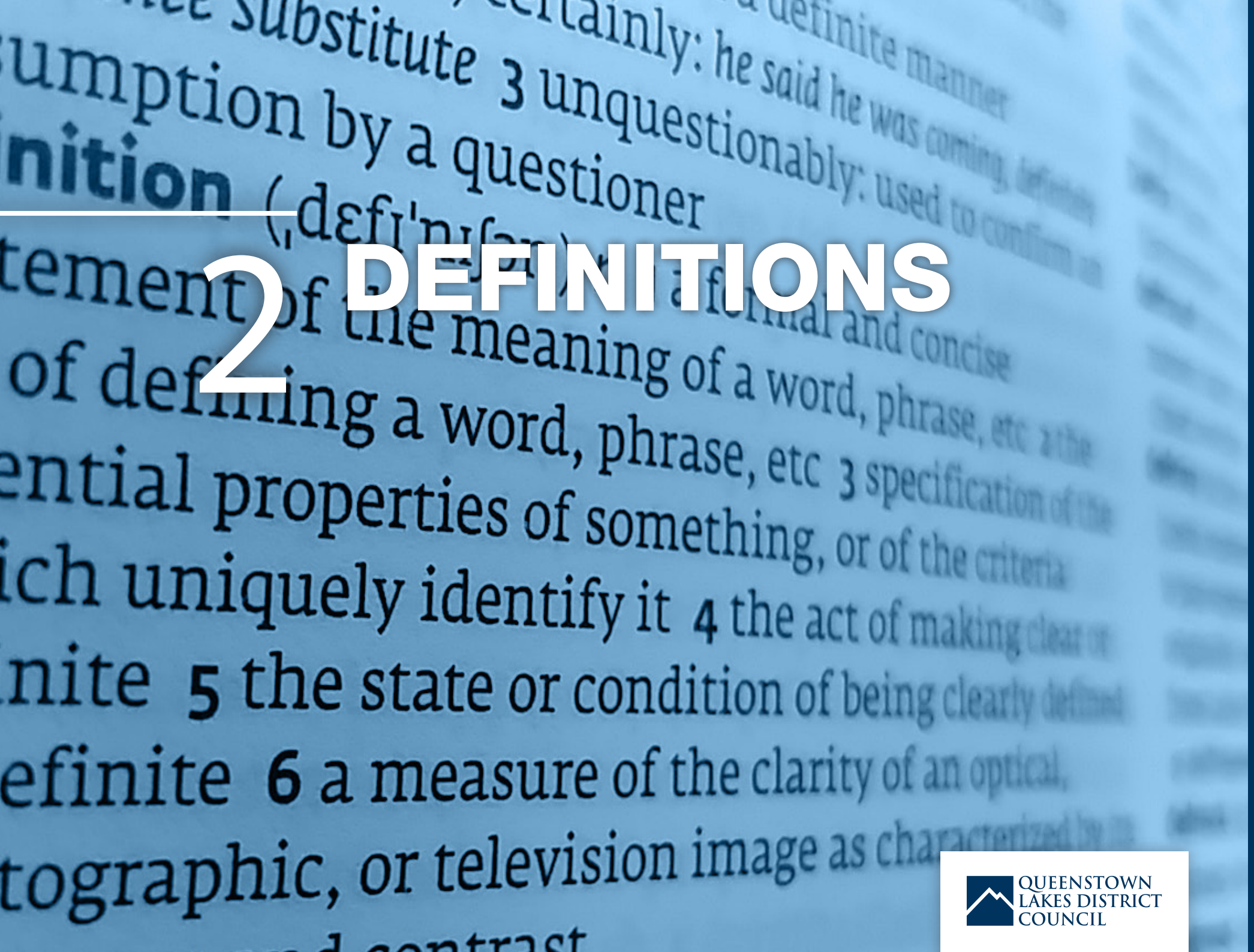
For the Hearing Panel

Denis Nugent, Chair
Dated: 31 March 2018

[265] Discussed at Section 10.11 above

Appendix 1: Chapter 2 Definitions as Recommended

2 DEFINITIONS



QUEENSTOWN LAKES DISTRICT COUNCIL

2.1 Definitions

Notes:

a. Unless the context otherwise requires, the deFinitions in this chapter apply throughout the plan whenever the defined term is used. The reverse applies to the designations in Chapter 37. The deFinitions in Chapter 2 only apply to designations where the relevant designation says they apply.

b. Where a term is not deFined within the plan, reliance will be placed on the deFinition in the Act, where there is such a deFinition.

c. Chapter 5: Tangata Whenua (Glossary) supplements the deFinitions within this chapter by providing English translations-explanations of Maori words and terms used in the plan

d. Acoustic terms not deFined in this chapter are intended to be used with reference to NZS 6801:2008 Acoustics - Measurement of environmental sound and NZS 6802:2008 Acoustics - Environmental noise.

e. Any deFined term includes both the singular and the plural.

f. Any notes included within the deFinitions listed below are purely for information or guidance purposes only and do not form part of the deFinition.

g. Where a deFinition title is followed by a zone or speciFic notation, the intention is that the application of the deFinition is limited to the speciFic zone or scenario described.

D Definitions

Access	Means that area of land over which a site or lot obtains legal vehicular and/or pedestrian access to a legal road. This land may include an access leg, a private way, common land as defined on a cross-lease or company-lease, or common property (as defined in section 2 of the Unit Titles Act 2010).
Access Leg **(Rear Lot or rear site)**	Means the strip of land, which is included in the ownership of that lot or site, and which provides the legal, physical access from the frontage legal road to the net area of the lot or site.
Access Lot	Means a lot which provides the legal access or part of the legal access to one or more lots, and which is held in the same ownership or by tenancy-in-common in the same ownership as the lot(s) to which it provides legal access.
Accessory Building	Means any detached building the use of which is incidental to the principal building, use or activity on a site, and for residential activities includes a sleep out, garage or carport, garden shed, glasshouse, swimming pool, mast, shed used solely as a storage area, or other similar structure, provided that any garage or carport which is attached to or a part of any building shall be deemed to be an accessory building.
Accessway	Means any passage way, laid out or constructed by the authority of the council or the Minister of Works and Development or, on or after 1 April 1988, the Minister of Lands for the purposes of providing the public with a convenient route for pedestrians from any road, service lane, or reserve to another, or to any public place or to any railway station, or from one public place to another public place, or from one part of any road, service lane, or reserve to another part of that same road, service lane, or reserve[1].
Act	Means the Resource Management Act 1991.
Activity Sensitive To Aircraft Noise (ASAN) / Activity Sensitive to Road Noise	Means any residential activity, visitor accommodation activity, community activity and day care facility activity as defined in this District Plan including all outdoor spaces associated with any education activity, but excludes activity in police stations, fire stations, courthouses, probation and detention centres, government and local government offices.
Adjoining Land (Subdivision)	Includes land separated from other land only by a road, railway, drain, water race, river or stream.
Aerodrome	Means a defined area of land used wholly or partly for the landing, departure, and surface movement of aircraft including any buildings, installations and equipment on or adjacent to any such area used in connection with the aerodrome or its administration.
Aircraft	Means any machine that can derive support in the atmosphere from the reactions of the air otherwise than by reactions of the air against the surface of the earth. Excludes remotely piloted aircraft that weigh less than 15 kilograms.

[1]. From section 315 of the Local Government Act 1974

D Definitions

Aircraft Operations	Means the operation of aircraft during landing, take-off and taxiing but excludes: a. aircraft operating in an emergency; b. aircraft using the Airport as an alternative to landing at a scheduled airport; c. military aircraft movements; and d. engine testing.
Air Noise Boundary Queenstown (ANB)	Means a boundary as shown on the District Plan Maps, the location of which is based on the predicted day/night sound level of 65 dB L_{dn} from airport operations in 2037.
Airport Activity	Means land used wholly or partly for the landing, departure, and surface movement of aircraft, including: a. aircraft operations which include private aircraft traffic, domestic and international aircraft traffic, rotary wing operations; b. aircraft servicing, general aviation, airport or aircraft training facilities and associated offices; c. runways, taxiways, aprons, and other aircraft movement areas; d. terminal buildings, hangars, air traffic control facilities, flight information services, navigation and safety aids, rescue facilities, lighting, car parking, maintenance and service facilities, fuel storage and fuelling facilities and facilities for the handling and storage of hazardous substances.
Airport Related Activity	Means an ancillary activity or service that provides support to the airport. This includes: a. land transport activities; b. buildings and structures; c. servicing and infrastructure; d. police stations, fire stations, medical facilities and education facilities provided they serve an aviation related purpose; e. retail and commercial services and industry associated with the needs of Airport passengers, visitors and employees and/or aircraft movements and Airport businesses; f. catering facilities; g. quarantine and incineration facilities; h. border control and immigration facilities; i. administrative offices (provided they are ancillary to an airport or airport related activity.
All Weather Standard	Means a pavement which has been excavated to a sound subgrade, backfilled and compacted to properly designed drainage gradients with screened and graded aggregate and is usable by motor vehicles under all weather conditions, and includes metalled and sealed surfaces.

D Definitions

Amenity Or Amenity Values	Means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes[2].
Antenna	Means telecommunications apparatus, being metal rod, wire or other structure, by which signals are transmitted or received, including any bracket or attachment but not any support mast or similar structure.
Archaeological Site	Means, subject to section 42(3) of the Heritage New Zealand Pouhere Taonga Act 2014: a. any place in New Zealand, including any building or structure (or part of a building or structure), that – i. was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and ii. provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand; and b. includes a site for which a declaration is made under section 43(1) of the Heritage New Zealand Pouhere Taonga Act 2014.
Area Median Income (AMI)	Means the median household income for the Queenstown Lakes District as published by Statistics New Zealand following each census, and adjusted annually by the Consumer Price Index (CPI).
Bar (Hotel or Tavern)	Means any part of a hotel or tavern which is used principally for the sale, supply or consumption of liquor on the premises. Bar area shall exclude areas used for storage, toilets or like facilities and space.
Biodiversity Offsets	Means measurable conservation outcomes resulting from actions designed to compensate for residual adverse biodiversity impacts arising from project development after appropriate avoidance, minimisation, remediation and mitigation measures have been taken. The goal of biodiversity offsets is to achieve no net loss and preferably a net gain of biodiversity on the ground.
Biomass Electricity Generation	Means electricity generation derived from biomass systems being recently living organisms such as wood, wood waste, by products of agricultural processes and waste.
Boat	Means any vessel, appliance or equipment used or designed to be used for flotation and navigation on or through the surface of water, other than a wetsuit or lifejacket, and includes any aircraft whilst such aircraft is on the surface of the water. Craft or boating craft shall have the same meaning. Boating activities shall mean activities involving the use of boats on the surface of water.
Boundary	Means any boundary of the net area of a site and includes any road boundary or internal boundary. Site boundary shall have the same meaning as boundary.

[2] From section 2 of the Act

D Definitions

Building	Shall have the same meaning as the Building Act 2004, with the following exemptions in addition to those set out in the Building Act 2004: a. fences and walls not exceeding 2m in height; b. retaining walls that support no more than 2 vertical metres of earthworks; c. structures less than $5m^2$ in area and in addition less than 2m in height above ground level; d. radio and television aerials (excluding dish antennae for receiving satellite television which are greater than 1.2m in diameter), less than 2m in height above ground level; e. uncovered terraces or decks that are no greater than 1m above ground level; f. the upgrading and extension to the Arrow Irrigation Race provided that this exception only applies to upgrading and extension works than involve underground piping of the Arrow Irrigation Race; g. flagpoles not exceeding 7m in height; h. building profile poles, required as part of the notification of Resource Consent applications; i. public outdoor art installations sited on Council owned land; j. pergolas less than 2.5 metres in height either attached or detached to a building; Notwithstanding the definition set out in the Building Act 2004, and the above exemptions a building shall include: a. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on a site for a residential accommodation unit for a period exceeding 2 months.
Building Coverage	Means that portion of the net area of a site which is covered by buildings or parts of buildings, including overhanging or cantilevered parts of buildings, expressed as a percentage or area. Building coverage shall only apply to buildings at ground, or above ground level. The following shall not be included in building coverage: a. pergolas; b. that part of eaves and/or spouting, fire aprons or bay or box windows projecting 600mm or less horizontally from any exterior wall; c. uncovered terraces or decks which are not more than 1m above ground level; d. uncovered swimming pools no higher than 1m above ground level; e. fences, walls and retaining walls; f. driveways and outdoor paved surfaces.
Building Line Restriction	Means a restriction imposed on a site to ensure when new buildings are erected or existing buildings re-erected, altered or substantially rebuilt, no part of any such building shall stand within the area between the building line and the adjacent site boundary.

D Definitions

Building Supplier	Means a business primarily engaged in selling goods for consumption or use in the construction, modification, cladding, fixed decoration or outfitting of buildings and without limiting the generality of this term, includes suppliers of: a. glazing; b. awnings and window coverings; c. bathroom, toilet and sauna installations; d. electrical materials and plumbing supplies; e. heating, cooling and ventilation installations; f. kitchen and laundry installations, excluding standalone appliances; g. paint, varnish and wall coverings; h. permanent floor coverings; i. power tools and equipment; j. locks, safes and security installations; and k. timber and building materials.
Camping Ground	Means camping ground as defined in the Camping Ground Regulations 1985[3].
Carriageway	Means the portion of a road devoted particularly to the use of motor vehicles.
Clearance Of Vegetation	Means the removal, trimming, felling, or modification of any vegetation and includes cutting, crushing, cultivation, soil disturbance including direct drilling, spraying with herbicide or burning. Clearance of vegetation includes, the deliberate application of water or oversowing where it would change the ecological conditions such that the resident indigenous plant(s) are killed by competitive exclusion. Includes dryland cushion field species.
Commercial	Means involving payment, exchange or other consideration.
Commercial Activity	Means the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment or services, and includes shops, postal services, markets, showrooms, restaurants, takeaway food bars, professional, commercial and administrative offices, service stations, motor vehicle sales, the sale of liquor and associated parking areas. Excludes recreational, community and service activities, home occupations, visitor accommodation, registered holiday homes and registered homestays.
Commercial Livestock	Means livestock bred, reared and/or kept on a property for the purpose of commercial gain, but excludes domestic livestock.
Commercial Recreational Activities	Means the commercial guiding, training, instructing, transportation or provision of recreation facilities to clients for recreational purposes including the use of any building or land associated with the activity, excluding ski area activities.

[3] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

D Definitions

Common Property	Means: a. all the land and associated fixtures that are part of the unit title development but are not contained in a principal unit, accessory unit, or future development unit; and b. in the case of a subsidiary unit title development, means that part of the principal unit subdivided to create the subsidiary unit title development that is not contained in a principal unit, accessory unit, or future development unit[4].
Community Activity	Means the use of land and buildings for the primary purpose of health, welfare, care, safety, education, culture and/or spiritual well being. Excludes recreational activities. A community activity includes day care facilities, education activities, hospitals, doctors surgeries and other health professionals, churches, halls, libraries, community centres, police purposes, fire stations, courthouses, probation and detention centres, government and local government offices.
Community Housing	Means residential activity that maintains long term affordability for existing and future generations through the use of a retention mechanism, and whose cost to rent or own is within the reasonable means of low and moderate income households.
Comprehensive Development **(For the purpose of Chapters 12 and 13 only)**	Means the construction of a building or buildings on a site or across a number of sites with a total land area greater than 1400m^2.
Contributory Buildings **(For the purpose of Chapter 26 only)**	Means buildings within a heritage precinct that contribute to the significance of a heritage precinct some of which may be listed for individual protection in the Inventory under Rule 26.8. They may contain elements of heritage fabric, architecture or positioning that adds value to the heritage precinct. They have been identified within a heritage precinct because any future development of the site containing a contributory building may impact on the heritage values of heritage features, or the heritage precinct itself. Contributory buildings are identified on the plans under Section 26.7 'Heritage Precincts'. (Refer also to the definition of Non-Contributory Buildings).
Council	Means the Queenstown Lakes District Council or any Committee, Sub Committee, Community Board, Commissioner or person to whom any of the Council's powers, duties or discretions under this Plan have been lawfully delegated pursuant to the provisions of the Act. District council shall have the same meaning.
Critical Listening Environment	Means any space that is regularly used for high quality listening or communication for example principle living areas, bedrooms and classrooms but excludes non-critical listening environments.
Day Care Facility	Means land and/or buildings used for the care during the day of elderly persons with disabilities and/or children, other than those residing on the site.
Design Sound Level	Means 40 dB L_{dn} in all critical listening environments.
District	Means Queenstown Lakes District

[4] From the Unit Titles Act 2010

D Definitions

Domestic Livestock	Means livestock bred, reared and/or kept on a property, excluding that which is for the purpose of commercial gain. a. In all zones, other than the Rural, Rural Lifestyle and Rural Residential Zones, it is limited to 5 adult poultry per site, and does not include adult roosters or peacocks; and b. In the Rural, Rural Lifestyle and Rural Residential Zones it includes any number of livestock bred, reared and/or kept on a site for family consumption, as pets, or for hobby purposes and from which no financial gain is derived, except that in the Rural Residential Zone it is limited to only one adult rooster and peacock per site. Note: Domestic livestock not complying with this definition shall be deemed to be commercial livestock and a farming activity.
Earthworks	Means the disturbance of land surfaces by the removal or depositing of material, excavation, filling or the formation of roads, banks, and tracks. Excludes the cultivation of land and the digging of holes for offal pits and the erection of posts or poles or the planting of trees[5].
Ecosystem Services	Means the resources and processes the environment provides that people benefit from e.g. purification of water and air, pollination of plants and decomposition of waste.
Education Activity	Means the use of land and buildings for the primary purpose of regular instruction or training including early childhood education, primary, intermediate and secondary schools, tertiary education. It also includes ancillary administrative, cultural, recreational, health, social and medical services (including dental clinics and sick bays) and commercial facilities.
Electricity Distribution	Means the conveyance of electricity via electricity distribution lines, cables, support structures, substations, transformers, switching stations, kiosks, cabinets and ancillary buildings and structures, including communication equipment, by a network utility operator.
Energy Activities	Means the following activities: a. small and community-scale distributed electricity generation and solar water heating; b. renewable electricity generation; c. non-renewable electricity generation; d. wind electricity generation; e. solar electricity generation; f. stand-alone power systems (SAPS); g. biomass electricity generation; h. hydro generation activity; i. mini and micro hydro electricity generation.
Environmental Compensation	Means actions offered as a means to address residual adverse effects to the environment arising from project development that are not intended to result in no net loss or a net gain of biodiversity on the ground, includes residual adverse effects to other components of the environment including landscape, the habitat of trout and salmon, open space, recreational and heritage values.

[5] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

D Definitions

Exotic **(Trees and Plants)**	Means species which are not indigenous to that part of New Zealand.
Extent of Place **(For the purpose of Chapter 26 only)**	Means the area around and/or adjacent to a heritage feature listed in the Inventory under Section 26.8 and which is contained in the same legal title as a heritage feature listed in the Inventory, the extent of which is identified in Section 26.8.1. (Refer also to the definition of Setting).
External Alterations and Additions **(For the purpose of Chapter 26 only)**	Means undertaking works affecting the external heritage fabric of heritage features, but excludes repairs and maintenance, and partial demolition. External additions includes signs and lighting.
External Appearance **(Buildings)**	Means the bulk and shape of the building including roof pitches, the materials of construction and the colour of exterior walls, joinery, roofs and any external fixtures.
Factory Farming	Includes: a. the use of land and/or buildings for the production of commercial livestock where the regular feed source for such livestock is substantially provided other than from grazing the site concerned; b. boarding of animals; c. mushroom farming.
Farming Activity	Means the use of land and buildings for the primary purpose of the production of vegetative matters and/or commercial livestock. Excludes residential activity, home occupations, factory farming and forestry activity. Means the use of lakes and rivers for access for farming activities.
Farm Building	Means a building (as defined) necessary for the exercise of farming activities (as defined) and excludes: a. buildings for the purposes of residential activities, home occupations, factory farming and forestry activities; b. visitor accommodation and temporary accommodation.
Flatboard	Means a portable sign that is not self-supporting[6].
Flat site	Means a site where the ground slope is equal to or less than 6 degrees (i.e equal to or less than 1 in 9.5). Ground slope in relation to building height shall be determined by measurement over the extremities of each building elevation. Where all elevations indicate a ground slope of less than 6 degrees (i.e equal to or less than 1 in 9.5), rules applicable to flat sites will apply.
Flood Protection Work	Means works, structures and plantings for the protection of property and people from flood fairways or lakes, the clearance of vegetation and debris from flood fairways, stopbanks, access tracks, rockwork, anchored trees, wire rope and other structures.

[6] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

D Definitions

Forestry Activity	Means the use of land primarily for the purpose of planting, tending, managing and harvesting of trees for timber or wood production in excess of 0.5ha in area.
Formed Road	Means a road with a carriageway constructed to an all-weather standard with a minimum width of 3m.
Free Standing Sign	Means a self supporting sign not attached to a building and includes a sign on a fence and a sandwich board[7].
Frontage	Means the road boundary of any site.
Full-Time Equivalent Person	Means the engagement of a person or persons in an activity on a site for an average of 8 hours per day assessed over any 14 day period.
Garage	Is included within the meaning of residential unit, and means a building or part of a building principally used for housing motor vehicles and other ancillary miscellaneous items.
Gross Floor Area (GFA)	Means the sum of the gross area of the several floors of all buildings on a site, measured from the exterior faces of the exterior walls, or from the centre lines of walls separating two buildings.
Ground Floor Area (For Signs)	Shall be measured: a. horizontally by the length of the building along the road, footpath, access way or service lane to which it has frontage. b. vertically by the height from the surface of the road, footpath, access way or service land or as the case may be to the point at which the verandah, if any, meets the wall of the building or to a height of 3m above the surface of the road, footpath, access way or service lane, whichever is less[8].
Ground Floor Area	Means any areas covered by the building or parts of the buildings and includes overhanging or cantilevered parts but does not include pergolas (unroofed), projections not greater than 800mm including eaves, bay or box windows, and uncovered terraces or decks less than 1m above ground level.

[7, 8] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

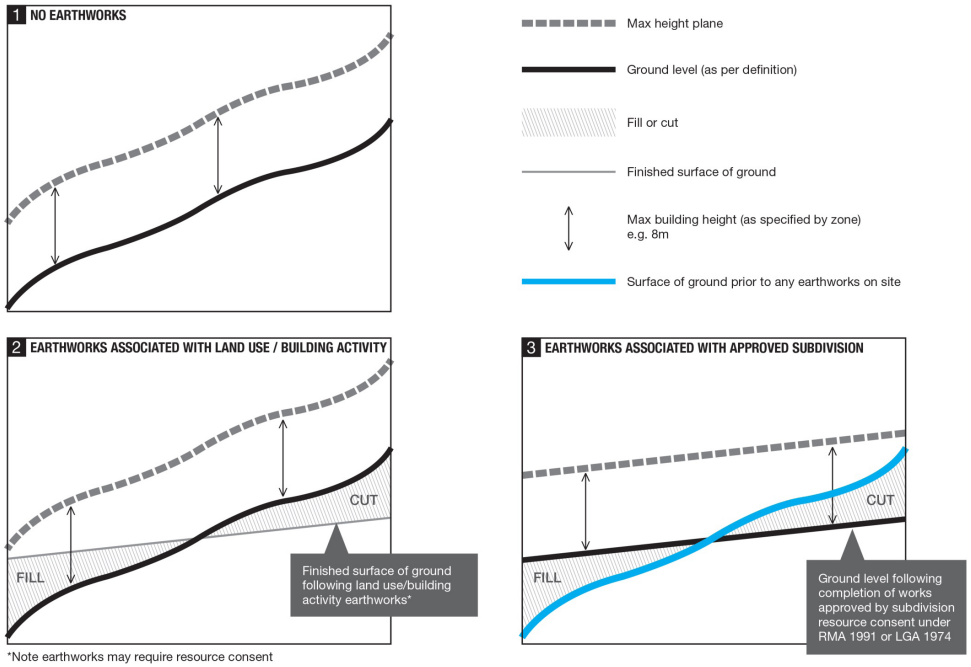
D Definitions

Ground Level	Means: The surface of the ground prior to any earthworks on the site, except that where the surface of the ground has been altered through earthworks carried out as part of a subdivision under the Resource Management Act 1991 or Local Government Act 1974 "ground level" means the finished surface of the ground following completion of works associated with the most recently completed subdivision. a. "earthworks" has the meaning given in the definition of that term in this Plan and includes earthworks carried out at any time in the past; b. "completed subdivision" means a subdivision in respect of which a certificate pursuant to section 224(c) of the Resource Management Act 1991 or a completion certificate under the Local Government Act 1974 has been issued; c. "earthworks carried out as part of a subdivision" does not include earthworks that are authorized under any land use consent for earthworks, separate from earthworks approved as part of a subdivision consent after 29 April 2016; d. ground level interpretations are to be based on credible evidence including existing topographical information, site specific topography, adjoining topography and known site history; e. changes to the surface of the ground as a result of earthworks associated with building activity do not affect the "ground level" of a site; f. subdivision that does not involve earthworks has no effect on "ground level"; Notes: a. See interpretive diagrams in the definition of Height; b. Special height rules apply in the Queenstown town centre, where "metres above sea level" is used. This is not affected by the definition of "ground level" above, which applies elsewhere.
Handicrafts	Means goods produced by the use of hand tools or the use of mechanical appliances where such appliances do not produce the goods in a repetitive manner according to a predetermined pattern for production run purpose.
Hangar	Means a structure used to store aircraft, including for maintenance, servicing and/or repair purposes.
Hard Surfacing	Means any part of that site which is impermeable and includes: a. concrete, bitumen or similar driveways, paths or other areas paved with a continuous surface or with open jointed slabs, bricks, gobi or similar blocks; or hardfill driveways that effectively put a physical barrier on the surface of any part of a site; b. any area used for parking, manoeuvring, access or loading of motor vehicles; c. any area paved either with a continuous surface or with open jointed slabs, bricks, gobi or similar blocks; The following shall not be included in hard surfacing: a. paths of less than 1m in width; b. shade houses, glasshouses and tunnel houses not having solid floors.

D Definitions

Hazardous Substance	Means any substance with one or more of the following characteristics: a i explosives ii flammability iii a capacity to oxidise iv corrosiveness v toxicity (both acute and chronic) vi ecotoxicity, with or without bio-accumulation; or b which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of the properties specified in paragraph a to this definition.
Health Care Facility	Means land and/or buildings used for the provision of services relating to the physical and mental health of people and animals but excludes facilities used for the promotion of physical fitness or beauty such as gymnasia, weight control clinics or beauticians.
Heavy Vehicle	Means a motor vehicle, other than a motor car that is not used, kept or available for the carriage of passengers for hire or reward, the gross laden weight of which exceeds 3500kg; but does not include a traction engine or vehicle designed solely or principally for the use of fire brigades in attendance at fires. (The Heavy Motor Vehicle Regulation 1974).

D Definitions

Height (Building)	Means the vertical distance between ground level (as defined), unless otherwise specified in a District Plan rule, at any point and the highest part of the building immediately above that point. For the purpose of calculating height in all zones, account shall be taken of parapets, but not of: a. aerials and/or antennas, mounting fixtures, mast caps, lightning rods or similar appendages for the purpose of telecommunications but not including dish antennae which are attached to a mast or building, provided that the maximum height normally permitted by the rules is not exceeded by more than 2.5m; and b. chimneys or finials (not exceeding 1.1m in any direction); provided that the maximum height normally permitted by the rules is not exceeded by more than 1.5m. See interpretive diagrams below and definition of GROUND LEVEL.  *Note earthworks may require resource consent

Heritage Fabric **(For the purpose of Chapter 26 only)**	Means any physical aspect of a heritage feature which contributes to its heritage values as assessed with the criteria contained in section 26.5. Where a heritage assessment is available on the Council's records this will provide a good indication of what consti-tutes the heritage fabric of that heritage feature. Where such an assessment is not available, heritage fabric may include, but is not limited to: a. original and later material and detailing which forms part of, or is attached to, the interior or exterior of a heritage feature; b. the patina of age resulting from the weathering and wear of construction material over time; c. fixtures and fittings that form part of the design or significance of a heritage feature but excludes inbuilt museum and art work exhibitions and displays, and movable items not attached to a building, unless specifically listed. d. heritage features which may require analysis by archaeological means, which may also include features dating from after 1900.
Heritage Feature or Features **(For the purpose of Chapter 26 only)**	Means the collective terms used to describe all heritage features listed in the Inventory of Heritage Features under Section 26.8.
Heritage Significance **(For the purpose of Chapter 26 only)**	Means the significance of a heritage feature (identified in this Chapter as Category 1, 2, or 3) as evaluated in accordance with the criteria listed in section 26.5. A reduction in heritage significance means where a proposed activity would have adverse effects which would reduce the category that has been attributed to that heritage feature.

D Definitions

Historic Heritage	Means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities: a. archaeological; b. architectural; c. cultural; d. historic; e. scientific; f. technological; and And includes: a. historic sites, structures, places, and areas; and b. archaeological sites; and c. sites of significance to Maori, including wāhi tapu; and d. surroundings associated with natural and physical resources. e. heritage features (including where relevant their settings or extent of place), heritage areas, heritage precincts, and sites of significance to Maori.
Holding	Means an area of land in one ownership and may include a number of lots and/or titles.
Home Occupation	Means the use of a site for an occupation, business, trade or profession in addition to the use of that site for a residential activity and which is undertaken by person(s) living permanently on the site, but excludes homestay.
Homestay	Means a residential activity where an occupied residential unit is also used by paying guests[9].
Hospital	Means any building in which two or more persons are maintained for the purposes of receiving medical treatment; and where there are two or more buildings in the occupation of the same person and situated on the same piece of land they shall be deemed to constitute a single building.
Hotel	Means any premises used or intended to be in the course of business principally for the provision to the public of: a. lodging; b. liquor, meals and refreshments for consumption on the premises.
Household	Means a single individual or group of people, and their dependents who normally occupy the same primary residence.
Household Income	Means all income earned from any source, by all household members.

[9] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

D Definitions

Hydro Generation Activity	Means activities associated with the generation of hydro electricity and includes the operation, maintenance, refurbishment, enhancement and upgrade of hydro generation facilities.
Indigenous Vegetation	Means vegetation that occurs naturally in New Zealand, or arrived in New Zealand without human assistance , including both vascular and non-vascular plants.
Indoor Design Sound Level	Means 40 dB L_{dn} in all critical listening environments.
Industrial Activity	Means the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing, or associated storage of goods
Informal Airport	Means any defined area of land or water intended or designed to be used for the landing, departure movement or servicing of aircraft and specifically excludes the designated 'Aerodromes', shown as designations 2, 64, and 239 in the District Plan. This excludes the airspace above land or water located on any adjacent site over which an aircraft may transit when arriving and departing from an informal airport.
Internal Boundary	Means any boundary of the net area of a site other than a road boundary.
Internal Alterations **(For the purpose of Chapter 26 only)**	Means undertaking works affecting the internal heritage fabric of heritage features, but excludes repairs and maintenance. Internal alterations includes the partial removal and replacement of decoration, windows, ceilings, floors or roofs that only affect the interior of the building.
Kitchen Facility	Means any space, facilities and surfaces for the storage, rinsing preparation and/or cooking of food, the washing of utensils and the disposal of waste water, including a food preparation bench, sink, oven, stove, hot-plate or separate hob, refrigerator, dish-washer and other kitchen appliances.
$L_{Aeq\ (15min)}$	Means the A frequency weighted time average sound level over 15 minutes, in decibels (dB).
L_{AFmax}	Means the maximum A frequency weighted fast time weighted sound level, in decibels (dB), recorded in a given measuring period.
L_{dn}	Means the day/night level, which is the A frequency weighted time average sound level, in decibels (dB), over a 24-hour period obtained after the addition of 10 decibels to the sound levels measured during the night (2200 to 0700 hours).
Lake	Means a body of fresh water which is entirely or nearly surrounded by land [10].
Landfill	Means a site used for the deposit of solid wastes onto or into land[11].
Landmark Building **(For the purposes of Chapter 12 only)**	Means the provision of tree and/or shrub plantings and may include any ancillary lawn, water, rocks, paved areas or amenity features, the whole of such provision being so arranged as to improve visual amenity, human use and enjoyment and/or to partially or wholly screen activities or buildings, and/or to provide protection from climate.

[10] From section 2 of the Act
[11] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

D Definitions

Landscaping	Means the provision of tree and/or shrub plantings and may include any ancillary lawn, water, rocks, paved areas or amenity features, the whole of such provision being so arranged as to improve visual amenity, human use and enjoyment and/or to partially or wholly screen activities or buildings, and/or to provide protection from climate.
Landside	Means an area of an airport and buildings to which the public has unrestricted access.
Laundry Facilities	Means facilities for the rinsing, washing and drying of clothes and household linen, and the disposal of waste water, and includes either a washing machine, tub or clothes dryer.
Licensed Premises	Means any premises or part of any premises, in which liquor may be sold pursuant to a licence, and includes any conveyance, or part of any conveyance on which liquor may be sold pursuant to the licence.
Lift Tower	Means a structure used for housing lift machinery and includes both the lift shaft and machinery room.
Liquor	Shall have the same meaning as alcohol as defined in the Sale and Supply of Alcohol Act 2012.
Living Area	Means any room in a residential unit other than a room used principally as a bedroom, laundry or bathroom.
Loading Space	Means a portion of a site, whether covered or not, clear of any road or service lane upon which a vehicle can stand while being loaded or unloaded.
Lot (Subdivision)	Means a lot, two or more adjoining lots to be held together in the same ownership, or any balance area, shown on a subdivision consent plan, except that in the case of land being subdivided under the cross lease or company lease systems or the Unit Titles Act 2010, lot shall have the same meaning as site.
Low Income	Means household income below 80% of the area median Income.
Manoeuvre Area	Means that part of a site used by vehicles to move from the vehicle crossing to any parking, garage or loading space and includes all driveways and aisles, and may be part of an access strip.
MASL	Means "metres above sea level".
Mast	Means any pole, tower or similar structured designed to carry antennas or dish antennas or otherwise to facilitate telecommunications.
Mineral	Means a naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water and includes all metallic minerals, non metallic minerals, fuel minerals, precious stones, industrial rocks and building stones and a prescribed substance within the meaning of the Atomic Energy Act 1945.
Mineral Exploration	Means any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences of 1 or more minerals; and includes any drilling, dredging, or excavations (whether surface or subsurface) that are reasonably necessary to determine the nature and size of a mineral deposit or occurrence; and to explore has a corresponding meaning.
Mineral Prospecting	Means any activity undertaken for the purpose of identifying land likely to contain mineral deposits or occurrences; and includes the following activities: a. geological, geochemical, and geophysical surveys; b. the taking of samples by hand or hand held methods; c. aerial surveys.

Mini and Micro Hydro Electricity Generation	Means conversion of the energy of falling water into electricity. Mini and micro generation may utilise impulse or reaction turbines and include intake or diversion structures, small weir, headrace, penstock, channel, pipes and generator.
Mining	Means to take, win or extract, by whatever means: a. a mineral existing in its natural state in land; or b. a chemical substance from a mineral existing in its natural state in land.
Mining Activity	Means the use of land and buildings for the primary purpose of the extraction, winning, quarrying, excavation, taking and associated processing of minerals and includes prospecting and exploration[12].
Minor Alterations and Additions to a Building **(For the purposes of Chapter 10 only)**	Means the following: a. constructing an uncovered deck; b. replacing windows or doors in an existing building that have the same profile, trims and external reveal depth as the existing; c. changing existing materials or cladding with other materials or cladding of the same texture, profile and colour.
Minor Repairs and Maintenance **(For the purpose of Chapter 26 only)**	Means repair of building materials and includes replacement of minor components such as individual bricks, cut stone, timber sections, roofing and glazing. The replacement items shall be of the original or closely matching material, colour, texture, form and design, except that there shall be no replacement of any products containing asbestos, but a closely matching product may be used instead. Repairs and maintenance works that do not fall within this definition will be assessed as alterations.
Minor Trimming **(For the purpose of Chapter 32 only)**	Means the removal of not more than 10% of the live foliage from the canopy of the tree or structural scaffold branches within a single calendar year.
Minor Trimming of a Hedgerow **(For the purpose of Chapter 32 only)**	Means the removal of not more than 50% of the live foliage within a single five year period.

[12] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

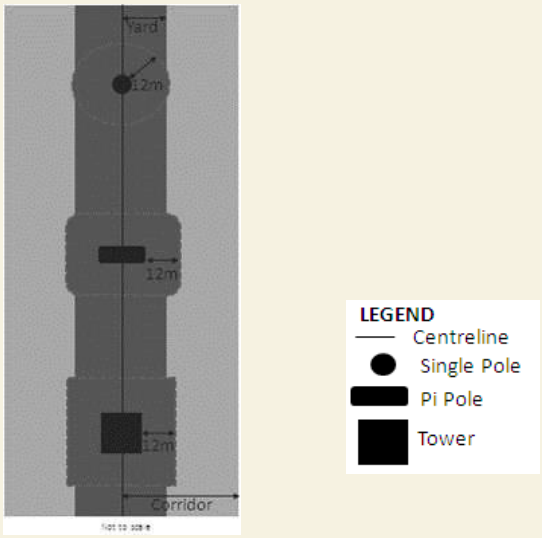
D Definitions

Minor Upgrading **(For the purpose of Chapter 30 only)**	Means an increase in the carrying capacity, efficiency or security of electricity transmission and distribution or telecommunication lines utilising the existing support structures or structures of similar character, intensity and scale and includes the following: a. addition of lines, circuits and conductors; b. reconducting of the line with higher capacity conductors; c. re-sagging of conductors; d. bonding of conductors; e. addition or replacement of longer or more efficient insulators; f. addition of electrical fittings or ancillary telecommunications equipment; g. addition of earth-wires which may contain lightning rods, and earth-peaks; h. support structure replacement within the same location as the support structure that is to be replaced; i. addition or replacement of existing cross-arms with cross-arms of an alternative design; j. replacement of existing support structure poles provided they are less or similar in height, diameter and are located within 2 metres of the base of the support pole being replaced; k. addition of a single service support structure for the purpose of providing a service connection to a site, except in the Rural zone; l. the addition of up to three new support structures extending the length of an existing line provided the line has not been lengthened in the preceding five year period.
Moderate Income	Means household income between 80% and 120% of the area median income.
Motorised Craft	Means any boat powered by an engine.
National Grid	Means the network that transmits high-voltage electricity in New Zealand and that, at the notification of this Plan, was owned and operated by Transpower New Zealand Limited, including: a. transmission lines; and b. electricity substations[13].
National Grid Corridor	Means the area measured either side of the centreline of above ground national grid line as follows: a. 16m for the 110kV lines on pi poles b. 32m for 110kV lines on towers c. 37m for the 220kV transmission lines. Excludes any transmission lines (or sections of line) that are designated.

[13] Adapted from the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009

National Grid Sensitive Activities	Means those activities within the national grid corridor that are particularly sensitive to risks associated with electricity transmission lines because of either the potential for prolonged exposure to the risk, or the vulnerability of the equipment or population that is exposed to the risk. Such activities include buildings or parts of buildings used for, or able to be used for the following purposes: a. child day care activity; b. day care facility activity; c. educational activity; d. home stay; e. healthcare facility; f. papakainga; g. any residential activity; h. visitor accommodation.

D Definitions

National Grid Yard	Means: a. the area located 12 metres in any direction from the outer edge of a national grid support structure; and b. the area located 12 metres either side of the centreline of any overhead national grid line; (as shown in dark grey in diagram below)  Excludes any transmission lines (or sections of line) that are designated.
Nature Conservation Values	Means the collective and interconnected intrinsic value of indigenous flora and fauna, natural ecosystems (including ecosystem services), and their habitats.
Navigation Infrastructure	Means any permanent or temporary device or structure constructed and operated for the purpose of facilitating navigation by aircraft.
Net Area **(Site or Lot)**	Means the total area of the site or lot less any area subject to a designation for any purpose, and/or any area contained in the access to any site or lot, and/or any strip of land less than 6m in width.

Net Floor Area	Means the sum of the floor areas, each measured to the inside of the exterior walls of the building, and shall include the net floor area of any accessory building, but it shall exclude any floor area used for: a. lift wells, including the assembly area immediately outside the lift doors for a maximum depth of 2m; b. stairwells; c. tank rooms, boiler and heating rooms, machine rooms, bank vaults; d. those parts of any basement not used for residential, retail, office or industrial uses; e. toilets and bathrooms, provided that in the case of any visitor accommodation the maximum area permitted to be excluded for each visitor unit or room shall be $3m^2$; f. 50% of any pedestrian arcade, or ground floor foyer, which is available for public thoroughfare; g. parking areas required by the Plan for, or accessory to permitted uses in the building.
Noise Event	Means an event, or any particular part of an event, whereby amplified sound, music, vocals or similar noise is emitted by the activity, but excludes people noise. Where amplified noise ceases during a particular event, the event is no longer considered a noise event.
Noise Limit	Means a $L_{Aeq\ (15\ min)}$ or L_{AFmax} sound level in decibels that is not to be exceeded.
Non-Contributory Buildings **(For the purpose of Chapter 26 only)**	Means buildings within a heritage precinct that have no identified heritage significance or fabric and have not been listed for individual protection in the Inventory under Rule 26.8. They have been identified within a heritage precinct because any future development of a site containing a non-contributory building may impact on the heritage values of heritage features or contributory buildings within the heritage precinct. Non-Contributory Buildings are identified on the plans under Section 26.7 'Heritage Precincts'.
Non Critical Listening Environment	Means any space that is not regularly used for high quality listening or communication including bathroom, laundry, toilet, pantry, walk-in-wardrobe, corridor, hallway, lobby, cloth drying room, or other space of a specialised nature occupied neither frequently nor for extended periods.
No net loss	Means no overall reduction in biodiversity as measured by the type, amount and condition.
Notional Boundary	Means a line 20m from any side of residential unit or the legal boundary whichever is closer to the residential unit.
Office	Means any of the following: a. administrative offices where the administration of any entity, whether trading or not, and whether incorporated or not, is conducted; b. commercial offices being place where trade, other than that involving the immediately exchange for goods or the display or production of goods, is transacted; c. professional offices.
Open Space	Means any land or space which is not substantially occupied by buildings and which provides benefits to the general public as an area of visual, cultural, educational, or recreational amenity values.

D Definitions

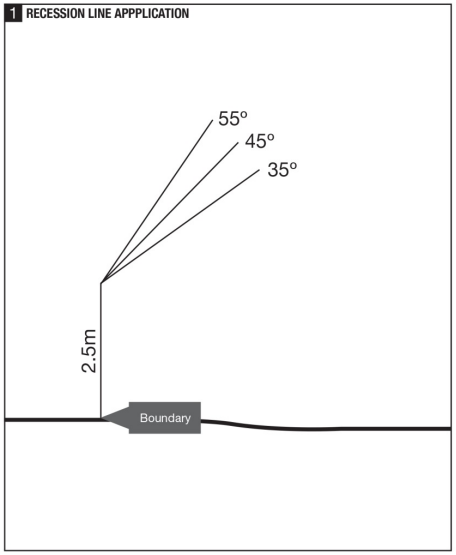
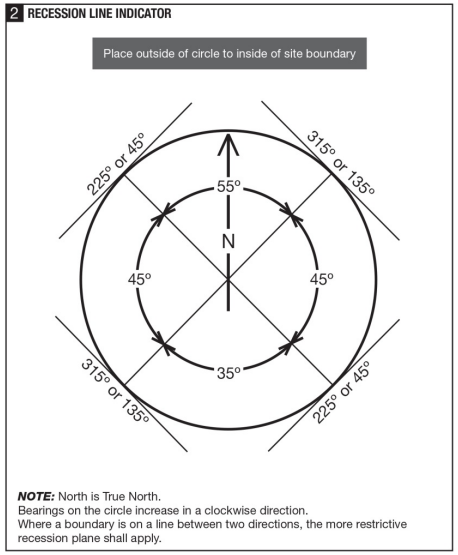
Outdoor Living Space	Means an area of open space to be provided for the exclusive use of the occupants of the residential unit to which the space is allocated.
Outdoor Recreation Activity	Means a recreation activity undertaken entirely outdoors with buildings limited to use for public shelter, toilet facilities, information and ticketing.
Outdoor Storage	Means land used for the purpose of storing vehicles, equipment, machinery, natural and processed products and wastes, outside a fully enclosed building for periods in excess of 4 weeks in any one year.
Outer Control Boundary (OCB)	Means a boundary, as shown on district plan maps, the location of which is based on the predicted day/night sound levels of 55 dBA L_{dn} from airport operations in 2036 for Wanaka Airport and 2037 for Queenstown Airport.
Park and Ride Facility	Means an area to leave vehicles and transfer to public transport or car pool to complete the rest of a journey into an urban area. Park and Ride Facilities include car parking areas, public transport interchange and associated security measures, fencing, lighting, ticketing systems, shelter and ticketing structures, landscape planting and earthworks[14].
Parking Area	Means that part of a site within which vehicle parking spaces are accommodated, and includes all parking spaces, manoeuvre areas and required landscape areas.
Parking Space	Means a space on a site available at any time for accommodating one stationary motor vehicle.
Partial Demolition **(For the purpose of Chapter 26 only)**	Means the demolition of the heritage fabric of a heritage feature exceeding 30% but less than 70% by volume or area whichever is the greater. Volume is measured from the outermost surface of the heritage feature (including any surfaces below ground) and the area is measured by the footprint of the heritage feature. Partial demolition shall be determined as the cumulative or incremental demolition of the heritage fabric as from the date that the decision [specify] on Chapter 26 of the District Plan is publicly notified.
Passenger Lift Systems	Means any mechanical system used to convey or transport passengers and other goods within or to a Ski Area Sub-Zone, including chairlifts, gondolas, T-bars and rope tows, and including all moving, fixed and ancillary components of such systems such as towers, pylons, cross arms, pulleys, cables, chairs, cabins, and structures to enable the embarking and disembarking of passengers. Excludes base and terminal buildings.
Photovoltaics (PV)	Means a device that converts the energy in light (photons) into electricity, through the photovoltaic effect. A PV cell is the basic building block of a PV system, and cells are connected together to create a single PV module (sometimes called a 'panel'). PV modules can be connected together to form a larger PV array.
Potable Water Supply	Means a water supply that meets the criteria of the Ministry of Health 'Drinking Water Standards for New Zealand 2005 (revised 2008)'.
Principal Building	Means a building, buildings or part of a building accommodating the activity for which the site is primarily used.
Private Way	Means any way or passage whatsoever over private land within a district, the right to use which is confined or intended to be confined to certain persons or classes of persons, and which is not thrown open or intended to be open to the use of the public generally; and includes any such way or passage as aforesaid which at the commencement of this Part exists within any district[15].
Projected Annual Aircraft Noise Contour (AANC)	Means the projected annual aircraft noise contours calculated as specified by the Aerodrome Purposes Designation 2, Condition 13.

[14] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.
[15] From the Local Government Act 1974.

D Definitions

Protected Feature **(For the purpose of Chapter 26 only)**	Means the collective terms used to explain all buildings, features, and structures listed in the Inventory of protected features (26.9).
Public Area	Means any part(s) of a building open to the public, but excluding any service or access areas of the building.
Public Place	Means every public thoroughfare, park, reserve, lake, river to place to which the public has access with or without the payment of a fee, and which is under the control of the council, or other agencies. Excludes any trail as defined in this Plan.
Public Space **(For the purposes of Chapter 32 only)**	Means the parts of the district that are owned and managed by the Queenstown Lakes District Council, are accessible to the public within the Residential Arrowtown Historic Management Zone including roads, parks and reserves.
Radio Communication Facility	Means any transmitting/receiving devices such as aerials, dishes, antennas, cables, lines, wires and associated equipment/apparatus, as well as support structures such as towers, masts and poles, and ancillary buildings.
Rear Site	Means a site which is situated generally to the rear of another site, both sites having access to the same road or private road, and includes sites which have no frontage to a road or private road of 6m or more.

D Definitions

Recession Lines/Recession Plane	Means the lines constructed from points or above a boundary surface or a road surface, the angle of inclination of which is measured from the horizontal, at right angles to a site boundary and in towards the site. See interpretive diagrams below.  
Recreation	Means activities which give personal enjoyment, satisfaction and a sense of well being.
Recreational Activity	Means the use of land and/or buildings for the primary purpose of recreation and/or entertainment. Excludes any recreational activity within the meaning of residential activity.
Regionally Significant Infrastructure	Means: a. renewable electricity generation activities undertaken by an electricity operator; and b. the national grid; and c. telecommunication and radio communication facilities; and d. state highways; and e. Queenstown and Wanaka airports and associated navigation infrastructure.

D Definitions

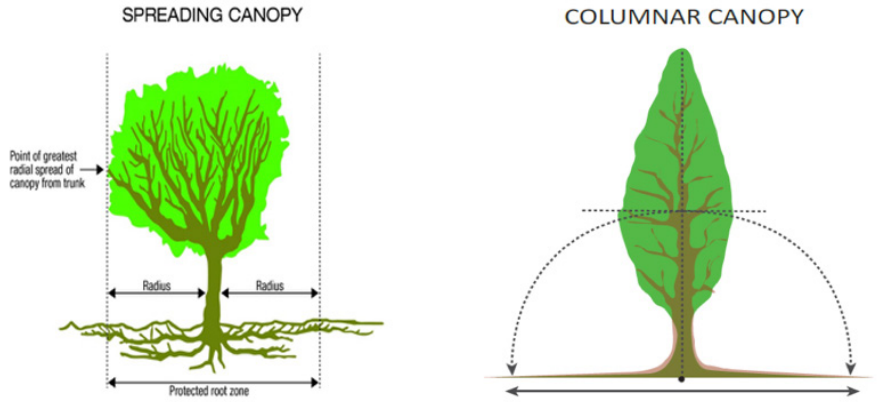
Registered Holiday Home	Means a stand-alone or duplex residential unit which has been registered with the Council as a Registered Holiday Home. For the purpose of this definition: a. a stand-alone residential unit shall mean a residential unit contained wholly within a site and not connected to any other building; b. a duplex residential unit shall mean a residential unit which is attached to another residential unit by way of a common or party wall, provided the total number of residential units attached in the group of buildings does not exceed two residential units; c. where the residential unit contains a residential flat, the registration as a Registered Holiday Home shall apply to either the letting of the residential unit or the residential flat but not to both. Advice Notes: a. a formal application must be made to the Council for a property to become a Registered Holiday Home. b. there is no requirement to obtain registration for the non-commercial use of a residential unit by other people (for example making a home available to family and/or friends at no charge)[16].
Registered Homestay	Means a Homestay used by up to 5 paying guests which has been registered with the Council as a Registered Homestay. Advice Note: A formal application must be made to the Council for a property to become a Registered Homestay[17].
Relocated/Relocatable Building	Means a building which is removed and re-erected on another site, but excludes any newly pre-fabricated building which is delivered dismantled to a site for erection on that site. This definition excludes removal and re-siting.
Relocation **(For the purpose of Chapter 26 only)**	Means the relocation of heritage features, both within, or beyond the site. The definition of Relocation (Buildings) in Chapter 2 (which means the removal of a building from any site to another site) shall not apply to chapter 26.
Relocation **(Building)**	Means the removal of any building from any site to another site.
Remotely Piloted Aircraft	Means an unmanned aircraft that is piloted from a remote station.
Removal **(Building)**	Means the shifting of a building off a site and excludes demolition of a building.
Renewable Electricity Generation (REG)	Means generation of electricity from solar, wind, hydro-electricity, geothermal and biomass energy sources.

[16, 17] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

D Definitions

Renewable Electricity Generation Activities	Means the construction, operation and maintenance of structures associated with renewable electricity generation. This includes small and community-scale distributed renewable generation activities and the system of electricity conveyance required to convey electricity to the distribution network and/or the national grid and electricity storage technologies associated with renewable electricity. Includes research and exploratory scale investigations into technologies, methods and sites, such as masts, drilling and water monitoring. This definition includes renewable electricity generation (REG), solar water heating, wind electricity generation, and mini and micro hydro electricity generation (as separately defined).
Renewable Energy	Means energy that comes from a resource that is naturally replenished, including solar, hydro, wind, and biomass energy.
Reserve	Means a reserve in terms of the Reserves Act 1977.
Residential Activity	Means the use of land and buildings by people for the purpose of permanent residential accommodation, including all associated accessory buildings, recreational activities and the keeping of domestic livestock. For the purposes of this definition, residential activity shall include Community Housing, emergency, refuge accommodation and the non-commercial use of holiday homes. Excludes visitor accommodation[18].
Residential Flat	Means a residential activity that comprises a self-contained flat that is ancillary to a residential unit and meets all of the following criteria: a. the total floor area does not exceed; i. 150m^2 in the Rural Zone and the Rural Lifestyle Zone; ii. 70m^2 in any other zone; not including in either case the floor area of any garage or carport; b. contains no more than one kitchen facility; c. is limited to one residential flat per residential unit; and d. is situated on the same site and held in the same ownership as the residential unit. Note: A proposal that fails to meet any of the above criteria will be considered as a residential unit.
Residential Unit	Means a residential activity which consists of a single self contained household unit, whether of one or more persons, and includes accessory buildings. Where more than one kitchen and/or laundry facility is provided on the site, other than a kitchen and/or laundry facility in a residential flat, there shall be deemed to be more than one residential unit.
Re-siting (Building)	Means shifting a building within a site.
Resort	Means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing temporary visitor accommodation and forming part of an overall development focused on onsite visitor activities.
Restaurant	Means any land and/or buildings, or part of a building, in which meals are supplied for sale to the general public for consumption on the premises, including such premises which a licence has been granted pursuant to the Sale and Supply of Alcohol Act 2012.

[18] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

Retail Sales / Retail / Retailing	Means the direct sale or hire to the public from any site, and/or the display or offering for sale or hire to the public on any site of goods, merchandise or equipment, but excludes recreational activities.
Retirement Village	Means the residential units (either detached or attached) and associated facilities for the purpose of accommodating retired persons. This use includes as accessory to the principal use any services or amenities provided on the site such as shops, restaurants, medical facilities, swimming pools and recreational facilities and the like which are to be used exclusively by the retired persons using such accommodation.
Reverse Sensitivity	Means the potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment or intensification of other activities which are sensitive to the established activity.
Right of Way	Means an area of land over which there is registered a legal document giving rights to pass over that land to the owners and occupiers of other land.
River	Means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal)[19].
Road	Means a road as defined in section 315 of the Local Government Act 1974.
Road Boundary	Means any boundary of a site abutting a legal road (other than an accessway or service land) or contiguous to a boundary of a road designation. Frontage or road frontage shall have the same meaning as road boundary.
Root Protection Zone **(For the purposes of Chapter 32 only)**	Means for a tree with a spreading canopy, the area beneath the canopy spread of a tree, measured at ground level from the surface of the trunk, with a radius to the outer most extent of the spread of the tree's branches, and for a columnar tree, means the area beneath the canopy extending to a radius half the height of the tree. As demonstrated by the diagrams below. 

[19] From section 2 of the Act.

D Definitions

Rural Industrial Activity	Means the use of land and buildings for the purpose of manufacturing, fabricating, processing, packing and/or storage of goods and materials grown or sourced within the Rural Zone and the storage of goods, materials and machinery associated with commercial contracting undertaken within the Rural Zone.
Sense of Place **(For the purpose of Chapter 12 only)**	Means the unique collection of visual, cultural, social, and environmental qualities and characteristics that provide meaning to a location and make it distinctly different from another. Defining, maintaining, and enhancing the distinct characteristics and quirks that make a town centre unique fosters community pride and gives the town a competitive advantage over others as it provides a reason to visit and a positive and engaging experience. Elements of the Queenstown town centre that contribute to its sense of place are the core of low rise character buildings and narrow streets and laneways at its centre, the pedestrian links, the small block size of the street grid, and its location adjacent to the lake and surrounded by the ever-present mountainous landscape.
Service Activity	Means the use of land and buildings for the primary purpose of the transport, storage, maintenance or repair of goods.
Service Lane	Means any lane laid out or constructed either by the authority of the council or the Minister of Works and Development or, on or after 1 April 1988, the Minister of Lands for the purpose of providing the public with a side or rear access for vehicular traffic to any land[20].
Service Station	Means any site where the dominant activity is the retail sale of motor vehicle fuels, including petrol, LPG, CNG, and diesel, and may also include any one or more of the following: a. the sale of kerosene, alcohol based fuels, lubricating oils, tyres, batteries, vehicle spare parts and other accessories normally associated with motor vehicles; b. mechanical repair and servicing of motor vehicles, including motor cycles, caravans, boat motors, trailers, except in any Residential, Town Centre or Township Zone; c. inspection and/or certification of vehicles; d. the sale of other merchandise where this is an ancillary activity to the main use of the site. Excludes: i. panel beating, spray painting and heavy engineering such as engine reboring and crankshaft grinding, which are not included within mechanical repairs of motor vehicles and domestic garden equipment for the purposes of b. above.
Setback	Means the distance between a building and the boundary of its site. Where any building is required to be set back from any site boundary, no part of that building shall be closer to the site boundary than the minimum distance specified. Where any road widening is required by this Plan, the setback shall be calculated from the proposed final site boundary. The setback distance shall only apply to buildings at ground, or above ground level.

[20]. From section 315 of the Local Government Act 1974

Setting **(For the purpose of Chapter 26 only)**	Means the area around and/or adjacent to a heritage feature listed under the Inventory in Section 26.8 and defined under 26.8.1, which is integral to its function, meaning, and relationships, and which is contained in the same legal title as the heritage feature listed on the Inventory. (Refer also to the definition of 'Extent of Place').
Showroom	Means any defined area of land or a building given over solely to the display of goods. No retailing is permitted unless otherwise specifically provided for in the zone in which the land or building is located.
Sign and Signage	Means: a. any external name, figure, character, outline, display, delineation, announcement, design, logo, mural or other artwork, poster, handbill, banner, captive balloon, flag, flashing sign, flatboard, free-standing sign, illuminated sign, moving signs, roof sign, sandwich board, streamer, hoarding or any other thing of a similar nature which is: i) intended to attract attention; and ii) visible from a road or any public place; b. all material and components comprising the sign, its frame, background, structure, any support and any means by which the sign is attached to any other thing: c. any sign written vehicle/trailer or any advertising media attached to a vehicle/trailer. Notes: i. This does include corporate colour schemes. ii. See definitions of SIGN AREA and SIGN TYPES[21].
Sign Area	The area of a sign means the surface area of a sign and the area of a sign includes all the area actually or normally enclosed, as the case may be, by the outside of a line drawn around the sign and enclosing the sign[22].

[21, 22] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

D Definitions

Sign Types	**Above Ground Floor Sign:** means a sign attached to a building above the verandah or above 3 metres in height from the ground. **Arcade Directory Sign:** means an externally located sign which identifies commercial activities that are accessed internally within a building or arcade **Banner:** means any sign made of flexible material, suspended in the air and supported on more than one side by poles or cables. **Flag:** means any sign made of flexible material attached by one edge to a staff or halyard and includes a flagpole. **Flashing Sign:** means an intermittently illuminated sign. **Flat Board Sign:** means a portable flat board sign which is not self-supporting. **Free Standing Sign:** means any sign which has a structural support or frame that is directly connected to the ground and which is independent of any other building or structure for its support; and includes a sign on a fence[23].

[23] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

	Hoarding: means any sign that is for purely commercial brand awareness purposes and which does not relate to land use activity conducted on the site. **Moving Sign:** means a sign other than a flag or a banner that is intended to move or change whether by reflection or otherwise. **Off-Site Sign:** means a sign which does not relate to goods or services available at the site where the sign is located and excludes a Hoarding. **Roof Sign:** means any sign painted on or attached to a roof and any sign projecting above the roof line of the building to which it is attached. **Sandwich Board:** means a self-supporting and portable sign. **Signage Platform:** means a physical area identified for the purpose of signage. **Temporary Event Sign:** means any sign established for the purpose of advertising or announcing a single forthcoming temporary event, function or occurrence including carnivals, fairs, galas, market days, meetings exhibitions, parades, rallies, filming, sporting and cultural events, concerts, shows, musical and theatrical festivals and entertainment; but does not include Electioneering Signs, Real Estate Signs, Construction Signs, a Land Development Sign, Off-Site Sign or Temporary Sale Sign. **Temporary Sale Sign:** means any sign established for the purpose of advertising or announcing the sale of products at special prices. **Under Verandah Sign:** means a sign attached to the underside of a verandah. **Upstairs Entrance Sign:** means a sign which identifies commercial activities that are located upstairs within a building. **Wall Sign:** means a sign attached to the wall of a building[24].
Significant Trimming **(For the purposes of Chapter 32 only)**	Means the removal of more than 10% of the live foliage from the canopy of the tree or structural scaffold branches.

[24] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

D Definitions

Site	Means: a. an area of land which is: i. comprised in a single lot or other legally defined parcel of land and held in a single Certificate of Title; or ii. comprised in a single lot or legally defined parcel of land for which a separate certificate of title could be issued without further consent of the Council. Being in any case the smaller land area of i or ii, or b. an area of land which is comprised in two or more adjoining lots or other legally defined parcels of land, held together in one certificate of title in such a way that the lots/parcels cannot be dealt with separately without the prior consent of the Council; or c. an area of land which is comprised in two or more adjoining certificates of title where such titles are: i. subject to a condition imposed under section 37 of the Building Act 2004 or section 643 of the Local Government Act 1974; or ii. held together in such a way that they cannot be dealt with separately without the prior consent of the Council; or d. in the case of land not subject to the Land Transfer Act 1952, the whole parcel of land last acquired under one instrument of conveyance; Except: a. in the case of land subdivided under the cross lease of company lease systems, other than strata titles, site shall mean an area of land containing: i. a building or buildings for residential or business purposes with any accessory buildings(s), plus any land exclusively restricted to the users of that/those building(s), plus an equal share of common property; or ii. a remaining share or shares in the fee simple creating a vacant part(s) of the whole for future cross lease or company lease purposes; and b. in the case of land subdivided under Unit Titles Act 1972 and 2010 (other than strata titles), site shall mean an area of land containing a principal unit or proposed unit on a unit plan together with its accessory units and an equal share of common property; and c. in the case of strata titles, site shall mean the underlying certificate of title of the entire land containing the strata titles, immediately prior to subdivision. In addition to the above. a. A site includes the airspace above the land. b. If any site is crossed by a zone boundary under this Plan, the site is deemed to be divided into two or more sites by that zone boundary. c. Where a site is situated partly within the District and partly in an adjoining District, then the part situated in the District shall be deemed to be one site[25].

[25] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

Ski Area Activities	Means the use of natural and physical resources for the purpose of establishing, operating and maintaining the following activities and structures: a. recreational activities either commercial or non-commercial; b. passenger lift systems; c. use of snowgroomers, snowmobiles and 4WD vehicles for support or operational activities; d. activities ancillary to commercial recreational activities including avalanche safety, ski patrol, formation of snow trails and terrain; e. installation and operation of snow making infrastructure including reservoirs, pumps and snow makers; and f. in the Waiorau Snow Farm Ski Area Sub-Zone vehicle and product testing activities, being activities designed to test the safety, efficiency and durability of vehicles, their parts and accessories.
Ski Area Sub-Zone Accommodation	Means the use of land or buildings for short-term living accommodation for visitor, guest, worker, and a. includes such accommodation as hotels, motels, guest houses, bunkhouses, lodges and the commercial letting of a residential unit; and b. may include some centralised services or facilities such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are ancillary to the accommodation facilities; and c. is limited to visitors, guests or workers, visiting and or working in the respective Ski Area Sub-Zone.
Sloping Site	Means a site where the ground slope is greater than 6 degrees (i.e greater than 1 in 9.5). Ground slope in relation to building height shall be determined by measurement over the extremities of each building elevation. Where any elevation indicates a ground slope of greater than 6 degrees (i.e greater than 1 in 9.5), rules applicable to sloping sites will apply.
Small and Community-Scale Distributed Electricity Generation	Means renewable electricity generation for the purpose of using electricity on a particular site, or supplying an immediate community, or connecting into the distribution network.
Small Cells Unit	Means a device: a. that receives or transmits radiocommunication or telecommunication signals; and b. the volume of which (including any ancillary equipment, but not including any cabling) is not more than $0.11m^3$.
Solar Electricity Generation	Means the conversion of the sun's energy directly into electrical energy. The most common device used to generate electricity from the sun is photovoltaics (PV). This may include free standing arrays, solar arrays attached to buildings or building integrated panels.
Solar Water Heating	Means devices that heat water by capturing the sun's energy as heat and transferring it directly to the water or indirectly using an intermediate heat transfer fluid. Solar water heaters may include a solar thermal collector, a water storage tank or cylinder, pipes, and a transfer system to move the heat from the collector to the tank.

D Definitions

Stand-Alone Power Systems (SAPS)	Means off-grid generation for activities including residential, visitor and farming activities, on remote sites that do not have connection to the local distribution network. SAP's will usually include battery storage, a backup generator, an inverter and controllers etc, as well as generation technologies such as solar, mini or micro hydro, wind electricity generation or a combination thereof.
Structure	Means any building, equipment device or other facility made by people and which is fixed to land and includes any raft.
Structure Plan	Means a plan included in the district plan, and includes spatial development plans, concept development plans and other similarly titled documents.
Subdivision	Means: a. the division of an allotment: i. by an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of the allotment; or ii. by the disposition by way of sale or offer for sale of the fee simple to part of the allotment; or iii. by a lease of part of the allotment which, including renewals, is or could be for a term of more than 35 years; or iv. by the grant of a company lease or cross lease in respect of any part of the allotment; or v. by the deposit of a unit plan, or an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of a unit on a unit plan; or b. an application to the Registrar-General of Land for the issue of a separate certificate of title in circumstances where the issue of that certificate of title is prohibited by section 226[26].
Subdivision and Development	Includes subdivision, identification of building platforms, any buildings and associated activities such as roading, earthworks, lighting, landscaping, planting and boundary fencing and access/gateway structures.
Tavern	Means any premises used or intended to be used in the course of business principally for the provision to the public of liquor and other refreshments but does not include an airport bar.
Technical Arborist **(For the purposes of Chapter 32 only)**	Means a person who: a. by possession of a recognised arboricultural degree or diploma and on-the-job experience is familiar with the tasks, equipment and hazards involved in arboricultural operations; and b. has demonstrated proficiency in tree inspection and evaluating and treating hazardous trees; and c. has demonstrated competency to Level 6 NZQA Diploma in Arboriculture standard or Level 4 NZQA Certificate in Horticulture (Arboriculture) standard (or be of an equivalent arboricultural standard).

[26] From section 218 of the Act

Temporary Activities	Means the use of land, buildings, vehicles and structures for the following listed activities of short duration, limited frequency and outside the regular day-to-day use of a site: a. temporary events; b. temporary filming; c. temporary activities related to building and construction; d. temporary military training; e. temporary storage; f. temporary utilities; g. temporary use of a site as an informal airport as part of a temporary event.

D Definitions

Temporary Events	Means the use of land, buildings, tents and marquees, vehicles and structures for the following activities: a. carnivals; b. fairs; c. festivals; d. fundraisers; e. galas; f. market days; g. meetings; h. exhibitions; i. parades; j. rallies; k. cultural and sporting events; l. concerts; m. shows; n. weddings; o. funerals; p. musical and theatrical entertainment, and q. uses similar in character. Note: The following activities associated with Temporary Events are not regulated by the PDP: a. Food and Beverage; b. Sale of Alcohol.
Temporary Filming Activity	Means the temporary use of land and buildings for the purpose of commercial video and film production and includes the setting up and dismantling of film sets, and associated facilities for staff.
Temporary Military Training Activity (TMTA	Means means a temporary military activity undertaken for defence purposes. Defence purposes are those in accordance with the Defence Act 1990.
Total Demolition **(For the purposes of Chapter 26 only)**	Means the demolition of the heritage fabric of a heritage feature equal to or exceeding 70% by volume or area whichever is greater. Volume is measured from the outermost surface of the heritage feature (including any surfaces below ground) and the area is measured by the footprint of the heritage feature.

Trade Supplier	Means a business that is a mixture of wholesaling and retailing goods in one or more of the following categories: a. automotive and marine suppliers; b. building suppliers; c. catering equipment suppliers; d. farming and agricultural suppliers; e. garden and patio suppliers f. hire services (except hire or loan of books, video, DVD and other similar home entertainment items); g. industrial clothing and safety equipment suppliers; and h. office furniture, equipment and systems suppliers.
Trade Wastes	Means any water that is used in a commercial or industrial process, and is then discharged to the Council's waste water system.
Trail	Means any public access route legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities, and specifically excludes: a. roads, including road reserves; b. public access easements created by the process of tenure review under the Crown Pastoral Land Act; and c. public access routes over any reserve administered by Queenstown Lakes District Council, the Crown or any of its entities.
Under Verandah Sign	Means a sign attached to the under side of a verandah[27].
Unit	Means any residential unit, or visitor accommodation unit of any type.
Urban Development	Means development which is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development.
Urban Growth Boundary	Means a boundary shown on the planning maps which provides for and contains existing and future urban development within an urban area.

[27] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

D Definitions

Utility	Means the systems, services, structures and networks necessary for operating and supplying essential utilities and services to the community including: a. substations, transformers, lines and necessary and incidental structures and equipment for the transmissions and distribution of electricity; b. pipes and necessary incidental structures and equipment for transmitting and distributing gas; c. storage facilities, pipes and necessary incidental structures and equipment for the supply and drainage of water or sewage; d. water and irrigation races, drains, channels, pipes and necessary incidental structures and equipment (excluding water tanks); e. structures, facilities, plant and equipment for the treatment of water; f. structures, facilities, plant, equipment and associated works for receiving and transmitting telecommunications and radio communications; g. structures, facilities, plant, equipment and associated works for monitoring and observation of meteorological activities and natural hazards; h. structures, facilities, plant, equipment and associated works for the protection of the community from natural hazards; i. structures, facilities, plant and equipment necessary for navigation by water or air; j. waste management facilities; k. flood protection works; and l. anything described as a network utility operation in s166 of the Resource Management act 1991. Utility does not include structures or facilities used for electricity generation, the manufacture and storage of gas, or the treatment of sewage.
Vehicle Crossing	Means the formed and constructed vehicle entry/exit from the carriageway of any road up to and including that portion of the road boundary of any site across which vehicle entry or exit is obtained to and from the site, and includes any culvert, bridge or kerbing.
Verandah	Means a roof of any kind which extends out from a face of a building and continues along the whole of that face of the building.

D Definitions

Visitor Accommodation	Means the use of land or buildings for short-term, fee paying, living accommodation where the length of stay for any visitor/guest is less than 3 months; and i. Includes such accommodation as camping grounds, motor parks, hotels, motels, boarding houses, guest houses, backpackers' accommodation, bunkhouses, tourist houses, lodges, homestays, and the commercial letting of a residential unit; and ii. May include some centralised services or facilities, such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are associated with the visitor accommodation activity. For the purpose of this definition: a. The commercial letting of a residential unit in (i) excludes: • A single annual let for one or two nights. • Homestay accommodation for up to 5 guests in a Registered Homestay. • Accommodation for one household of visitors (meaning a group which functions as one household) for a minimum stay of 3 consecutive nights up to a maximum (ie: single let or cumulative multiple lets) of 90 nights per calendar year as a Registered Holiday Home. (Refer to respective definitions). b. "Commercial letting" means fee paying letting and includes the advertising for that purpose of any land or buildings. c. Where the provisions above are otherwise altered by Zone Rules, the Zone Rules shall apply[28].
Wall Sign	Means a sign attached to a wall within the ground floor area[29].
Waste	Means any contaminant, whether liquid solid, gaseous, or radioactive, which is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an adverse effect on the environment, and which includes all unwanted and economically unusable by-products at any given place and time, and any other matters which may be discharged accidentally or otherwise, to the environment. Excludes cleanfill.
Waste Management Facility	Means a site used for the deposit of solid wastes onto or into land, but excludes: a. sites situated on production land in which the disposal of waste generated from that land takes place, not including any dead animal material or wastes generated from any industrial trade or process on that productive land; b. sites used for the disposal of vegetative material. The material may include soil that is attached to plant roots and shall be free of hazardous substances and wastes; and c. sites for the disposal of clean fill.

[28, 29] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

D Definitions

Waterbody	Means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area [30].
Wetland	Includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions[31].
Wholesaling (Airport Zones)	Means a business engaged in the storage and distribution of goods to businesses (including retail activities) and institutional customers.
Wind Electricity Generation	Means the conversion of the energy from wind into electricity, through the use of the rotational motion. A wind turbine may be attached to a building or freestanding. Wind turbine components may include blades, nacelle, tower and foundation. This definition shall include masts for wind monitoring.
Works Within the Root Protection Zone **(For the Purpose of Chapter 32 only)**	Means works including paving, excavation, trenching, ground level changes, storage of materials or chemicals, vehicle traffic, vehicle parking, soil compaction, construction activity, whether on the same site or not as the tree.
2037 Noise Contours	Means the predicted airport noise contours for Queenstown airport for the year 2037 in 1dB increments from 70dB L_{dn} to 55dB L_{dn} inclusive. Note: These contours shall be available from the council and included in the airport noise management plan.
2037 60 dB Noise Contours	Means the predicted 60 dB L_{dn} noise contour for Queenstown airport for 2037 based on the 2037 noise contours.

[30, 31] From Section 2 of the Act

2.2 Acronyms Used in this Plan

Listed below are acronyms used within the plan. They do not include the acronyms of names of activity areas identified within structure plans adopted under the PDP.

AANC	Projected annual aircraft noise contour
AMI	Area median income
ANB	Air noise boundary
ASAN	Activity sensitive to aircraft noise
C	Controlled
CPI	Consumer price index
CPTED	Crime prevention through environmental design
dB	Decibels
D	Discretionary
GFA	Gross floor area
GHOA	Glenorchy Heritage Overlay Area
HD	Hanley Downs
LAR	Limited access roads
LENZ	Land Environments New Zealand
MHOA	Macetown Heritage Overlay Area
NC	Non-complying
NES	National Environmental Standard
NESETA	Resource Management (National Environmental Standard for Electricity Transmission Activities) Regulations 2009
NOR	Notice of requirement
NZTA	New Zealand Transport Agency
OCB	Outer control boundary
ONF	Outstanding natural feature
ONL	Outstanding natural landscape
P	Permitted
PR	Prohibited
PV	Photovoltaics
RCL	Rural character landscape

RD	Restricted discretionary
REG	Renewable electricity generation
RMA	Resource Management Act 1991
SAPS	Stand-alone power systems
SEL	Sound exposure level
SHOA	Skippers Heritage Overlay Area
SMLHOA	Sefferton and Moke Lake Heritage Overlay Area
SNA	Significant natural areas
UGB	Urban growth boundary