BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN

IN THE MATTER	of the Resource Ma1991
AND	
IN THE MATTER	Stage 3 Submissions on the proposed General Industrial Zone, the Business Mixed Use zone and associated Proposed District Plan variations.

PLANNING EVIDENCE OF BLAIR JEFFREY DEVLIN
ON BEHALF OF:

TUSSOCK RISE LIMITED (3128)
BRIGHT SKY LAND LIMITED (3130)
ALPINE ESTATES LIMITED (3161)

29 May 2020

TABLE OF CONTENTS

1. **PROFESSIONAL DETAILS** 2
2. **BACKGROUND** 3
3. **EXECUTIVE SUMMARY** 4
4. **SECTION 1: STRATEGIC CONTEXT OF THE WANAKA INDUSTRIAL AREA** 5
5. **SECTION 2: PURPOSE OF THE BMUZ AND PURPOSE OF THE GENERAL INDUSTRIAL ZONE** 12
6. **SECTION 3: GROUND TRUTHING RESULTS** 16
7. **SECTION 4: COMPARISON OF THE ODP AND PDP INDUSTRIAL ZONES** 19
8. **SECTION 5: LOSS OF INDUSTRIAL LAND SUPPLY** 23
9. **SECTION 6: MANAGING REVERSE SENSITIVITY, INCLUDING NOISE EFFECTS AND ODOUR** 24
10. **SECTION 7: MANAGING TRANSPORT INCLUDING WALKING AND CYCLING** 26
11. **SECTION 8: ASSESSMENT AGAINST THE QLDC REZONING PRINCIPLES** .. 27
12. **SECTION 9: SECTION 42A REPORT** 33
13. **SECTION 10 - FURTHER SUBMISSIONS** 36
14. **CONSIDERATION OF ALTERNATIVES AND SECTION 32AA RE-ASSESSMENT** 39
15. **CONCLUSION** 43

Appendix [A]: Recommended zoning approach to the Wanaka Industrial Area

Appendix [B]: Environment Court decision [2019] NZEnvC 111 – Tussock Rise Stage 1 submission

Appendix [C]: Outline Development Plan for the Three Parks area

Appendix [D]: Correspondence regarding noise compliant records with QLDC

Appendix [E]: Assessment of Proposed Rezoning Against the BMUZ Objectives and Policies

Appendix [F]: Assessment of Proposed Rezoning Against the Strategic Directions Objectives and Policies (taken from Strategic S42A report and Chapter 3 where not under appeal)

Appendix [G]: Topographic plan of the Tussock Rise site.

Appendix [H]: Assessment of Proposed Rezoning Against Relevant Chapter 4 (Urban Development) Objectives and Policies

1. PROFESSIONAL DETAILS

1.1 My full name is Blair Jeffrey Devlin. I am a Director of, and hold the position of Senior Planner at Vivian and Espie Limited ("Vivian+Espie"), a Queenstown based resource management and landscape planning consultancy. I have been in this position since September 2018.

1.2 I hold the qualifications of Bachelor of Arts (Geography) and Masters of Regional and Resource Planning (Distinction), both from the University of Otago. I have been a Full Member of the New Zealand Planning Institute since March 2006.

1.3 I have over 20 years' experience as a planner. This experience comprises thirteen years in local government in New Zealand and the United Kingdom (Dunedin City Council and the Queenstown Lakes District Council). I have worked in Central Government for approximately two years as a policy analyst at the Ministry for the Environment. I have worked as a senior consultant planner for five years at private consultancies based in Queenstown. I have practised in the Queenstown Lakes district since 2007.

1.4 Prior to my current role with Vivian+Espie, I was employed by the Queenstown Lakes District Council ("Council") as Manager of Planning Practice. I have also held the role of Acting Planning Policy Manager, Resource Consents Manager, and prior to that, as a Senior Policy Planner during my employment at the Council between 2011 and 2018. I reside in Queenstown.

1.5 I am familiar with the Tussock Rise site, the surrounding business / industrial area and the wider areas that have been zoned Business Mixed Use Zone ("BMUZ") in both Queenstown and Wanaka. I was involved in preparing the 233-lot residential subdivision consent under the Housing Accords and Special Housing Areas Act on the Bright Sky Land Ltd site to the west of Tussock Rise on its boundary.

1.6 I have been involved with several policy processes during my time at QLDC, with specific involvement as an expert planning witness for Environment Court hearings on Plan Change 39 (Arrowtown South Special Zone) and Plan Change 44 (Hanley Downs Special Zone). I have had a range of roles in relation to other plan change processes.

1.7 Of particular relevance to this matter is Plan Change 36 (PC36) which created the operative Industrial B zone and applied it to the Tussock Rise site and other nearby land in Wanaka. PC36 was a Council led plan change to the Operative District plan (ODP).

1.8 I was not involved at all in the preparation of PC36, or the Council hearing. I became involved at the appeal stage while employed as a Senior Policy Planner at QLDC. I prepared expert planning evidence on Plan Change 36 which was subject to quite a discrete appeal by the then owners of the Tussock Rise site. The appeals related to the required finished ground levels within the Connell Terrace Precinct and the inclusions of the Ballantyne Road structure plan area as part of the Industrial B zone. The matter was settled by Consent Order and did not proceed to an Environment Court hearing.

1.9 I was not involved in the Proposed District Plan ("PDP") Stage 1 hearings that created the Business Mixed Use zone. I am engaged by the QLDC for Stage 3 in regard to proposed Design Guidelines that would apply to new development in the Business Mixed Use and Residential zones.

1.10 I prepared the written submission for Tussock Rise Limited, Alpine Estates Limited, and Bright Sky Land Limited. These submissions focused on the General Industrial zone but also referred to the Council's rezoning of the oxidation pond site at 100 Ballantyne Road, and aspects of the Three Parks rezoning – in particular the rezoning to Business Mixed Use in parts of what was the operative Three Parks Special Zone.

1.11 As noted in legal submissions, the Tussock Rise alternate relief that sought a split BMUZ / LDSR zoning is not the preferred approach. This evidence does not cover the alternate relief.

1.12 Although this is a Council hearing, I confirm that I have read the Code of Conduct for Expert Witness contained in the Environment Court Practice Note 2014 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

2. BACKGROUND

2.1 The written submissions for Tussock Rise Limited, Alpine Estate Limited, and Bright Sky Land Limited are taken as read. The key documents I have used, or referred to, in forming my view while preparing this evidence are:

(a) Resource Management Act 1991

(b) National Policy Statement on Urban Development Capacity (2016)

(c) Partially Operative Regional Policy Statement 2019 for Otago (PORPS 19).

(d) Notified Chapter 18A: General Industrial Zone

(e) General Industrial Zone Section 32 evaluation 2019 (**S32**)

(f) General Industrial Zone Section 42A report (**S42A**).

(g) Council's expert evidence

(h) Mr Barr's Stage 3 Strategic Evidence (**Strategic Evidence**).

(i) Proposed District Plan Stage 1 & 2 Decision Version as provided with Mr Barr's Stage 3 Strategic Evidence (**PDP)**

(j) Operative District Plan Section 11 containing the operative Industrial A and B zone provisions (**ODP**).

2.2 I also rely on the following briefs of evidence:

(a) Economic evidence – Mr John Ballingall, Sense Partners Ltd

(b) Transport evidence – Mr Andy Carr, Carriageway Consulting Ltd

(c) Acoustic Evidence – Mr Kerry Wilson, Acoustic Engineering Services Ltd

(d) Submitter evidence – Mr Paul Miller

2.3 In **Appendix [A]** I show the proposed zoning changes I consider are necessary to the notified PDP maps for the Wanaka industrial area and a small number of changes to the PDP text.

2.4 My evidence is structured as follows:

- Executive Summary
- Section 1: strategic context of the Wanaka industrial area
- Section 2: Purpose of the BMUZ And Purpose of The General Industrial Zone
- Section 3: Ground Truthing Results
- Section 4: Comparison of the ODP and PDP Industrial Zones
- Section 5: Loss of Industrial Land Supply

- Section 6: Managing Reverse Sensitivity, Including Noise Effects and Odour
- Section 7: Managing Transport Including Walking and Cycling
- Section 8: Assessment Against the QLDC Rezoning Principles
- Section 9: Section 42a Report
- Consideration of Alternatives and Section 32AA Re-Assessment
- Conclusion

2.5 I am aware that the Gordon Family Trust submitted on Stage 1 of the PDP in relation to the Tussock Rise site. This submission was transferred to Tussock Rise Limited seeking that the Tussock Rise Limited land be rezoned to Low Density Suburban Residential. This submission was ruled out of scope by the Hearings Panel, and this decision was appealed to the Environment Court. No evidence was able to be presented to the Hearings Panel.

2.6 In decision [2019] NZEnvC 111 dated 21 June 2019 (Appendix **[B]**) the Court refused to strike out any part of the submission by Tussock Rise Limited. This submission has therefore not been considered by QLDC. The appeal remains outstanding.

2.7 As evidenced by the 2015 submission on Stage 1 of the PDP, TRL and previous owners (Gordon Family Trust) have considered for many years that the operative Industrial B zone (which is similar in many respects to the notified General Industrial zone), is unsuitable for the site due to the surrounding residential activities.

2.8 This situation is the result of the staged approach to the PDP, where the Low Density Suburban Residential zoning was notified as part of Stage 1 but the site was not included due to its Industrial B zoning and has now been included in Stage 3. This led the Panel to conclude (incorrectly that the Stage 1 submission was not within scope). Tussock Rise also found themselves in the position of having taken over a submission seeking LDSR.

2.9 Now that there is no doubt the site is included with Stage 3, the submission lodged is the preferred position of Tussock Rise Ltd. However, the right to pursue the appeal on the Stage 1 submission remains as a consequence of the staged approach to the PDP review.

3. EXECUTIVE SUMMARY

3.1 Tussock Rise Limited have submitted in relation to the wider Wanaka Industrial Area. The proposed rezoning shown in Appendix **[A]** adopts a pragmatic approach that recognises the

wider strategic context of the Wanaka industrial area and surrounding land uses that are almost all residential in nature.

3.2 The proposed General Industrial Zone is a restrictive planning framework that does not reflect the existing mixed-use nature of the Wanaka Industrial Area or the apparent demand for BMU.

3.3 Ground truthing by the Council and Tussock Rise demonstrates that the receiving environment of the Wanaka industrial area is split roughly 50/50 between predominantly industrial and service activities and non-industrial activities. This confirms the mixed-use nature of the area. On the Tussock Rise boundary is approximately 42/58 industrial / service to non-industrial based on the evidence of Mr Miller.

3.4 The proposed re-zoning recognises that Wanaka is well supplied with industrially zoned land, yet recognises QLDC desire for this form of zoning and retains GIZ in suitable areas. It also provides new BMUZ zoning (including some vacant supply) in different ownerships, and a more enabling planning framework for a post Covid-19 Wanaka economy with a reduced tourism industry.

3.5 A small number of changes are required to the policy and rule framework to ensure large format retail does not establish and compete with the Wanaka or Three Parks commercial centres.

3.6 The proposed rezoning is considered to better achieve the purpose of the Act than the notified GIZ of the Tussock Rise land. It will enable the Wanaka community to better provide for their social cultural and economic well-being while avoiding, remedying and mitigating effects on the environment.

4. SECTION 1: STRATEGIC CONTEXT OF THE WANAKA INDUSTRIAL AREA

4.1 As members of the Hearings Panel are not locally based, I have set out in some detail the existing and future surrounding land uses around what I have called the existing 'Wanaka Industrial Area' which includes the Tussock Rise site. I use this term to describe the area shown in Figure 1 below in relation to the ODP:

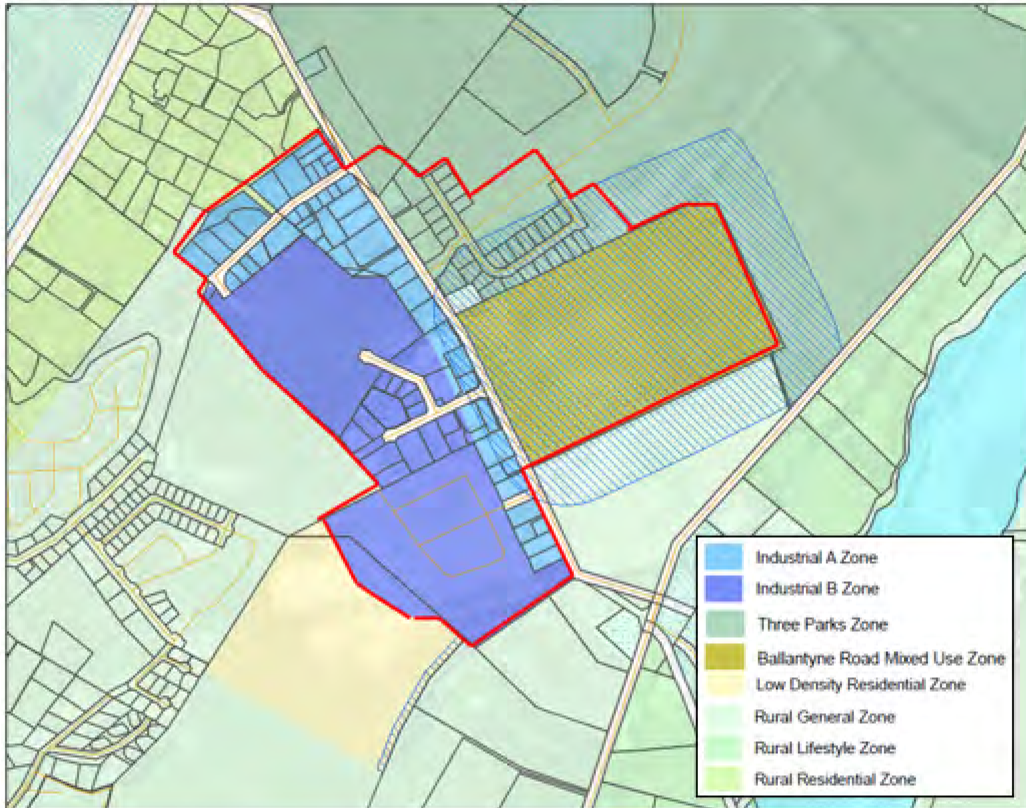

Figure 1: ODP Existing "Wanaka Industrial Area" from ODP maps, including the Business Sub-Zone from the Three Parks Special Zone

4.2 In Figure 2 below, I have used the PDP Planning Map to show the adjusted 'Wanaka Industrial Area' although I have not shown the full extent of the notified Business Mixed Use strip along Sir Tim Wallis Drive.

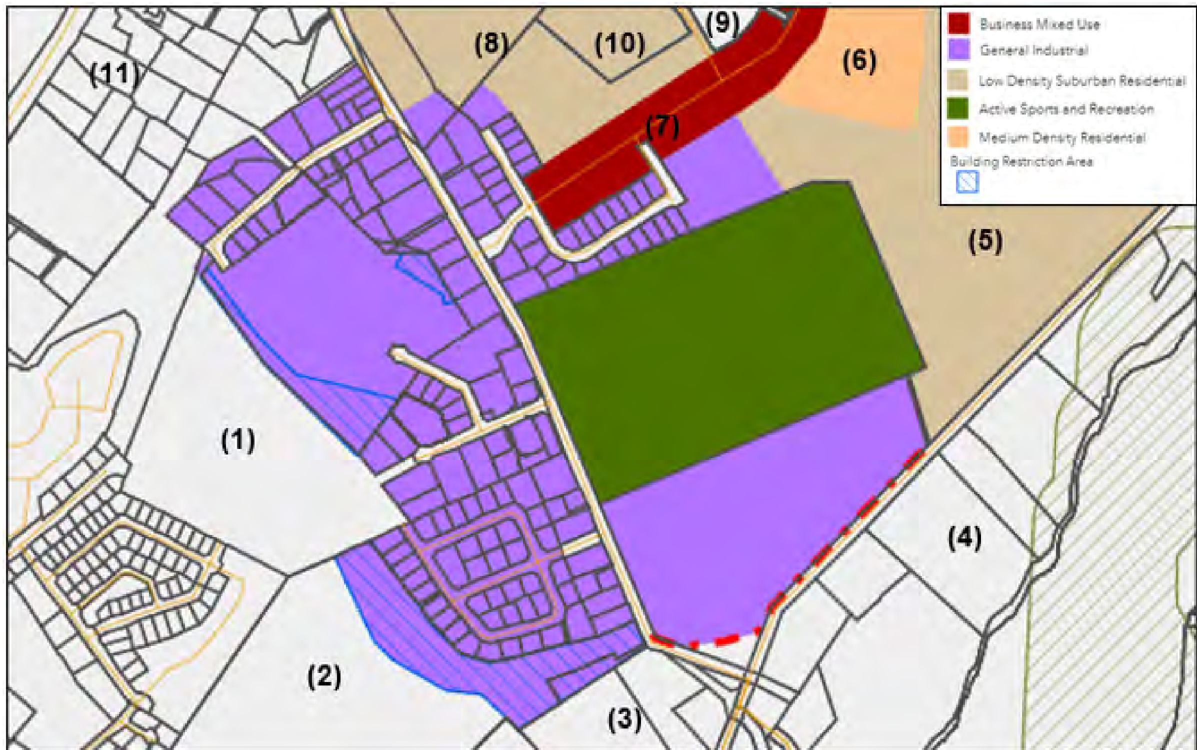

Figure 2: Notified Stage 3 PDP "Wanaka Industrial Area" from notified PDP maps, excluding full extent of proposed 'Business Mixed Use Zone along Sir Tim Wallis Drive.

4.3 To the west of the Wanaka Industrial Area (shown as number **(1)**) is land owned by Bright Sky Land Limited which was made a Special Housing Area by the Government in 2019. This land is now zoned Low Density Suburban Residential (LDSR) following Stage 1 decisions on the PDP. There are no appeals affecting this zoning. Subdivision consent SH190490 under the HASHAA legislation was lodged for a 233-lot medium density residential style development and five reserve allotments, but has subsequently been withdrawn, as the site can be developed under the LDSR framework. Under the LDSR provisions, it is anticipated that the land can be subdivided down into 450m^2 vacant lots or 300m^2 if pre-built and then subdivided.

4.4 Also to the west of the Wanaka Industrial Area is the Plan Change 46 area (shown as number **(2)**), which is a residential zone under the Operative District Plan. The estimated yield of this area is around 300-400 residential units. This land is owned by Orchard Road Holdings Ltd.

4.5 To the south of the Wanaka Industrial Area (shown as number **(3)**) is a Rural zone that runs along Riverbank Road. The area has been subdivided down into relatively small lots ranging from 3 – 6 hectares. As the aerial photography shows in Figure 3, these all have large residences on them and could be described as being more 'rural living' in character.

Figure 3: Aerial Photography of the "Wanaka Industrial Area" (Source: QLDC website, photography from 2019)

4.6 To the east of the Wanaka Industrial Area (shown as number **(4)**) is the Rural Lifestyle zone along Riverbank Road. This area has now largely been subdivided into Rural Lifestyle sized allotments (minimum 1 hectare, average of 2ha).

4.7 Also to the east is the Three Parks area, which is proposed to be rezoned to LDSR (shown as number **(5)**) and Medium Density Residential (shown as number **(6)**) through the Stage 3 PDP. An area of Business Mixed Use is also proposed (shown as number **(7)**) along Sir Tim Wallis Drive. An Outline Development Plan for the Three Parks area has been approved by QLDC and is appended as Appendix **[C]**. The status of this approved Structure Plan is unclear given the proposed re-zoning of the Three Parks area through Stage 3 of the PDP; however it will give the Panel a good indication of the developers most recent intentions for the land under the ODP framework. As Appendix **[C]** illustrates, the majority of the land is proposed to be low density residential development.

4.8 To the north is further areas of LDSR (shown as number **(8)**), and also the Council's Sport and Recreation Centre (Designation 376) **(9)** and the new Te Kura O Take Karara Primary School **(10)**. These are important community facilities for Wanaka.

4.9 Also to the north is an area of Large Lot Residential zoning along Golf Course Road (shown as number **(11)**). This area has largely been subdivided into 4000m^2 sized allotments reflecting its former ODP Rural Residential zoning (minimum 4000m^2), but which can now be subdivided to 2000m^2.

4.10 As Figure 2 illustrates, it is a matter of fact that under the PDP almost all land surrounding what I have called the 'Wanaka Industrial Area' is zoned for residential development of some shape or form with the exception of the Rural zone to the north of Riverbank Road (which has already been subdivided and exhibits more 'rural living' characteristics).

4.11 A major concern I have is that both the section 32 report and the section 42A report have not accurately described the nature and the surrounding context of the Wanaka industrial area, which is located just 1.2km[1] by road from Wanaka town Centre. Wanaka has experienced significant growth over the last 20 years and looking at the PDP Planning Maps today, and the surrounding environment, the Wanaka industrial area is no longer on the edge of town and is in fact surrounded on almost all sides by residential zoning. In this regard the notified approach to strengthen the General Industrial provisions and make them more of a 'pure industrial' zone in my opinion is not the best approach to sustainably managing Wanaka as the town has now grown to surround this industrial area.

4.12 I am concerned that the notified General Industrial zoning, which seeks a more pure industrial zone, has not recognised this wider strategic context, and that seeking to turn what is effectively a mixed business / light industrial area into a more pure industrial zone is inappropriate in the context of the surrounding zoned and planned development in Wanaka. In section 5 of my evidence I compare the Industrial A (ODP), Industrial B (ODP) and General Industrial Zone (PDP) to show the significant change proposed through the Stage 3 PDP rezoning.

[1] From Ardmore St / Lakeside Rd roundabout to edge of ODP Industrial A zone on Ballantyne Road

4.13 In my opinion, the surrounding land uses demonstrate that the Wanaka industrial area is not well located for a more pure industrial zone such as the General Industrial zone (GIZ), but rather a mixed use environment would be more appropriate. This strategic context of the Wanaka industrial area has not been recognised by the notified GIZ, which seeks to make the area less 'business / commercial' and more of a pure industrial zone where almost all other activities are excluded.

4.14 Focusing on the Tussock Rise site itself, this is located geographically 1.5km to the south-east of the Wanaka town centre and waterfront, separated only by the Wanaka Golf Course and Golf Course Road which lies on a low ridge visually separating the two. While this results in longer, less direct routes between the site and town centre increasing the effective distance to around 2.0km, it is a functional walkable distance.

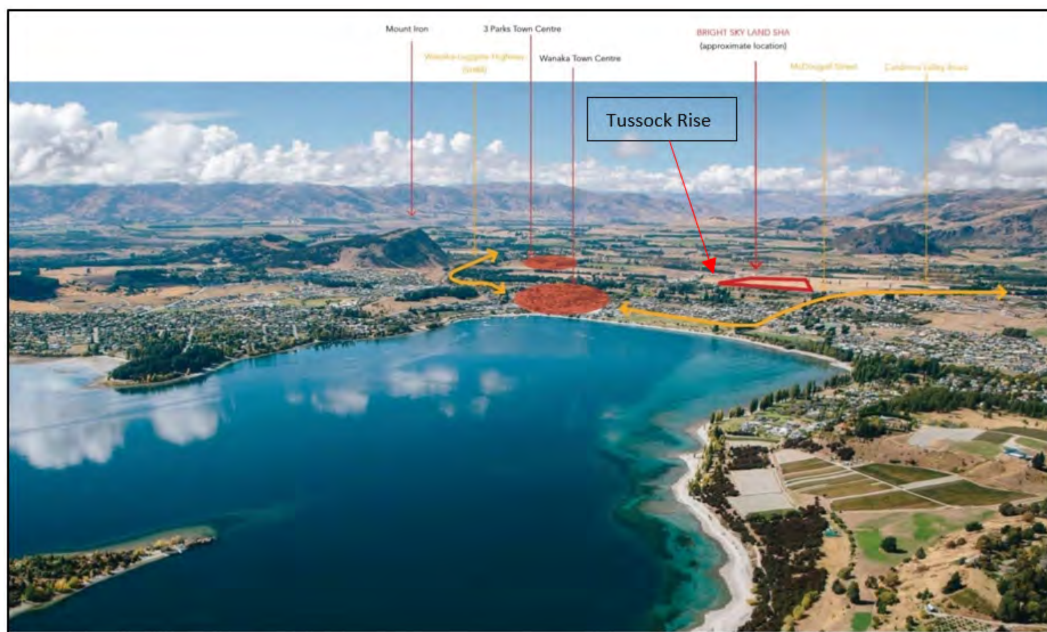

Figure 4: Site in context when viewed from the north-west

4.15 The PDP has rezoned an area to Local Shopping Centre on Cardona Valley Road that will further provide good local amenity and complement existing amenities in that neighbourhood including a cinema and the Wanaka Medical Centre. The Three Parks Town Centre (including the QLDC Recreation Centre and the new primary school) is also located within a walkable distance.

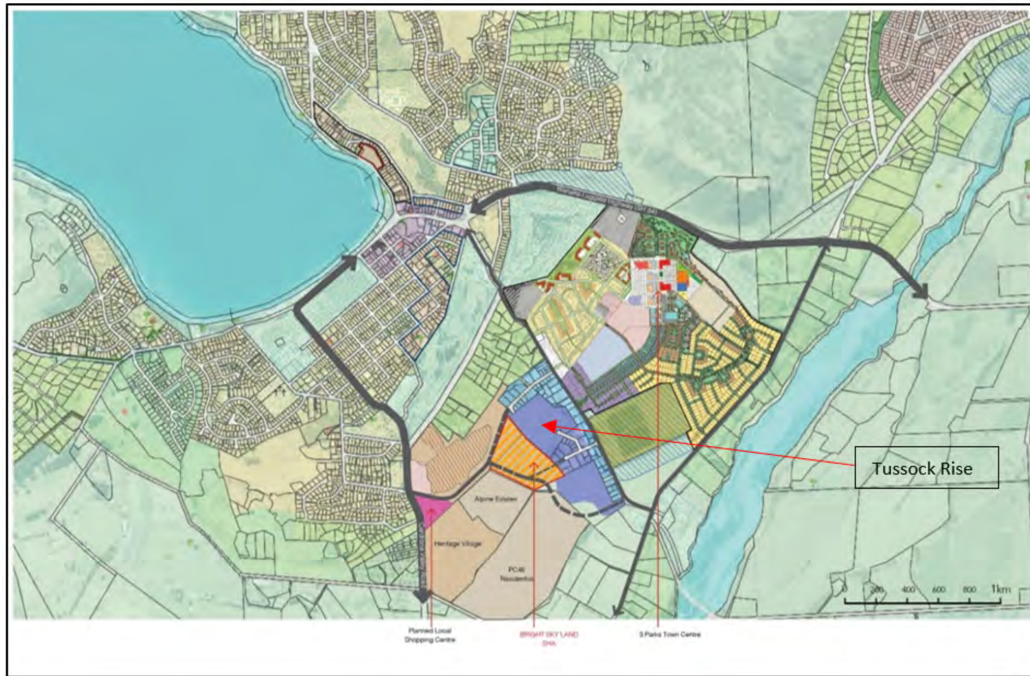

Figure 5: Wider urban context showing Structure Plans (shown on ODP planning map)

4.16 In 2007 the Wanaka Structure Plan[2] exercise was undertaken, as it was felt that the ODP had not kept up with the growth of Wanaka. It was identified through that process that the Tussock Rise site was suitable for a mixed business use, as shown in the Structure Plan below:

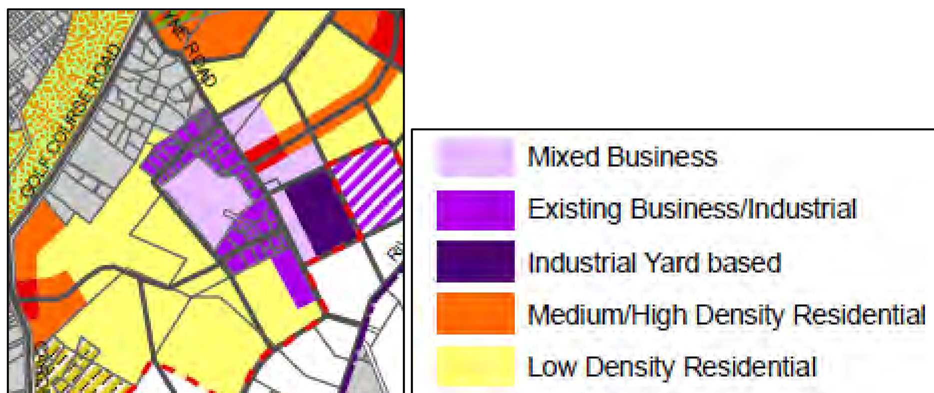

Figure 6: Wanaka Structure Plan 2007

4.17 As noted above, Plan Change 36 did not give effect to the Wanaka Structure Plan 2007 with regard to the Tussock Rise site, rather it notified the Industrial B zone for the site, rather than a Mixed Business type zone. As I was only involved at the end of PC36, with regarding

[2] https://www.qldc.govt.nz/media/vq1fkn2l/2007_proposed_zoning_wanaka_structure_plan-1.pdf
https://www.qldc.govt.nz/media/sm5pytyh/2007_wanaka_structure_plan_review-1.pdf

to resolving discrete appeals, I am unsure as to why the results of the Wanaka Structure Plan 2007 which showed a mixed business area were not implemented. In the s.32 report the assessment joins the 'industrial or business zoning' into one category (Option E), and as I illustrate in Section 3, the Industrial B zone is not a mixed business zone.

4.18 The Wanaka Structure Plan 2007 is now somewhat dated. Parts of it were implemented through plan changes, such as the Three Parks Special Zone (PC16), the Ballantyne Road Mixed Use Zone (PC32), and the Ballantyne Road residential and industrial extension (PC46). However, it must be recognised that the PDP exercise is the first chance to examine the Wanaka area as a whole as happened with the 2007 Structure Plan. There are many good reasons why the Tussock Rise site is suitable for a mixed business zoning as was identified in 2007. I set these out in my evidence to follow.

4.19 In summary, my concern is that the Council, in deciding not to try and zone for new vacant greenfield industrial sites in areas where a more 'pure industrial' zone would be suitable, has instead sought to rigidly protect the existing developed industrial areas that have been developed in such a way that they are not suitable for the proposed General Industrial zone framework. In addition to the evidence of Mr Ballingall about the economic impacts of this decision, in Wanaka this will have the effect of concentrating industrial activities in close proximity to surrounding residential activities.

4.20 This description of the strategic context of the Wanaka industrial area also illustrates that the Tussock Rise site is well suited to the Business Mixed Use zoning sought in the submission. The central location of the Tussock Rise site and adjoining land is perfectly suited for the mix of activities anticipated through the BMUZ framework, including residential. I examine this further in the following section on the 'Purpose' statements for the BMUZ and General industrial zones.

5. SECTION 2: PURPOSE OF THE BMUZ AND PURPOSE OF THE GENERAL INDUSTRIAL ZONE

5.1 The purpose statement of the BMUZ is set out below:

> *The intention of this zone is to provide for complementary commercial, business, retail and residential uses that supplement the activities and services provided by town centres. Higher density living opportunities close to employment and recreational activities are also enabled. Significantly greater building heights are enabled in the Business Mixed Use zone in Queenstown, provided that high quality urban design outcomes are achieved.*

5.2 When reviewing the Purpose Statement for the Business Mixed Use area, in my opinion it is perfectly suited for the Wanaka industrial area. I reach this conclusion due to the existing range of activities present within the zone described in the ground truthing undertaken by Council and referred to in the evidence of Mr Miller and the strategic context of the Wanaka industrial area described in Section 1 above.

5.3 When considering the above purpose statement, I note that the ground truthing exercise undertaken by QLDC already confirms the existing mixed-use nature of the Wanaka Industrial area. As noted in paragraph 8.7 of the S42A report, the split is roughly 50/50 at present in the Industrial A zone, with 53% of activities being service and light industrial activities, and 47% being other activities. In the Industrial B zone the split is 58%/42%. Mr Place states that given these numbers, *"I do not consider that a BMUZ zoning or a GIZ more enabling of non-industrial related activities would be more representative of the current situation within the Zone"*[3]. Significantly Mr Place does not explain *why* he reaches that conclusion, given the numbers quoted clearly demonstrate the use is almost perfectly evenly split, and therefore illustrate the current mixed-use nature of the area.

5.4 The area already provides for *'complementary commercial, business, retail and residential uses that supplement the activities and services provided by town centres'* as sought by the BMU zone purpose. The nature of the industrial and service activities that are already established is that the greater majority are lighter industrial in nature, with no major manufacturing or heavy industries as sought to be provided for in the GIZ, apparent.

5.5 The Tussock Rise site in particular, also provides the opportunity for *'higher density living opportunities close to employment and recreational activities'.* The area is close to the new Te Kura o Take Karara Primary School, just 1.2km by road, and an even shorter walk[4]. The Wanaka Sport and Recreation Centre including a gym / pool / sports fields etc is also just 1.3km away by road.

5.6 In contrast, the purpose statement of the General Industrial zone is set out below:

> *The purpose of the General Industrial Zone is to provide for the establishment, operation and long-term viability of Industrial and Service activities. The Zone*

[3] Paragraph 8.7 S42A report

[4] The ODP structure plan shows there is an opportunity to create a Pedestrian Access from the Tussock rise site through to Ballantyne road for a more direct pedestrian link

recognises the significant role these activities play in supporting the District's economic and social wellbeing by prioritising their requirements, and zoning land to ensure sufficient industrial development capacity.

The Zone seeks to ensure a range of site sizes are available, including for those Industrial and Service activities which require larger buildings and more space for the purpose of outdoor storage, manoeuvring and parking vehicles including heavy vehicles. The role that ancillary Office, Retail and Commercial activities play in supporting Industrial and Service activities is recognised and provided for. Activities and development that would not primarily result in sites being used for Industrial and Service activities are avoided.

While the Zone seeks to provide for land uses more commonly associated with noise, glare, dust, odour, shading, visual and traffic effects and other similar effects, it also seeks to manage activities and development to ensure that appropriate levels of amenity are achieved for people who work within and visit the Zone, and to avoid adverse amenity effects on land located outside of the Zone.

5.7 The General Industrial purpose statement notes that '*the Zone seeks to provide for land uses more commonly associated with noise, glare, dust, odour, shading, visual and traffic effects and other similar effects'.* Given the strategic context of the Wanaka industrial area I have described in Section 1, it must be questioned whether deliberately placing land uses that create noise, glare, dust, odour, shading, visual and traffic effects and other similar effects into an area just 1.2 km from the Wanaka town Centre that is surrounded on almost all sides by residential activity is prudent. I have stated previously I consider the General Industrial zone is suitable for new greenfield industrial re-zonings, but is less suited to being applied to existing industrial areas.

5.8 Given the Council's clear desire for a more 'pure industrial' zone, the Tussock Rise submission and my evidence supports a mixture of Business Mixed Use and General Industrial zoning as shown in Figure 7 below:

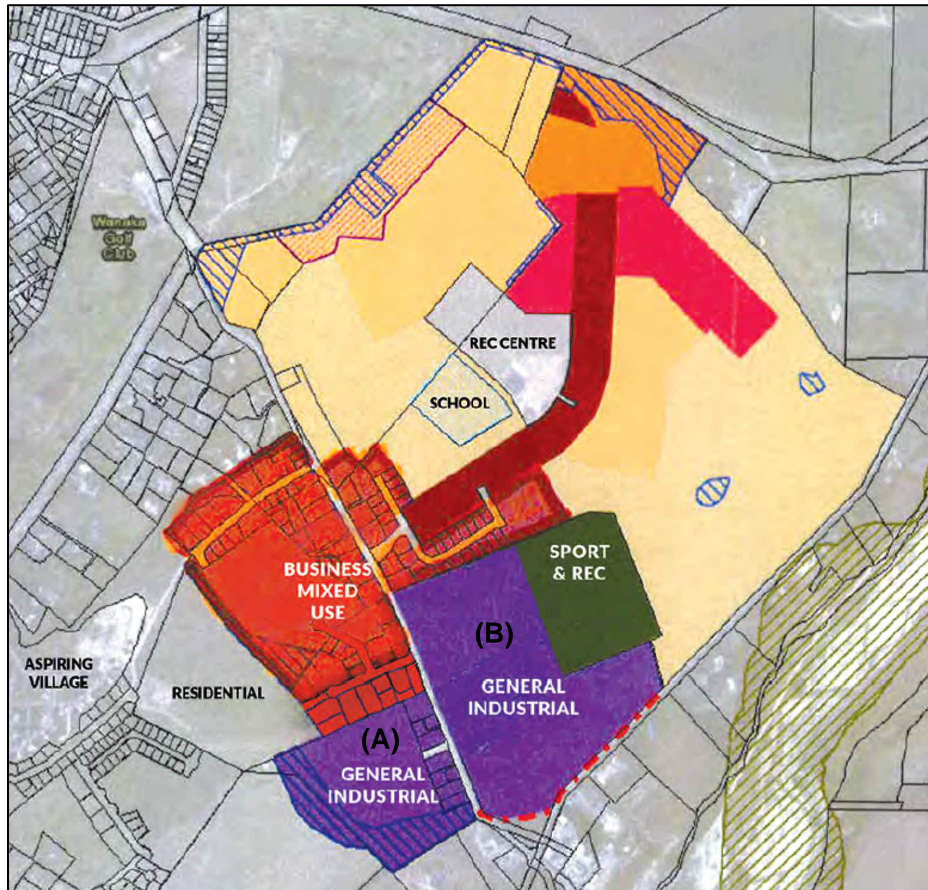

Figure 7: Proposed Re-Zoning from Tussock Rise submission

5.9 In this regard it is my opinion that a pragmatic approach is required. On one hand the QLDC ground truthing, the ground truthing undertaken by Mr Miller for sites directly adjoining Tussock Rise, and my evidence around the strategic context is that the area is already mixed use in nature, however I recognise the desire of Council to protect land for the more 'pure industrial' uses anticipated by the General Industrial zone in this location from normal market forces (despite Mr Balingall's reservations about such an approach from a pure economic perspective).

5.10 In the zoning approach shown in Figure 7 above, the vacant areas shown purple are retained as General Industrial. This is consistent with the Council's position with the exception of a portion of the former oxidation ponds not being zoned for Active Sport and Recreation. Taking a pragmatic approach, the purple area to the south of Frederick Street (marked **(A)**) and accessed off Enterprise Drive has only recently been subdivided into industrial lots[5], and any person purchasing one of these would go in 'eyes wide open' to the nature of the

[5] RM171176

operative Industrial B zone and the proposed General Industrial zone. i.e. the land has not already been developed in a mixed-use fashion. For the land to the east of Ballantyne Road marked (B), this is also predominantly vacant land that includes half of the former Ballantyne Road oxidation ponds, with the only existing buildings being purpose built for industrial use.

5.11 In my opinion the zoning approach set out in Figure 7 above is an approach that better achieves the purpose of the Act and the sustainable management of the Wanaka urban area as it recognises the mixed nature of those areas that have already been developed, the strategic location of that land proposed for BMUZ, while at the same time providing new greenfield land to the south in areas **(A)** and **(B)** that are best placed to manage a General Industrial zoning as they are further isolated from established residential zones.

5.12 While undeveloped, I consider the Tussock Rise site to be best used for a Business Mixed Use zoning as that is the nature of the surrounding land uses, due to the presence of adjoining residential activities, and the elevated nature of the site provides an excellent aspect for a mixed-use type environment. I comment further on this in my Section 9 in relation to the S42A report.

6. SECTION 3: GROUND TRUTHING RESULTS

6.1 The section 32 report refers to the ground truthing that was undertaken. In paragraph 7.22 it is noted that *"the exercise sought to identify the actual mix of activities being undertaken on individual sites within the Industrial Zones <u>according to ODP definitions</u>"*.

6.2 I am unsure why ODP definitions were used as the PDP definitions have now largely replaced the ODP definitions. Some of the definitions used for ground truthing e.g. light industrial, yard based industrial, yard-based storage, appear in the ODP definitions, but not the PDP definitions[6].

6.3 Puzzlingly, the s32 report has states in relation to the Glenda Drive industrial area that *"the zone appears to have a modest presence of residential activities, with 26% of all observed business having an associated residential component"*. However residential activity is not listed in any of the graphs in Figures 12-14 listing predominant and ancillary activities.

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[6] There are no variations to the PDP definitions proposed as part of the GIZ.

6.4 Similarly, when discussing the Wanaka Industrial areas in paragraphs 7.34 – 7.49, the category of residential is not listed in any of the graphs, either as a predominant or ancillary activity. Table 4 covering the results of the Wanaka Industrial A zone in fact lists it as covering the Glenda Drive Industrial Zone.

6.5 The classification of 'ancillary activities' is also a little puzzling, for example the ODP definitions of 'Industrial Activity' and 'Service Activity' both use the term "primary purpose":

INDUSTRIAL ACTIVITY	Means the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing, or associated storage of goods

SERVICE ACTIVITY	Means the use of land and buildings for the primary purpose of the transport, storage, maintenance or repair of goods.

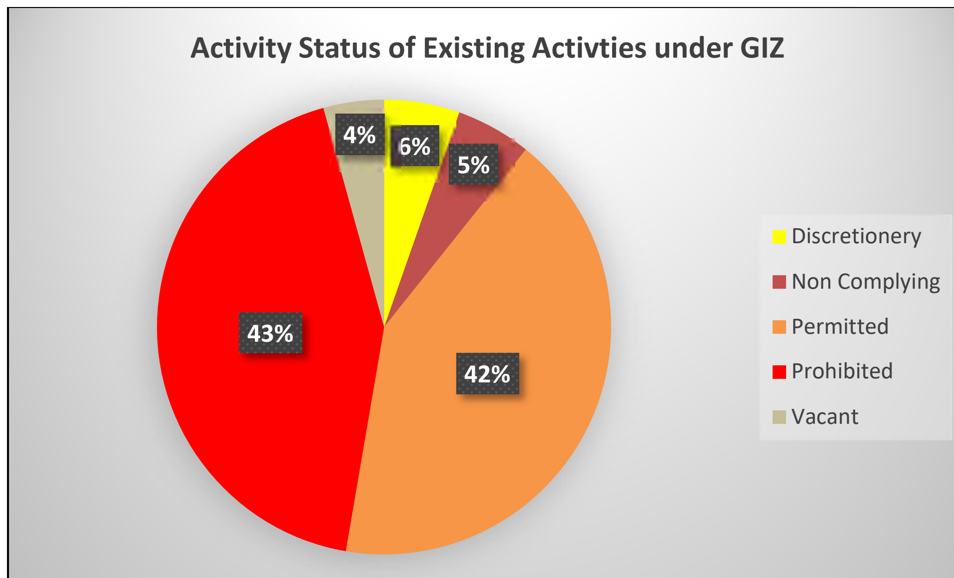
6.6 The ODP Industrial A zone then had a controlled activity rule for buildings, which shows that offices were anticipated in all buildings:

> i **Buildings**
> Buildings in respect of landscaping, external appearance, location of offices and showrooms, and visual impact.

6.7 I am uncertain how the ground truthing undertaken by QLDC distinguished an office as part of an industrial activity, from a separate office space. If it is an office as part of an industrial activity, it is just part of the predominant activity as the site is still used for the 'primary purpose' of industrial activity, and it is not ancillary but an integral part of the industrial activity. i.e. offices are shown in Figures 12-19 of the s32 as being ancillary, but they may just be an integral part of running an industrial or service activity.

6.8 I refer the Panel to the evidence of Mr Miller who visited every site adjoining the Tussock Rise land and photographed and recorded the activity undertaken. I then classified these into different types of activity based on PDP definitions.

6.9 The results are shown in Figure 8 below:



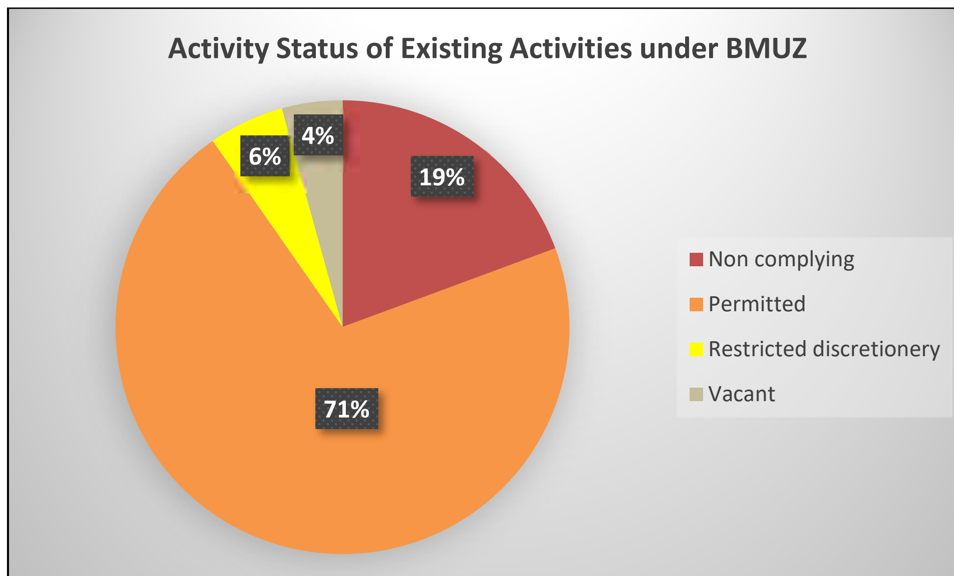


Figure 8 - Activity Status of Existing Activities adjoining Tussock Rise site

6.10 The results show that the area adjoining the Tussock Rise site is closer to a BMUZ than a GIZ, because under a GIZ 48% of them would be prohibited or non-complying activities. In contrast, under a BMUZ, 19% of existing activities would be non-complying and none prohibited.

6.11 In terms of the category of activity itself, the table below illustrates the results of the ground truthing for sites adjoining Tussock Rise.

PDP Definition	***Number***	***Percentage***
Commercial	23	24.7%
Commercial Recreation Activity	3	3.2%
Health Care Facility	2	2.1%

Industrial Activity	18	19.3%
Residential Activity	17	18.2%
Service	21	22.6%
Trade supplier	5	5.4%
Vacant	4	4.3%
Total	**93**	**100%**

6.12 On the Tussock Rise boundary is approximately 42% industrial and service activities, to 58% non-industrial activities, based on the research of Mr Miller.

6.13 In the following section of my evidence I compare the ODP and PDP industrial zones.

7. SECTION 4: COMPARISON OF THE ODP AND PDP INDUSTRIAL ZONES

7.1 The Tussock Rise submission raised a concern about the proposed 'one size fits all' approach to the industrial zones in the Queenstown Lakes District. In my opinion, Issue 4 of the s.32 report does not fully assess the implications of moving from the operative Industrial A and B zones to a single General Industrial zone. The operative Industrial A and B zones are quite different, and this is reflected in the nature of the different industrial areas in Queenstown and Wanaka.

7.2 I understand from my involvement with PC36 that the approach under the ODP of having two industrial zones was a deliberate decision to create a new, separate industrial zone rather than try and amend the operative Industrial A zone. The approach reflected the nature of the different industrial areas. The proposed General Industrial zone seeks to retrospectively apply a 'one size fits all' more pure industrial zone to areas that are already developed and are certainly not purely industrial in nature.

7.3 By way of comparison I understand that the National Planning Standards (which the Queenstown Lakes District will have to move to within 7 years) in fact have three industrial zones, Light, General and Heavy Industrial to reflect the different nature of industrial areas. The National Planning Standard zones for industrial activity are set out below[7]:

[7] https://www.mfe.govt.nz/sites/default/files/media/RMA/national-planning-standards-november-2019.pdf

Light industrial zone	Areas used predominantly for a range of industrial activities, and associated activities, with adverse effects (such as noise, odour, dust, fumes and smoke) that are reasonable to residential activities sensitive to these effects.
General industrial zone	Areas used predominantly for a range of industrial activities. The zone may also be used for activities that are compatible with the adverse effects generated from industrial activities.
Heavy industrial zone	Areas used predominantly for industrial activities that generate potentially significant adverse effects. The zone may also be used for associated activities that are compatible with the potentially significant adverse effects generated from industrial activities.

7.4 At a high level, I consider the S42A GIZ to be similar to the Heavy Industrial Zone, whereas the QLDC and Mr Miller's ground truthing show that on the ground for the Wanaka industrial area is more akin to a Light Industrial as defined under the National Planning Standards definitions above.

7.5 The table below is a summary only to illustrate to the Panel the differences between the four relevant zones. It is challenging to summarise four zones in a table as each has different ways of regulating activities, for example the Industrial B zone had provisions for Structure Plans to be prepared.

Activities	***Industrial A (ODP)***	***Industrial B (ODP)***	***General Industrial (PDP) S42A version***	***Business Mixed Use (PDP)***
Industrial Activities	Permitted	Permitted	Permitted	Some RD, otherwise non-complying
Service Activities	Permitted	Permitted	Permitted	Permitted
Commercial	Permitted	Non-complying	Prohibited	Permitted
Trade Suppliers	Permitted	Non-complying[8]	Discretionary	Restricted Discretionary
Offices (not ancillary)	Permitted	Prohibited	Prohibited	Permitted
Buildings	Controlled	Controlled	Restricted Discretionary	Restricted Discretionary
Residential	1 per site for custodial use	Prohibited	Prohibited	Permitted
Outdoor storage areas	Controlled	Controlled	Permitted	Restricted Discretionary
Commercial Recreation Activities	Discretionary	Permitted	Non-complying	

[8] 11.5.5.23

Community Activities	Permitted	Non-complying	Non-complying	Permitted
Ancillary retail sales	Permitted up to 20% GFA	Permitted up to 20% NFA or 100m²	Permitted up to 50m².	Permitted
Ancillary retail sales >20% of GFA	Non-complying	Prohibited	50-100m² – RD 100m²+ - NC	Permitted
Airports	Non-complying	Non-complying	Prohibited	Prohibited
Activities requiring offensive trade licence	Non-complying	Non-complying	Non-complying	Not listed so permitted
Visitor accommodation	Non-complying	Prohibited	Prohibited	Controlled
Factory farming	Non-complying	Non-complying	Non-complying	Prohibited
Standards				
Minimum Lot size	200m²	1000m²	1000m² or for lots 500-1000m² discretionary	200m²
Site coverage	75%	100% (no limit)	75%	75%
Setbacks	A variety	15m from residential zones	3m road boundary 7m adjoining non GIZ zones	3m from residential zones and 45 degree angle
Height	6m	7m[9]	10m	12m (Wanaka)
Noise	a) daytime (0800 to 2000 hrs) 60 dB LAeq(15 min) b) night-time (2000 to 0800 hrs) 50 dB LAeq(15 min) c) night-time (2000 to 0800 hrs) 70 dB LAFmax	a) daytime (0800 to 2000 hrs) 60 dB LAeq(15 min) b) night-time (2000 to 0800 hrs) 50 dB LAeq(15 min) c) night-time (2000 to 0800 hrs) 70 dB LAFmax	No specific limits, refers to zones in which noise is received.	Residential requires acoustic insulation a. Daytime (0800 to 2200hrs) 60 dB LAeq(15 min) b. Night-time (2200 to 0800hrs) 50 dB LAeq(15 min) c. Night-time (2200 to 0800hrs) 75 dB LAFmax

7.6 The above table illustrates that the S42A General Industrial zone is similar but overall more restrictive than the ODP Industrial B zone in that:

- Buildings require restricted discretionary activity resource consent, rather than controlled.
- Commercial activities (with the exception of trade suppliers) are prohibited, rather than non-complying.
- Ancillary retail is limited to 50m² rather than 100m².

[9] Height is taken from the Connell Terrace topographic plan which effectively requires lowering of the site.

7.7 The table also illustrates that the S42A GIZ is more enabling than the ODP Industrial B zone in that:

- The height limit has increased from 7 to 10m (except for the Tussock Rise site that under the ODP requires 80,000m^3 to be removed and then 7m height).
- Trade suppliers are discretionary rather than non-complying.
- Outdoor storage areas are permitted rather than controlled.

7.8 This supports my evidence that the S42A General Industrial zone is, with some exceptions, a more 'pure' industrial zone than the ODP Industrial B zone.

7.9 The key differences between the S42A General Industrial and the BMUZ are:

- Industrial activities are permitted in the GIZ, whereas some require restricted discretionary consent in the BMUZ, or are otherwise non-complying.
- Commercial activities are prohibited in the GIZ (excluding trade suppliers which are discretionary) but permitted in the BMUZ
- Retail activities that are not ancillary are prohibited in the GIZ, and permitted in the BMUZ.
- Residential activities are prohibited in the GIZ but permitted in the BMUZ.
- The BMUZ has much more detailed matters of restricted discretion (and proposed design guidelines) however both require restricted discretionary consent for buildings.

7.10 If the Tussock Rise relief is granted, it is reasonable to expect that the 47% of activities in the ODP Industrial A zone, and 42% of activities in the Industrial B Zone that were not industrial or service activities could continue under a BMUZ framework. Of the 53% of activities in the Industrial A zone, and 58% of activities in the Industrial B zone that were classified as industrial or service activities, all *service* activities could continue unaffected by a BMUZ as service activities are also permitted in the BMUZ. The existing industrial activities could continue under their resource consents or existing use rights, however *new* industrial or trade supply activities would require resource consent.

7.11 Should the proposed General Industrial zone be applied to Wanaka industrial area (including Three Parks Business Sub-Zone) it is also the case that many existing activities will be able to continue under their resource consents or existing use rights. However due to the prohibited activity status

propose din the GIZ, for some it will be impossible to change to alternative commercial uses as these will be Prohibited[10]. This could render the existing built form (e.g. an office) unusable.

7.12 It is also reasonable to expect that the area will see increasing development of activities that include a residential or retail component. In Section 2 above I set out the purpose statement for the BMUZ which states that the BMUZ is to provide for complementary commercial, business, retail and residential uses that supplement the activities and services provided by town centres. Higher density living opportunities close to employment and recreational activities are also enabled. I consider the proposed location for BMUZ meets the purpose statement of the zone, and that the increased presence of activities with a retail or residential component is appropriate given the strategic context.

8. SECTION 5: LOSS OF INDUSTRIAL LAND SUPPLY

8.1 The Panel will be familiar with the evidence of Ms Hampson for Council, and Mr Ballingall for Tussock Rise. Both economists agree that QLDC is meeting its requirements under the National Policy Statement on Urban Development capacity (NPS-UDC) in terms of industrial land supply for Wanaka. There is sufficient land zoned for Wanaka's industrial needs over the long term even with Tussock Rise being rezoned. Mr Ballingall concludes:

> *[26] In short, my view is that rezoning Tussock Rise should be supported because:*
>
> *a) There is more than enough industrial-zoned land available in Wanaka to meet demand for the next 30 years, even under the rosiest demand projections.*
>
> *b) The BDCA's – and hence Council's – central argument against flexible zoning has no economic merit and in fact works counter to the RMA's purpose, decreasing economic wellbeing. This is perverse.*
>
> *c) The Wanaka economy needs Council support to regenerate after the Covid-19 recession. Innovation and new business development will be stifled if restrictive industrial zoning is maintained, despite an acknowledged lack of demand.*

8.2 Mr Ballingall has had the benefit of preparing his evidence while the Covid-19 economic shut down was underway, and has been able to consider the consequent impact on Wanaka from the complete disruption to international tourism.

8.3 Wanaka currently only has one other area of BMUZ at Anderson Heights. Ms Hampson notes in her paragraph 18.6(e) that this area is full and only provides some redevelopment potential in the short to medium term.

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[10] Office, retail and commercial activities not otherwise identified are prohibited under Rule 18A.4.14.

8.4 While additional land is proposed to be rezoned at Three Parks along Sir Tim Wallis Drive, this is all within a single ownership, providing a local monopoly on the supply of BMUZ zoned land. I alert the Panel to this situation as the NPS-UDC contains a specific policy PA3 relating to providing choices and limiting "as much as possible" adverse impacts on the competitive operation of land markets:

> *PA3. When making decisions that affect the way and rate at which development capacity is provided, decision-makers shall provide for the social, economic, cultural and environmental wellbeing of people and communities and future generations, having regard to:*
>
> - *Providing choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses*
> - *Promoting efficient use of scarce urban land and infrastructure*
> - *Limiting as much as possible adverse impacts on the competitive operation of land and development markets.*

8.5 This policy is particularly relevant to the relief sought by Tussock Rise, as the S42A version proposed would result in all vacant BMUZ zoned land being held in one ownership. This is a local monopoly situation that could adversely affect the competitive operation of land and development markets for BMUZ land.

8.6 It is accepted by both economists that the rezoning of the Tussock Rise site to a BMUZ will not adversely affect the total supply of land zoned for industrial purposes. I prefer the evidence of Mr Ballingall as he has adopted a more pragmatic approach to the issues at hand and has had the benefit of considering the description of the strategic context I have provided with this evidence, and has prepared his evidence with a growing knowledge of the Covid-19 economic impacts on the Wanaka economy.

9. SECTION 6: MANAGING REVERSE SENSITIVITY, INCLUDING NOISE EFFECTS AND ODOUR

9.1 The Panel will be alive to the risk of reverse sensitivity arising from the submissions seeking BMUZ. Re-zoning the land to BMUZ does enable residential use, and presents the risk of residential occupiers complaining about the operations of established businesses located along Ballantyne Road, Gordon Road and Connell Terrace. The most likely potential effects that could be complained of are considered to be noise and odour from the established activities.

9.2 I note that residential use is already apparent in the zone, so we do have a test case upon which to consider the risk. Live-work custodial units are apparent along Gordon Road already, as shown in Figure 9 below.

Figure 9: Fourteen first floor custodial units approved under RM050831

9.3 Of the 14 units, I understand five are tenanted separately on the ground floor from the first floor. Four are fully occupied (ground and first floor by the owners), two are fully tenanted with the same tenant, two have the owner on one floor and a tenant above, one is vacant.

9.4 With regard to <u>noise</u> complaints, QLDC holds records of noise complaints. I have enquired with QLDC whether any complaints about noise or odour have been received from occupiers of these custodial units about noise from surrounding industrial activities. The response in Appendix **[D]** was that no complaints have been received about surrounding business / industrial activity, but that four complaints had been received about the occupiers of one of the residential units.

9.5 With regard to <u>odour</u>, my observation when walking around the area is that odour is likely to be less of a concern. No waste disposal or manufacturing premises were identified that could give rise to odour issues, for example transfer stations or fish processing. Odour complaints are generally held by the Otago Regional Council and are managed under the Regional Plan: Air[11].

9.6 I have reviewed the Regional Plan Air which contains Rules 16.3.5.1 – 16.3.5.9 which cover discharges from industrial or trade processes. Every rule lists a permitted discharge, which is subject in every case to the proviso that "*any discharge of odour, particulate matter or gases is not noxious, dangerous, offensive or objectionable at or beyond the boundary of the property*"[12]. These rules provide the Panel with a high level of certainty that an activity that generates noxious, dangerous, offensive or objectionable odours beyond the site boundary could arise from existing

[11] I have requested from ORC a record of any odour complaints received from these residential properties on 25/05/20.

[12] This example taken from Rule 16.3.5.4(b).

business or from those new activities moving into an existing premise and setting up operations, and adversely affecting residential development within a BMUZ zoning.

9.7 With regard to the noise implications of the proposed rezoning, the Panel will have read the acoustic evidence of Dr Trevathan of Acoustic Engineering Services. Dr Trevathan notes that the BMUZ has provisions "hard wired "into it for reverse sensitivity for residential development within the BMU zone. Rule 16.5.5 applies which states the following:

For all residential development and visitor accommodation the following shall apply:

16.5.5.1 A mechanical ventilation system shall be installed for all critical listening environments in accordance with Table 5 in Chapter 36; and

16.5.5.2 All elements of the façade of any critical listening environments shall have an airborne sound insulation of at least 40 dB Rw + Ctr determined in accordance with ISO 10140 and ISO 717-1.

9.8 Dr Trevathan confirms that this a very high level of sound insulation. Under a full rezoning of the Tussock Rise site to BMUZ, Dr Trevathan concludes:

> *I consider it unlikely that there would be any significant negative noise effects associated with the rezoning of the Tussock Rise site to Business Mixed Use and any concerns with residential development in this zone will be very adequately addressed by rule 16.5.5 of the PDP.*[13]

9.9 While not strictly necessary based on the evidence of Dr Trevathan, to provide QLDC with further comfort, a private developers agreement could be entered into at the time of subdivision requiring that non-objection covenants be registered on the title of any allotment containing a residential unit under either a BMUZ or split BMUZ/ LDSR scenario. This would be a private agreement between Tussock Rise and QLDC, recognising that non-objection matters are not able to be addressed through rules in the PDP.

9.10 The proposed rezoning would increase the potential for reverse sensitivity effects to arise, particularly in relation to noise. However, the acoustic evidence is that the BMUZ has stringent provisions that mitigate this risk, recognising the mixed-use nature of the zone.

10. SECTION 7: MANAGING TRANSPORT INCLUDING WALKING AND CYCLING

[13] Paragraph 4.8 – Evidence of Dr Jeremy Trevathan

10.1 With regard to the transportation implications of the proposed re-zoning to BMUZ, these have been fully considered in the evidence of Mr Carr. The local roading network is well described by Mr Carr, and he is also familiar with the proposed roading connections linking Avalon Station Road with Gordon Road (and Ballantyne Road) that were proposed as part of the adjoining Bright Sky Special Housing Area proposal. A connection between Avalon Station Road and Gordon Road is shown in the QLDC 2018 Wanaka Network Operating Framework document[14].

10.2 Mr Carr has considered a concern raised in the S32 report[15] that if non-industrial uses are allowed then there may be conflicts created between the different types of road user. Particular examples raised include high traffic and pedestrian volumes that result in conflicts arising, and limited and/or disjointed active transport networks.

10.3 Mr Carr considers the existing provision of infrastructure for pedestrians and cyclists. On this basis, two of the roading connections already meet the QLDC Code of Practice for walking and cycling, and only relatively minor changes are required for the third connection in order to meet the Code. Mr Carr therefore does not consider that the concerns of the Council regarding the mix of road users are relevant for this particular rezoning request.

10.4 Further to Mr Carr's evidence, I also note there is an off-road trail connection on the eastern side of Ballantyne Road that provides a direct walking /cycling route into downtown Wanaka. This trail is located within QLDC legal road so is able to be relied upon. The trail connection is 400m from the edge of the Tussock Rise site.

10.5 Mr Carr concludes that there are no traffic and transportation reasons why the submission could not be accepted, and the Tussock Rise site rezoned as BMUZ. His analysis does not indicate a need for intersection or roading improvements, even when the site is fully developed. Rather there is ample capacity already available. However, if improvements were to be required, they can be accommodated within the existing legal roads, which are 20m wide.

11. SECTION 8: ASSESSMENT AGAINST THE QLDC REZONING PRINCIPLES

11.1 The following rezoning principles have been used by QLDC in the S42A report prepared by Mr Barr for the Strategic Directions section of the PDP. In his report, Mr Barr notes that they are not

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14 https://www.qldc.govt.nz/media/ffadaq0p/wanaka-network-operating-framework-report.pdf

15 Paragraph 7.48 of General Industrial Zone S32 report

intended to paraphrase the tests set out in the Colonial Vineyards Environment Court decision, but rather to elaborate on those tests as it may apply to matters raised in a submission[16]. The assessment is necessarily high level as these are 'principles' upon which a rezoning is considered. I now consider those principles

Whether the change is consistent with the objectives and policies of the proposed zone. This applies to both the type of zone in addition to the location of the zone boundary;

11.2 The proposed zone is BMUZ or alternately a split of BMUZ / LDSR. In Section 2 I explored the Purpose Statements of the BMUZ and General Industrial Zones, and in my opinion the proposed rezoning is perfectly captured by the Purpose Statement for the BMUZ. In Appendix **[E]** I provide a full assessment against the objectives and policies of the BMUZ. A short summary of that assessment is provided below.

11.3 With regard to the objectives and policies of the BMUZ, the proposed re-zoning is consistent with the objectives and policies of the BMUZ. The two relevant objectives are set out below:

> *16.2.1 Objective – An area comprising a high intensity mix of compatible residential and non-residential activities is enabled.*

11.4 The area already exhibits a mix of activities as confirmed by Mr Millers evidence and QLDC's ground truthing. Development of the Tussock Rise site under a BMUZ framework, or split BMUZ / LDSR would increase this 'high intensity' mix of compatible residential and non-residential activities.

> *16.2.2 Objective – New development achieves high quality building and urban design outcomes that minimises adverse effects on adjoining residential areas and public spaces.*

11.5 Development of the Tussock Rise site can readily achieve this objective. High quality urban design outcomes are a key part of the BMUZ and associated design guidelines that can be implemented on the Tussock Rise site. Where sites are already developed in the wider area, re-development under a BMUZ framework can also achieve this objective.

11.6 The Tussock Rise site adjoins LDSR land, and this interface can be better managed under a BMUZ framework than under the notified GIZ / LDSR scenario as the uses are more compatible, and there would be no need for large setbacks or bunds under a full BMUZ rezoning.

11.7 A development concept could see access come through the Bright Sky residential area, fully separating residential traffic from non-residential traffic. The change would be consistent with the objectives and policies of the proposed zone.

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[16] Paragraph 8.7, Strategic S42A report, Mr Craig Barr.

11.8 With regard to the *policies* of the BMUZ, these are focused on ensuring a high-quality design response that achieves an urban environment that is desirable to work and live in. I have examined the full range of policies under the two objectives above (refer Appendix **[E]**), and consider the development of the Tussock Rise site could readily achieve the policies.

Whether the change is consistent with the PDP Strategic Directions chapters (Chapters 3-6);

11.9 I have assessed the proposed rezoning against the relevant Strategic Directions objectives and policies (including the latest changes shown in the Strategic S42A report in Appendix **[F]**. The proposed rezoning is consistent with numerous Strategic Objectives relating to enabling people to provide for their social and economic well-being. I refer the Panel to the full assessment in Appendix **[F]**. I have also considered the objectives and policies of the Urban Development chapter, and refer the Panel to Appendix **[H]**.

11.10 A key policy is Strategic Policy 3.3.8 that states:

> *3.3.8 Avoid non-industrial activities not ancillary to industrial activities occurring within areas zoned for industrial activities. (relevant to S.O. 3.2.1.3 and 3.2.1.5).*

11.11 This policy is not under appeal and has clearly been important in the Council's approach to the notified General Industrial zone. This stringent 'avoid' policy supports the proposed General Industrial zone that has been notified by QLDC which is a 'pure industrial' type zone with a number of prohibited and non-complying activities.

11.12 If the Tussock Rise relief is granted it would not result in non-industrial activities occurring in an industrial zone, rather it would be a non-industrial zone next to an industrial zone, all of which was originally zoned Industrial A.

11.13 It must also be recognised that the Strategic Policy 3.3.8 was notified as part of Stage 1 of the PDP when the provisions for the General Industrial zone were not available. It was therefore difficult for submitters to predict how the 'avoid' strategic objective would be applied in the absence of a zoning framework. Submitters on Stage 1 could reasonably have assumed the two-zone approach to industrial areas would have been continued when the industrial zones were considered.

11.14 I consider that Strategic policy 3.3.8 must be read in light of the two industrial zone framework that existed at the time it was notified as part of Stage 1. The operative Industrial A and B zones have quite different objectives, policies and rules and reflect the different nature of the industrial areas of the

Queenstown Lakes district. The operative Industrial A zone is applied to the existing industrial areas that are more 'business / light industrial / mixed use' in nature. The operative Industrial B zone is more suited to greenfield industrial park areas that are yet to be developed, and not located near residential areas where the opportunity still exists to create a genuine industrial area and prevent or restrict sensitive activities that could result in reverse sensitivity complaints.

11.15 By proposing to combine the Industrial A and B zones, and remove the Three Parks Business Sub-Zone, and replace with a single 'General Industrial' zone for the whole Wanaka industrial area, the provisions have sought to become a 'one-size fits all' approach, which is now covered by the strategic 'avoid' policy 3.38 when those earlier zones did not try to avoid all non-industrial activities.

11.16 In my opinion the notified GIZ is suitable for large new greenfield rezonings such as what resulted in Stage 1 such as the new Coneburn Industrial Area. I consider it is inappropriate for existing areas such as in Wanaka and Glenda Drive to be rezoned that based on the ground truthing results cannot be described as pure industrial as anticipated by the General Industrial zoning. In my opinion the Wanaka and Glenda Drive industrial areas do not exhibit the characteristics contemplated by the General Industrial zone. In particular, industrial and service activities are not in fact the dominant land uses but rather form part of a mixed business environment as the section 32 report notes in Figure 15 - 19, where office and commercial activities are in fact common across both the Industrial A and B zones. The notified provisions seek that these now be prohibited activities.

11.17 Given the extent of existing built development in the Wanaka industrial area, it is not possible to turn it back into a more 'pure industrial' zone. It cannot be suggested that the Strategic Policy seeks to retrospectively turn existing mixed commercial areas into pure industrial zones. While existing activities can likely continue under their land use consents (which when given effect to never lapse) or existing use rights, a prohibited activity status could create problems for minor alterations or additions or more importantly other changes in use which cannot be accommodated as existing use as they are of a different scale or characteristic. For example, if one office use ceases to operate in a purpose-built office premise, another office use may not be able to establish in the vacant premises (it may depend on how well described / defined the consent was that created the right to use the premises).

11.18 I note that the section 32 report the rezoning of the ODP Ballantyne Road Mixed Use Zone away from industrial to the proposed Active Sport and Recreation Zone, the proposal was not considered to be inconsistent with the Strategic Directions chapters given the large supply of industrial zoned land available in Wanaka. I consider a similar conclusion can be reached for the Tussock Rise relief given the more than adequate supply of industrial land in Wanaka.

11.19 Overall, the proposed rezoning is consistent with the enabling Strategic Directions objectives and policies, but can be considered inconsistent with Strategic Policy 3.3.8. Viewing the policy in the context of the staged approach to the review is important. I understand that with the rezoning of the Ballantyne Road Mixed Use zone away from industrial, that proposal was not found to be inconsistent with his strategic policy, most likely due to the good supply of industrially zoned land for Wanaka.

The overall impact of the rezoning gives effect to the PRPS and PORPS;

11.20 I have considered the proposed rezoning in the context of the Operative Regional Policy Statement 1998 for Otago, and in particular, against the Partially Operative Regional Policy Statement that has almost fully replaced the 1998 document.

11.21 Policy 4.5.1(b) of the PORPS requires monitoring of the supply and demand of commercial and industrial zoned land. Policy 4.5.3(h) relates to urban design. New urban development should be designed with regard to a diverse range of housing, commercial, industrial and service activities.

11.22 Policy 5.3.3 relates to managing the finite nature of suitable land available for industrial activities by:

> *a) Providing specific areas to accommodate the effects of industrial activities;*
> *b) Providing a range of land suitable for different industrial activities, including land-extensive activities;*
> *c) Restricting the establishment of activities in industrial areas that are likely to result in:*
> > *i. Reverse sensitivity effects; or*
> > *ii. Inefficient use of industrial land or infrastructure.*

11.23 With regard to (a), the Council has provided specific areas to accommodate industrial activities. The evidence of two economists is unanimous that Wanaka is well catered for with regard to industrial land supply, including if the Tussock Rise site is removed from the pool of industrial land through a BMUZ rezoning.

11.24 With regard to part (b) of the policy, as noted above more than enough land has been zoned for industrial, and this would include the full range of activities, including land extensive activities[17].

11.25 With regard to part (c) of the Policy, activities that are likely to result in reverse sensitivity effects are to be restricted (ci). I have considered reverse sensitivity in my Section 5, and based on the evidence

[17] I also note that in the S42A for the rezoning of the Ballantyne Road Mixed Use Zone away from an industrial zoning to Active Sport and Recreation, that proposal was not considered inconsistent with or contrary to PORPS policy 5.3.3 above, despite the ODP Ballantyne Road Mixed Use Zone being specifically set up for yard based industrial activities. The S32 report for that rezoning does not elaborate on it, so I must presume it is due to the large supply of industrial zoned land available in Wanaka.

of Dr Trevathan and the existing ORC rules around odour, I do not expect reverse sensitivity effects to arise.

11.26 With regard to part (cii), activities that would result in the inefficient use of industrial land or infrastructure are also to be restricted. I have reviewed the evidence of Mr Ballingall who confirms that a BMUZ would result in a very efficient use of this land, and a more economically efficient use than what is enabled under the General Industrial framework.

11.27 I therefore do not consider the proposal to be inconsistent with this key policy of the PORPS.

Issues debated in recent plan changes are considered;

11.28 There have not been any recent plan changes. The Industrial B zone was made operative in 2013.

Changes to zone boundaries are consistent with the maps in the PDP that indicate additional overlays or constraints (e.g. Airport Obstacle Limitation Surfaces, SNAs, Building Restriction Areas, ONF/ONL);

11.29 There are no additional overlays or constraints.

Changes should take into account the location and environmental features of the site (e.g. the existing and consented environment, existing buildings, significant features and infrastructure);

11.30 The location and environmental features of the site are described in section 2 of this evidence. It is my view the re-zoning proposal better matches the change in topography apparent on the Tussock Rise site than the operative zoning, as the Tussock Rise site is elevated above surrounding land making the visual impact of any industrial development on the site more pronounced.

Zone changes recognise the availability or lack of major infrastructure (e.g. water, wastewater, roads), and that changes to zoning does not result in unmeetable expectations from landowners to the Council for provision of infrastructure and/or management of natural hazards;

11.31 There are no known infrastructural constraints. Existing zoning provides for development utilising QLDC reticulated infrastructure. From my experience with the Bright Sky SHA proposed on the neighbouring land, I am also aware that the QLDC has committed expenditure through its LTP for infrastructure works in this area due to the rezoning of adjacent land such as Bright Sky to LDSR.

Zone changes take into account effects on the wider network water, wastewater and roading capacity, and are not just limited to the matter of providing infrastructure to that particular site;

11.32 The area is already serviced with reticulated infrastructure. There are no known infrastructural constraints. Existing zoning provides for development of what I have called the Wanaka industrial area utilising QLDC reticulated infrastructure. Roading capacity has been considered in the evidence of Mr

Carr and his conclusion is that these can cope with the effect of the rezoning. The BMUZ zoning of the site is unlikely to generate greater demand on infrastructure than an industrial zoning.

There is adequate separation and/or management between incompatible land uses;

11.33 The BMUZ zoning has provisions which seek to ensure activities such as residential can sit comfortably alongside business and industrial activities. This has been confirmed in the acoustic evidence of Dr Trevathan.

11.34 The BMUZ has a real focus on urban design, as well as a set of proposed design guidelines. This would provide the opportunity to provide for a suitable transition between the adjoining LDSR zone and the proposed BMUZ, without the need for a 20m wide 3m high earth bund as is currently required under the ODP Industrial B zones.

Rezoning in lieu of resource consent approvals, where a portion of a site has capacity to absorb development does not necessarily mean another zone is more appropriate; and

11.35 The rezoning sought is not in lieu of a resource consent approval.

Zoning is not determined by existing resource consents and existing use rights, but these will be taken into account.

11.36 The requested rezoning is not determined by existing resource consents or existing use rights as all buildings in the operative Industrial A and B zones require resource consent to be constructed. However, as the ground truthing demonstrates, the existing mix of consented activities is close to 50% industrial and 50% commercial. I also refer to the evidence of Mr Miller who has undertaking more detailed ground truthing of sites directly adjoining the Tussock Rise land.

12. SECTION 9: SECTION 42A REPORT

12.1 The key difference in the planning assessment of Mr Place and myself is with regard to the results of the ground truthing exercise undertaken. In paragraph 8.7 of the S42A report, Mr Place states:

> *"….The ground truthing results conducted as part of the S32 in fact demonstrate that 53.3% of all recorded predominant activities within the Wanaka ODP Industrial Zone comprised Service activities and Light Industrial activities[175]. Offices and other non-industrial activities represent 33.8% of all recorded predominant activities[175]. In the Industrial B Zone, the ground truthing results demonstrated that industrial type activities (comprising Service and Light Industrial activities) represented 58.3% of all recorded activities[176]. Given this, I disagree with the suggestion that the Wanaka GIZ is not predominantly industrial in character.*

While there may be other non-industrial related activities occurring within the Wanaka GIZ, I do not consider that a BMUZ zoning or a GIZ more enabling of non-industrial related activities would be more representative of the current situation within the Zone."

12.2 This paragraph is pivotal to Mr Place's conclusions, as he sees the slight majority of industrial activity in the Industrial A zone of 3%, and the Industrial B zone of 8% as being crucial, with a GIZ more representative of the current situation within the zone.

12.3 My view is that the small majority in industrial and service activities is not sufficient justification to try and retrospectively turn the area into a more restrictive 'pure industrial' type zone, but rather that the ground truthing confirms the existing mixed-use nature of the environment. Given the strategic context of the Tussock Rise location and the 'Wanaka Industrial area' generally, I consider a mixed-use zoning better recognises both the existing mixed-use nature of the area and better provides for the sustainable management of Wanaka. I also refer the Panel to the very detailed ground truthing undertaken by Mr Miller of sites adjoining the Tussock Rise land.

12.4 In paragraph 8.8 Mr Place considers the more enabling BMUZ framework. He states that:

The application of a BMUZ would provide a much more enabling framework for a wide range of activities, including Office, Commercial, Retail and Residential activities, that are known to have adverse effects on the establishment, operation, and long term growth of Industrial and Service activities. These include reverse sensitivity effects, competitive market disadvantages (in terms of m2 profitability and land value increase within the proposed GIZ), increased vehicle/pedestrian related traffic conflicts between the different uses, their customers and staff, and the resulting loss of industrially zoned development capacity. The submitters relief would therefore be contrary to Policies 3.2.1 and 3.2.1.6 of Chapter 3 (Strategic Direction) PDP, which set out that the District's economy should be managed in a way that provides prosperity, resilience and equity as well as for diversification.

12.5 With regard to this paragraph I comment as follows:

- reverse sensitivity effects – I have considered these in Section 5 and note that Tussock Rise have provided expert evidence in relation to acoustic matters. No other party has presented expert evidence on these matters and in particular Council has not called any expert acoustic (or traffic) evidence to support Mr Places conclusions[18].

[18] The evidence of Michael Smith does not address the Tussock Rise submission.

- competitive market disadvantages – I have considered these in Section 4 and Mr Ballingall (supported by Ms Hampson for Council) has comprehensively addressed these matters in his evidence in the context of a significant amount of industrially zoned land being available. The lack of a competitive market for vacant BMUZ land has not bee recognised.
- Increased vehicle / pedestrian related traffic conflicts – I have considered these in Section 6 and the expert evidence of Mr Carr is that these are readily managed.
- Strategic Objective 3.2.1 – I cannot agree the relief is contrary to Strategic Objective 3.2.1 which seeks *The development of a prosperous, resilient and equitable economy in the District.* In fact the evidence of Mr Ballingall is that a more flexible framework is likely to better enable the provision of economic well-being[19].
- Strategic Policy 3.2.1.6 – I cannot agree the relief is contrary to Strategic Policy 3.2.1.6 which is *Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.* A more flexible BMUZ is more likely to foster diversification and creation of employment opportunities, rather than a singular focus on providing for industrial and service activities.

12.6 In paragraph 8.11, Mr Place correctly confirms the Tussock Rise submission considers the General Industrial Zone better suited to genuine greenfield industrial zoned land yet to be developed. This is correct. Where Mr Place and I disagree is that he considers the Tussock Rise site falls into this 'greenfield industrial' category. While I accept the Tussock Rise site is currently vacant, due to the Strategic Context I have described in Section 1 I do not think it is a true greenfield location for the more 'pure' GIZ due to the surrounding residential land uses. The site does adjoin the existing industrial area of Wanaka on three sides, however as the very detailed ground truthing undertaken by Mr Miller has demonstrated, the development adjoining the Tussock Rise site is already mixed in nature. The site is also in close proximity to residential activity off Golf Course Road. When taking a more strategic view of the context, it is just 1.2km from the Wanaka town centre and surrounded on other sides by residential activities. For these reasons I do not consider it to be a true greenfield site suitable for a more pure industrial zoning.

12.7 I note from my experience with PC36 that the industrial zoning of the Tussock Rise land was a major concern to the residents along Golf Course Road due at least in part to the elevated nature of the Tussock Rise site (refer Appendix **[G]**), and its proximity to residential activity along Golf Course Road. This was partly responsible for the special ODP Industrial B zone rules that required significant lowering of the Tussock Rise site (Connell Terrace precinct land) before works could commence. ODP Rule

19 Paragraph 79, EIC Mr John Ballingall

11.5.6.10i[20] required height to be measured from the "Industrial B Zone Contour and Zone Plan for Connell Terrace Precinct" Rev C and dated 8 October 2012, which forms part of the Industrial B zone. This was a finished ground level contour plan.

12.8 This rule and the associated finished contour plan has been deleted from the notified General Industrial Zone, however the issue a more pure GIZ in proximity to the houses of Golf Course Road on the elevated Tussock Rise site remains. The submissions of Ian Piercy (#3134) from 66B Golf Course Road, M Wheen (#3137) and P Wheen (#3049) from 76B Golf Course Road, and S&B Wallace (#3154) at 44 Golf Course Road are particularly pertinent in this regard but neither these or the history of the existing zoning of the Tussock Rise land and the special provisions of such have not been directly addressed in the S42A report.

12.9 In paragraph 8.1 Mr Place also states that the Tussock Rise submission *"offers little discussion on the rationale of separating this vacant piece of land".* The sentence is incorrect as the Tussock Rise submission does not state that *just* the Tussock Rise site should be rezoned. As Appendix **[A]** to my evidence shows, which is taken from the submission, the submission was that a wider area be rezoned BMUZ, including that part of the Three Parks Special Zone that is currently within a Business Sub-Zone.

12.10 Overall, I remain of the view that the BMUZ both better recognises the existing nature of what I have called the 'Wanaka Industrial Area' environment compared to a GIZ.

13. SECTION 10 - FURTHER SUBMISSIONS

13.1 In this section I comment on the further submission received.

Queenstown Airport Corporation (FS3436.18) on OS3128.3

13.2 A further submission in opposition to the Tussock Rise submission was received from Queenstown Airport Corporation. The extract from the further submission is shown below:

20 ODP page 11-16 to 11-17

Oppose	QAC opposes the proposed amendments to the General Industrial Zone insofar as it relates to the Glenda Drive area (and surrounds). The proposed changes could result in significant adverse effects on QAC that have not been appropriately assessed in terms of section 32 of the Act.

13.3 As this relates to the Glenda Drive industrial area in Queenstown, it is not applicable to the proposed rezoning by Tussock Rise in Wanaka. The proposed rezoning will not affect Wanaka Airport.

<u>Alpine Nominees Ltd (FS3450), The Breen Construction Company Ltd (FS3451), Ben and Hamish Acland (FS3452), JC Breen Family Trust (FS3453), 86 Ballantyne Road Partnership (FS3454), NPR Trading Ltd (FS3455) – further submitters on OS3128.3, OS3128.4</u>

13.4 These further submitters are all represented by John Edmonds & Associates. They all support the Tussock Rise relief in part, but request restrictions on visitor accommodation where the requested BMUZ intersects with the General Industrial zone. The area where the proposed BMUZ touches the GIZ is shown in Figure 10 below:

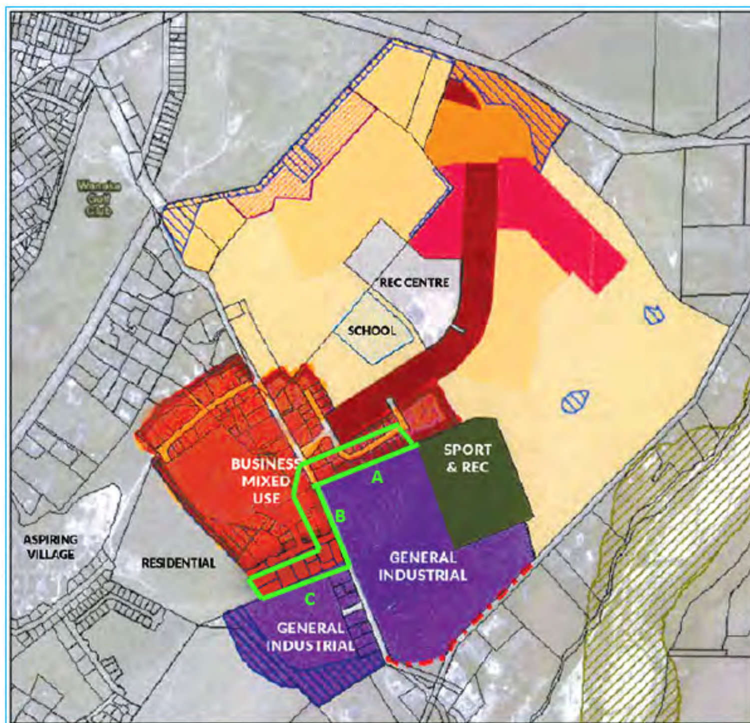


Figure 10: Interface of proposed GIZ and Proposed BMUZ from Tussock Rise submission

13.5 As noted in section 5, the BMUZ already has provisions hard wired into it for noise protection.

13.6 With regard to interface area (A) on the Figure above, this area of interface is between the proposed GIZ over part of the proposed Active Sport & Recreation Zone. Tussock Rise are not presenting evidence on this part of their submission, and abide the decision of the Panel with regard to the amount of Active Sport and Recreation zoning. I note that if the Panel approves the rezoning sought, then the proposed BMUZ will interface with an Active Sport and Recreation zone. This is not likely to create a concern of the type expressed but the further submitters.

13.7 With regard to interface area (B), Ballantyne Road itself would act as a physical separation between part of the interface shown above. The physical separation created by the legal road corridor is in my opinion likely to address the matter of concern raised by the further submitter, when recognising the built-in provisions of the BMUZ for noise.

13.8 With regard to interface area (C), this interface could create the concern raised in the further submission. While the lots along Frederick Street are already developed, in the future under a BMUZ framework as sought by Tussock Rise there could potentially be residential and visitor accommodation activities adjoining a GIZ.

13.9 For this interface, the noise rules for the GIZ are such that any noise from the GIZ must comply with the noise requirements at a different zone boundary[21]. As noted in the evidence of Dr Trevathan, the BMUZ also has very high noise protection standards hard wired into it.

13.10 In order to address this concern, I consider a setback for residential and visitor accommodation only, could be applied. This would mean that the 9 lots along the southern side of Frederick Street would most likely be used for commercial or office activities under a BMUZ framework, rather than residential or visitor accommodation. In Appendix **[A]** I have proposed a standard requiring a restricted discretionary consent for residential and visitor accommodation within 40m of the GIZ. Council's discretion is restricted to the potential for reverse sensitivity effects, whether any 'no complaints' private covenants are offered, and how the interface between the BMUZ and GIZ is addressed.

Willowridge Developments Ltd (FS3417 – on OS3128),

13.11 This further submission supports in part the relief sought by Tussock Rise Ltd. The further submitter agrees the General Industrial Zone as proposed is too restrictive and does not reflect the type of activity already taking place in the Industrial area. However the further submitter is concerned that the BMUZ is too permissive and could affect existing industrial activities. These points have been addressed in my

[21] Rule 36.5.15 – Variation to Chapter 36 – noise

evidence and in the expert evidence of Dr Trevathan. The further submitter has recently developed a number of industrial lots (Enterprise Drive and Venture Crescent) that are proposed to be zoned GIZ. The Tussock Rise submission would see BMUZ adjacent to these lots.

13.12 In response to the submissions above, I have proposed a setback for residential and visitor accommodation activities along this interface. This is shown in Figure 10 earlier. In Appendix **[A]** I have included a new rule requiring a setback for residential and visitor accommodation on sites that adjoin the GIZ. I do not consider commercial activities enabled by the BMUZ to be particularly sensitive to industrial activities. I consider this addresses the concern of Willowridge Developments Ltd.

Wanaka Football Club (FS3423 – on OS3128),

13.13 The further submissions oppose the part of the Tussock Rise submission that suggested reducing the extent of Active Sport and Recreation zone. Tussock Rise Ltd is concerned to ensure proposed rezonings away from an industrial zone are treated consistently. Tussock Rise noted the amount of land zoned for Active Sport and Recreation (20.4 hectares) was much larger than was required to meet the documented needs of the community for sports fields.

13.14 As noted earlier, Tussock Rise Ltd are not presenting evidence on that aspect of the submission, and will abide the decision of the Panel.

14. CONSIDERATION OF ALTERNATIVES AND SECTION 32AA RE-ASSESSMENT

14.1 The following summary evaluation has been prepared under section 32AA of the Act to supplement the proposed planning approach sought by the submitters. S.32AA requires that a further evaluation under sections 32(1) to (4) is necessary for any changes that have been made to the proposal since the evaluation report for the proposal was completed.

14.2 In accordance with s.32AA(1)(c) this evaluation has been undertaken at a level of detail which corresponds to the scale and significance of the changes.

Proposed District Plan Policy Framework

Chapter 3 – Strategic Directions

14.3 No changes are required to Chapter 3 of the PDP. By rezoning to BMUZ as shown in Appendix **[A]** Strategic Policy 3.3.8 can continue to apply, particularly in relation to resource consents for non-industrial activities in the General Industrial zone.

Chapter 4 – Urban Development

14.4 No specific changes are required to Chapter 4 of the PDP to give effect to the rezoning relief sought in Appendix **[A].**

Chapter 16 – Business Mixed Use zone

14.5 I consider two changes are required to Chapter 16 of the PDP to avoid the risk of Large Format Retail establishing in the area proposed to be rezoned BMUZ and competing with the established Wanaka town centre and Three Parks commercial centre. This would be inconsistent with strategic policies 3.2.1.2 and 3.2.14 taken from the Strategic S42A report:

3.2.1.2 The Queenstown and Wanaka town centres[1] are the hubs of New Zealand's premier alpine visitor resorts and the District's economy.

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

14.6 Unlike the BMUZ at North Frankton Flats, there are currently no specific policies for the Wanaka BMUZ at Anderson Heights. I therefore propose a new policy at the end of the list under Objective 16.2.1– *An area comprising a high intensity mix of compatible residential and non residential activities is enabled.* I propose an additional policy, 16.2.1.10:

16.2.1.10 To avoid large format retail activity in the Wanaka Business Mixed Use zone west of Ballantyne Road and at Anderson Heights

14.7 The term 'large format retail' is already defined in the PDP as a retail activity exceeding $500m^2$. To implement the policy, I propose a non-complying rule for Large Format Retail in the new area zoned BMUZ west of Ballantyne Road:

16.4.19	Large Format Retail activities in the Wanaka BMUZ west of Ballantyne Road	NC

14.8 These changes are very minimal to the PDP framework and would ensure the few vacant sites west of Ballantyne Road (the Tussock Rise site, one site in Frederick Street and one site in Gordon Road) would not be developed for large format retail and risk creating a competing retail centre.

14.9 The only other change I would propose to the BMUZ provisions is a slightly reduced height limit, recognising the elevated nature of the Tussock Rise site in particular. The BMUZ already has a variety of height limits, and currently a 12m height limit would apply under BMUZ Rule 16.5.8.1b. I propose

amending this to 10m, to be consistent with the height limit the Council was comfortable with for the GIZ, and to reflect the elevated nature of the Tussock Rise site in particular. The change proposed to Rule 16.5.8 is shown below:

16.5.8	Maximum building height 16.5.8.1 The absolute maximum building height shall be: a. Queenstown - 20m b. Wanaka - 12m <u>c. Wanaka west of Ballantyne Road – 10m</u> 16.5.8.2 Any fourth storey (excluding basements) and above shall be set back a minimum of 3m from the building frontage.	NC

14.10 The change from a 12m to 10m height limit should not affect existing business that have been developed under an Industrial A framework with a 6m or Industrial B with a 7m height limit.

<u>Chapter 18A – General Industrial zone</u>

14.11 No specific changes are required to Chapter 18A of the PDP to give effect to the rezoning relief sought in Appendix **[A].**

Identification of other reasonably practicable options for achieving the objectives s.32(1)(b)(i)

14.12 The reasonably practicable options available to provide for the Strategic Objectives in relation to the Wanaka industrial area under the PDP include three approaches:

i. Retention of the status quo in the ODP prior to notification, with the ODP Industrial A, Industrial B, Three Parks Special Zone (Business Sub-Zone) and Ballantyne Road Mixed Use Special Zone.
ii. The notified provisions as amended by the S42A report;
iii. The approach shown in Appendix **[A]** to the Wanaka Industrial Area that:
    - Recognises the strategic context of the Wanaka industrial area
    - Recognises the receiving environment and existing mixed use nature of the area
    - Recognises that given the proposed changes contained in the PDP there will be little vacant BMUZ available in Wanaka, and that the new BMUZ in Three Parks is in a single ownership
    - Prevents large format retail from establishing that could compete with the Three Parks and Wanaka town centres.

14.13 The Council S32 has considered Options i and ii above. In the table below I summarise the efficiency and effectiveness of Option iii above.

Assessment of efficiency and effectiveness of provisions s.32(1)(b)(ii) and s.32(2)(a)

(a) Effectiveness:

14.14 As outlined in the evaluation of the PDP objectives above, taking more of a 'receiving environment' approach to the existing mixed nature of the Wanaka industrial area through a BMUZ will be more effective in that it will achieve the strategic objectives of the PDP and the objectives of the BMUZ but in a way that better recognises the development that has already occurred within Wanaka Industrial area and the difficulties that could occur in commercial and service uses having to seek to establish in a GIZ. This approach is similar to the approach used for the Gorge Road BMUZ in Queenstown.

(b) Efficiency

Benefits	***Costs***
Recognises the receiving environment is split roughly 50/50 between industrial / service activities and non-industrial activities (refer also Mr Miller's evidence)	Increased risk of reverse sensitivity from more residential activity establishing noting the expert evidence does not see this as an issue
Recognises the strategic context of the Wanaka industrial area and surrounding land uses	Some existing "industrial" activities would become non-complying activities for any future alterations or extensions.
Recognises that Wanaka is well supplied with industrially zoned land	Loss of industrially zoned land in close proximity to Wanaka town centre
Provides new BMUZ zoning (including some vacant supply) in different ownerships	
A more enabling planning framework for a post Covid-19 Wanaka economy with a reduced tourism industry	
Provisions to ensure large format retail does not establish	

14.15 Compared with retaining the status quo and the S42A version of the Chapter 18A provisions, adoption of a BMUZ that recognises the mixed receiving environment and strategic context will be efficient as the benefits far outweigh any costs.

Summary of reasons for proposed provisions s.32(1)(b)(iii)

14.16 In my opinion, the 'pragmatic approach' shown in Appendix **[A]** provides the most appropriate way of achieving the Strategic and BMUZ objectives of the PDP because:

i. It is a more pragmatic approach that seeks to recognise the receiving environment that exists with a roughly 50/50 split, but without major changes necessary to the BMUZ; and
ii. Seeks to avoid creating a more 'pure industrial' zone in a location bordered by residential land uses; but
iii. Recognises the QLDC desire for the General Industrial zone and proposes retention of that GIZ on certain land more suited to that zoning
iv. Better enables the Wanaka community to provide for their social and economic well-being.

15. CONCLUSION

15.1 The proposed rezoning shown in Appendix **[A]** adopts a pragmatic approach that:

- Recognises the strategic context of the Wanaka industrial area and surrounding land uses that are almost all residential in nature
- Recognises the receiving environment of the Wanaka industrial area is split roughly 50/50 between industrial predominantly light industrial and service activities and non-industrial activities, and on the Tussock Rise boundary is approximately 58%/42% based on the research of Mr Miller.
- Recognises that Wanaka is well supplied with industrially zoned land, yet recognises QLDC desire for this form of zoning and retains GIZ in suitable areas.
- Provides new BMUZ zoning (including some vacant supply) in different ownerships
- Provides a more enabling planning framework for a post Covid-19 Wanaka economy with a reduced tourism industry.
- Includes provisions to ensure large format retail does not establish and compete with the Wanaka or Three Parks commercial centres.

15.2 In my opinion the proposed rezoning shown in Appendix **[A]** better achieves the purpose of the Act than the notified GIZ of the Tussock Rise land. It will enable the Wanaka community to better provide for their social cultural and economic well-being while avoiding, remedying and mitigating effects on the environment. A focus on Strategic Direction policy 3.3.8 relating to avoiding non industrial activities in industrial areas has resulted in the GIZ which is a highly restrictive planning framework that does not reflect the existing mixed use nature of what I have called the Wanaka

Industrial Area or the apparent demand for BMU. This strategic policy must also be read in the context of Strategic Objective 3.2.2 and associated policies that seek to enable the development of a prosperous, resilient and equitable economy in the District.

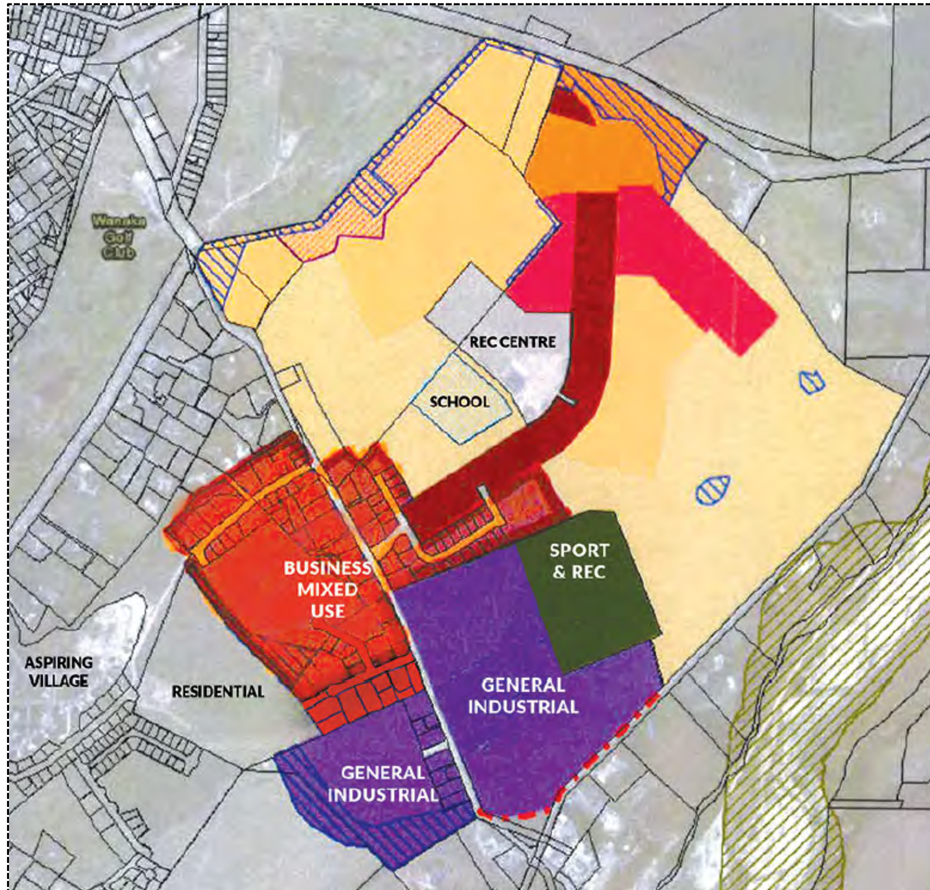
Blair Devlin

27 May 2020

APPENDIX [A]

Requested Zoning Changes to the PDP Planning Map & Plan Text

1. Proposed Planning Map



2. Proposed Changes to PDP text

All changes show new text as underline.

16.2.1.10 To avoid large format retail activity in the Wanaka Business Mixed Use zone west of Ballantyne Road and at Anderson Heights

16.5 Rules – Activities

16.4.19	Large Format Retail activities in the Wanaka BMUZ west of Ballantyne Road	NC

16.5 Rules – Standards

16.5.1A	Setbacks – Sites adjoining the General Industrial Zone – Wanaka	RD Discretion is restricted to: a. the potential for reverse sensitivity effects;

	Residential and visitor accommodation activity: 40m	b. whether any ‘no complaints’ private covenants are offered, and c. how the interface between the BMUZ and GIZ is addressed with regard to landscaping and screening.
16.5.8	Maximum building height 16.5.8.1 The absolute maximum building height shall be: a. Queenstown - 20m b. Wanaka - 12m c. Wanaka west of Ballantyne Road – 10m 16.5.8.2 Any fourth storey (excluding basements) and above shall be set back a minimum of 3m from the building frontage.	NC

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2019] NZEnvC 111

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal pursuant to clause 14(1) of the First Schedule of the Act
BETWEEN	TUSSOCK RISE LIMITED
	(ENV-2018-CHC-121)
	Appellant
AND	QUEENSTOWN LAKES DISTRICT COUNCIL
	Respondent

Court:	Environment Judge J R Jackson (sitting alone under section 279(1) of the Act)
Hearing:	at Queenstown on 20 December 2018 (Final submissions received 26 April 2019)
Appearances:	G M Todd and B B Gresson for Tussock Rise Limited K L Hockly for the Queenstown Lakes District Council
Date of Decision:	21 June 2019
Date of Issue:	21 June 2019

PROCEDURAL DECISION

A: Under section 279(4) of the Resource Management Act 1991 the Environment Court refuses to strike out any parts of the appeal by Tussock Rise Limited.

B: Costs are reserved.

Table of Contents Para

1.	Introduction	[1]
	1.1 The issues and the application to strike-out	[1]
	1.2 The steps leading to the appeal	[5]
	1.3 The section 32 analysis and the superior policy framework	[18]
2.	The law and the issues	[25]
	2.1 Preparation and renewal of district plans	[25]
	2.2 The contents of a district plan	[42]
	2.3 Moving from submissions to appeals under Schedule 1 RMA	[50]
	2.4 The issues	[65]
3.	Consideration	[66]
	3.1 Is the appeal 'on' the plan change?	[66]
	3.2 The procedural and superior policy contexts	[70]
	3.3 Is allowing the appeal to proceed fair to persons not before the court?	[78]
	3.4 Are there potential remedies?	[83]
4.	Outcome	[91]

REASONS

1. Introduction

1.1 The issues and the application to strike out

[1] A jurisdictional issue has arisen in an appeal lodged by Tussock Rise Limited ("TRL") against the Queenstown Lakes District Council's decisions on "Stage 1" of what is called the Proposed District Plan ("PDP"). The Council has applied under section 279(4) of the Resource Management Act 1991 ("the RMA" or "the Act") to strike out the relief sought by TRL in this appeal.

[2] The stated grounds for the Council's application are that[1]:

> (a) the relief sought does not satisfy the prerequisites of subclauses 14(1) and (2) of Schedule 1 of the RMA, in that the relief does not relate to a provision or matter either included in, or excluded from, the Council's decisions on Stage 1 of the PDP, and *that the submission by Tussock Rise was not 'on' Stage 1*; and

1 Notice of motion seeking strike out of appeal dated 2 November 2018 at [1.1].

> (b) as a result, the Tussock Rise appeal discloses no reasonable or relevant case, amounts to an abuse of process and is frivolous or vexatious in the sense that it lacks the requisite jurisdiction.
>
> [italics added]

In fact, the case put forward by the Council at the hearing was confined to the italicised words: whether TRL's appeal was 'on' the relevant parts of the PDP.

[3] Reflection on the case has thrown up some rather unusual facets of the Council's district plan review which may have implications for the Council's application. First, the "proposed district plan" is at law a series of plan changes to the operative district plan ("ODP"); second, it is unclear what provisions[2] of the ODP are proposed to be replaced by the PDP; third, now that most of the hearings on Topics 1 and 2 (Strategic Issues) of "Stage 1" of the PDP have been heard, there is as yet minimal evidence that the guiding strategic objectives of the PDP have ever been tested under section 32 RMA against the provisions they are (presumably) replacing in Section 4 (District-wide provisions) of the District Plan. Fourth, the Council is not proposing to amend the industrial provisions of the ODP despite the fact that they appear to be inconsistent with the National Policy Statement on Urban Development Capacity ("NPS-UDC")[3].

[4] Those difficulties with the review process and their relevance to the Council's application will be elaborated on below.

1.2 <u>The steps leading to the appeal</u>

[5] The proceeding relates to a block of land now owned by TRL at the end of Connell Terrace, Wanaka being Lot 3 DP 417191 (Otago Registry)[4] ("the site"). TRL is successor to the Gordon Family Trust, the original submitter in relation to the site.

[6] On 17 April 2014 the Council resolved[5] to review parts of the ODP under section 79(1) RMA.

[7] "Stage 1" of a proposed district plan was notified in August 2015. The public

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2 See 79(1) RMA.

3 See *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59 at [46].

4 The notice of appeal records Lot 2 DP 477622 but all other relevant documentation has it as stated here. I suspect an error in the notice.

5 Memorandum of counsel for Queenstown Lakes District Council dated 26 April 2019 lodged in *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* (ENV-2018-CHC-56).

notification commenced:

> **PUBLIC NOTIFICATION OF THE PROPOSED QUEENSTOWN LAKES DISTRICT PLAN (STAGE 1)**
>
> The Council has completed the first stage of the District Plan review and is now notifying the Proposed Queenstown Lakes District Plan (Stage 1) for public submission pursuant to Schedule 1 Clause 5 of the RMA.
>
> There are many differences between the current Operative District Plan and the Proposed District Plan. The Proposed District Plan affects all properties in the District and may affect what you and your neighbours can do with your properties. You should take a look to see what it means for you.
>
> In summary, some of the key substantive changes include:
>
> - A new Strategic Direction chapter that sets out the overall approach to ensuring the District's sustainable management in an integrated manner.
> - An Urban Development chapter that sets out a growth management direction for the District, and introduction of Urban Growth Boundaries around urban areas.
> - A Landscape chapter that sets out how development affecting the District's valued landscapes will be managed – including the mapping of lines that identify Outstanding Natural Landscapes and Features.
>
> ...

[8] The notice was, I assume, sent to all ratepayers and residents of the District under clause 6(1A) Schedule 1 RMA and also published in local newspapers. It may be important that the public notice records that the PDP "...affects all properties in the District".

[9] After providing further detail about the proposed plan, how to view it and make submissions on it, the public notification concluded:

> **The closing date for submissions is Friday 23 October 2015.**
>
> **What happens next?**
>
> After submissions close:
>
> - we will prepare a summary of decisions requested by submitters and publicly notify the availability of this summary and where the summary and full submissions can be inspected;

- people who represent a relevant aspect of the public interest or have an interest greater than the interest of the general public may make a further submission, in the prescribed form within 10 working days of notification of the summary of decisions sought, supporting or opposing submissions already made;
- a copy of the further submission must also be served on the Council and the person who made the original submission;
- submitters may speak in support of their submission(s) at a hearing if they have indicated in their submission that they wish to be heard;
- following the hearing the Council will give notice of its decision on the Proposed District Plan and matters raised in submissions, including its reasons for accepting or rejecting submissions;
- every submitter then has the right to appeal the decision on the Proposed District Plan to the Environment Court.

Want more info or help understanding the proposals?

Visit www.qldc.govt.nz/proposed-district-plan to find a range of fact sheets and diagrams to help you understand some of the more technical parts of the Proposed District Plan.

A duty policy planner will also be available every workday until submissions close. Call 03 441 0499 (Queenstown) or 03 443 0024 (Wanaka).

This notice is in accordance with clause 5 of Schedule 1 of the Resource Management Act 1991.

[10] I note that while the Council purports to be acting under section 79(1) RMA so that Stage 1 is in effect a plan change to the ODP, Stage 1 reads as if it is a full review under section 79(4) RMA. That explains some of the submissions for TRL as I will explain later.

[11] For the Upper Clutha Basin, the Low Density Residential zone in eastern Wanaka is shown on Map 23 – Wanaka Rural – of the notified PDP. A copy is annexed marked "A". The attached "Legend" shows that:

- the beige colour describes "Low Density Residential";
- the dark blue colour describes "Industrial B zone (operative)".

The site is dark blue (i.e. it is "Industrial B zone (operative)") with a beige area adjacent and to the west.

[12] There is no explanation on Map 23 of what an operative zone is. To understand that, one has to turn to a different Legend at the start of the volume of planning maps. That page contains six columns. The first column is headed "Operative Plan". A note at the top of the first column reads:

> Operative Plan
> Operative zones are shown across sites that are not being reviewed in Stage 1 of the District Plan Review, or where the Zone has been specifically reserved for review in Stage 2.

The Council relied on that "note" as advice to the public that parts of the "operative plan" were not the subject of "Stage 1" of the PDP. The note is troubling for two reasons. One is that it is so small – how were readers of the plan to know its importance? Second, the words are not on the notified Map 23 which has its own legend (which does not refer to any note).

[13] The Gordon Family Trust wished to respond to Map 23 of the notified PDP. Its original submission[6] is dated 23 October 2015. After giving contact details and identifying the site, the submission states (relevantly):

> Specific provisions / of the proposal that my submission relates to are:
> 1. The proposal to zone part of the Submitters' land shown on Proposed Planning Map 21 located off Gordon Road and Connell Terrace Wanaka, which is legally described as Lot 3 Deposited Plan 417191 Wanaka (the "Submitters' Land"), Industrial B zone.
> 2. The proposal to make all subdivision applications a Discretionary Activity.
>
> My submission is / include whether you support or oppose the specific provisions or wish to have them amended; and the reasons for your views.
> 1. I oppose the proposed zoning of the Submitters' land in part as Industrial B.
> 2. I oppose the proposal to classify all applications for subdivision consent a Discretionary Activity.
>
> ...
>
> I seek the following from the local authority ...
> 1. That part of the Submitters' land be rezoned as Low Density Residential (as per the attached plan).
> 2. That subdivision of land zoned Low Density Residential be a Controlled Activity.

[14] The Council's[7] notified summary of submissions stated (relevantly):

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6 Given reference no. 395 by the Council.

7 Under clause 7 Schedule 1.

Point Number	395.1 Provision: 138-7 Low Density Residential
Position:	Oppose
Summary of Submission:	Opposes the Industrial B zoning of that part of the Submitters' land described as Lot 3 DP 417191 and as shown on the plan attached to this submission and submits that it be rezoned Low Density Residential.

Point Number	395.2 Provision: 7-Part Seven – Maps > 7.25-Map 23 – Wanaka
Position:	Oppose
Summary of Submission:	Opposes the Industrial B zoning of that part of the Submitters' land described as Lot 3 DP 417191 and as identified on the plan attached to this submission and submits that it be rezoned Low Density Residential.

[15] The Council's decision was received by TRL – which I infer, by then had an interest in the land – on 4 May 2018. TRL appealed in June 2018. The notice of appeal contests:

(a) the zoning of the appellant's land at Connell Terrace, Wanaka, legally described as [sic] Lot 2 Deposited Plan 477622[8] ...;

(b) the determination of the Council that the appellant's submission seeking a rezoning of the [site] from Industrial B Zone to Low Density Residential Zone was not part of Stage 1 of the plan and subsequently no decision was made on the submission.

[16] The stated reasons for the appeal are:

(a) the land was included in the notified maps for Stage 1 of the plan and was noted as being zoned "Industrial B (Operative)".

(b) the residential zone provisions were also notified in Stage of the plan. For submitters seeking residential zones for their properties they would have to submit as part of Stage 1, being the same time the provisions of the residential zones were notified.

(c) if they did not submit at that time this would create a vacuum whereby they potentially could not seek a residential zoning for that land at subsequent stages of the plan, given the provisions and zoning for residential land had already been decided as part of Stage 1.

(d) given (a)-(c) above it was not an option for the Council to come to the conclusion that the submission was not on Stage 1 of the plan and to that end the decision was unlawful.

...

8 See footnote 4 above.

[17] It appears that the Council has endeavoured to place the site beyond the scope of its review. It now argues the court has no jurisdiction to consider TRL's appeal on "Stage 1" of the PDP.

1.3 The section 32 analysis and the superior policy framework

[18] Each notified chapter – or at least each general issue covered by "Stage 1" – was accompanied by a section 32 evaluation report. These were not referred to at the hearing, but they are public documents and are relevant as part of the context of this proceeding. The most relevant reports[9] to this proceeding were those on "Strategic Directions" (corresponding to Chapter 3 of the PDP) and on the "Low Density Residential" zone. The section 32 evaluation report on the Low Density Residential describes the rapid growth of the district and its effects on housing affordability. It makes no direct assessment of development capacity. Its conclusion on that issue is one sentence[10]:

> The Low Density zone generally retains its existing spatial extent, with a limited number of specific new areas to be included within the zone – either to reflect the density of development which has already occurred, or to include land with further housing potential within urban growth boundaries.

I also note that the section 32 report does not say anything about the effect of demand for residential land on the demand for industrial land or vice versa. Nor does the report appear to consider that housing capacity could be provided from other existing zones, e.g. Industrial.

[19] The policy framework in higher order statutory instruments may not be relevant to consideration of whether a submission or appeal is 'on' an isolated plan change with its more defined geographical or legal limits. However, in my view the policies of any relevant superior statutory instrument may be relevant to consideration of whether a submission is on a provision 'in' a proposed plan change when further stages in the review of an operative plan are contemplated.

[20] I should not overlook either that there are challenged higher order provisions in the (strategic) Chapter 3 of the PDP[11]. Thinking about those in relation to the application

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9 These are all searchable online on the Council's website.

10 ERLD section 32 Report, p 12 (https://www.qldc.govt.nz/planning/district-plan/proposed-district-plan-stage-1/section-32-documents/).

11 And in Chapters 4-6 of the PDP to the extent that they include strategic objectives and policies also.

before me, I have realised that there is potentially a problem with the way the Council has gone about preparing its plan (changes) given that both the ODP and the PDP have (very different) strategic chapters[12] which set strategic objectives and policies for the entire plan[13]. The difficulty is this: if there are changes to the (strategic) Chapter 3 of the PDP as a result of appeals then there may of necessity need to be changes to subsequent sections of the PDP. That suggests the Council's decision to notify other sections of the PDP – or at least to decide the submissions on them – may have been premature.

[21] The court has looked at this type of problem surprisingly infrequently. The issue did arise many years ago in *Campbell v Christchurch City Council*[14] where I observed:

> ...It appears that changes to a plan (at least at objective and policy level) work in two dimensions. First an amendment can be anywhere on the line between the proposed plan and the submission. Secondly, consequential changes can flow downwards from whatever point on the first line is chosen. This arises because a submission may be on any provision of a proposed plan. Thus, a submission may be only on an objective or policy. That raises the difficulty that, especially if:
>
> (a) a submission seeks to negate or reverse an objective or policy stated in the proposed plan as notified; and
> (b) the submission is successful (that is, it is accepted by the local authority)
>
> – then there may be methods, and in particular, rules, which are completely incompatible with the new objective or policy in the proposed plan as revised. It would make the task of implementing and achieving objectives and policies impossible if methods could not be consequentially amended even if no changes to them were expressly requested in a submission. The alternative – not to allow changes to rules – would leave a district plan all in pieces, with all coherence gone.

[22] I also pointed out the fairness issues that result[15]:

> The danger in the proposition that a change to an objective or policy may lead to changes in methods – including rules which are binding on individual citizens – is that citizens may then subsequently protest with some justification that they had no idea that a rule which binds them could result from a submission on an objective.

---

12 Section 4 (District wide issues) ODP: Chapter 3 (Strategic directions) PDP.

13 This may be slightly inaccurate for the PDP because parts of the ODP are not to be reviewed but somehow incorporated into the PDP.

14 *Campbell v Christchurch City Council* [2002] NZRMA 332 at [20].

15 *Campbell v Christchurch City Council* above n 14 at [21].

An answer would appear to be to resolve the strategic section of a district plan first, including appeals, and only then to continue with reviewing other sections. Perhaps jurisdictional challenges on later chapters of the PDP should have been deferred until Chapter 3 is settled.

[23] A more authoritative, but with respect abstract, analysis of permissible consequential changes was given in the High Court's decision in *Albany North Landowners v Auckland Council* (*"Albany North"*). I discuss this case below[16].

[24] It may not be illegal for the Council to adopt the process it has. However, the process certainly has implications as to fairness both to landowners such as TRL in this case and to other unknown persons potentially affected. For example, some consideration of an appeal on Chapter 3 of the PDP may show that the strategic objectives or policies concerning urban development may need to be altered to give effect to the NPS-UDC referred to above and discussed later. That in turn could mean that TRL's submission and notice of appeal become directly[17] on Stage 1 of the PDP.

2. The law and the issues

2.1 Preparation and renewal of district plans

[25] Since the PDP was notified in 2015 the relevant form of the RMA is at the last amendment, i.e. the Resource Management Amendment Act 2013. The Resource Legislation Amendment Act 2017 does not apply.

[26] District plans are prepared under section 73 RMA. This states (relevantly):

> **73 Preparation and change of district plans**
>
> (1) There shall at all times be one district plan for each district prepared by the territorial authority in the manner set out in Schedule 1.
>
> (1A) A district plan may be changed by a territorial authority in the manner set out in Schedule 1.
>
> (1B) A territorial authority given a direction under section 25A(2) must prepare a change to its district plan in a way that implements the direction.
>
> (2) Any person may request a territorial authority to change a district plan, and the plan may be changed in the manner set out in Schedule 1.

16 *Albany North Landowners v Auckland Council* [2017] NZHC 138.

17 E.g. under clause 16A RMA.

> (3) A district plan may be prepared in territorial sections.
>
> ...[18]

The Council now claims[19] that Stage 1 of the review was confined "... to the territorial area notified", so section 73(4) RMA, which states that a proposed plan (or change) may be "... prepared in territorial sections", has some importance.

[27] "Proposed plan" is defined separately in section 43AAC RMA. That states:

> **43AAC Meaning of proposed plan**
>
> (1) In this Act, unless the context otherwise requires, proposed plan—
>
> (a) means a proposed plan, a variation to a proposed plan or change, or a change to a plan proposed by a local authority that has been notified under clause 5 of Schedule 1; and
>
> (b) includes a proposed plan or a change to a plan proposed by a person under Part 2 of Schedule 1 that has been adopted by the local authority under clause 25(2)(a) of Schedule 1.
>
> (2) Subsection (1) is subject to section 86B and clause 10(5) of Schedule 1.

The four ways of replacing an operative plan

[28] There are (at least) four ways that an operative district plan under the RMA may be replaced in whole or part:

(1) preparation of a new proposed plan under Schedule 1;
(2) by way of full review under s 79(4) RMA;
(3) by plan change under s 79(1) to (3) RMA;
(4) by privately initiated plan change under Schedule 1.

The fourth is not relevant here and I say no more about it.

[29] The first is by preparation of a new (proposed) plan under Schedule 1 to the Act, without reference to any operative district plan. The RMA does not contain a specific reference to any general relationship between such a new plan and the previously operational plan. Rather, Schedule 1 simply specifies how a new plan is commenced by

18 Sections 73(4) and (5) relate to giving effect to a regional policy statement and so are not relevant here.

19 Memorandum of counsel for QLDC dated 26 April 2019 at [15].

preparation of[20] a provisional plan, followed by consultation[21], inclusion of[22] designations in operative plans, notification[23] etc. The relationship between the new plan and the old plan is specified indirectly by clause 20 Schedule 1, which empowers the local authority to publicly notify the date on which the new plan is to become operative. Implicitly, the old plan lapses at that date. In fact, there are specific provisions in subpart 7 of Part 5 of the RMA as to the legal effects of rules, so that rules "...must be treated as operative" at an earlier date if, for example, there are no submissions in opposition or appeals filed[24]. In that case, "any previous rule" (presumably a rule in an operative plan) is treated "as inoperative"[25]. In addition, rules in a proposed plan may have legal effect at an earlier stage[26], but in that case they appear to apply alongside the operative plan so that two resource consents may be required (although the position is quite obscure).

[30] The second method by which an operative district plan, or parts of it, may be replaced is by way of review under section 79(4) RMA. This method – the closest to preparing an entirely new plan under Schedule 1 – is to conduct a full review of an operative plan under section 79 RMA. This enables[27] a district council to review and change its operative district plan section by section. "Section" [of the plan] is not defined in the RMA, but in this context it means a "chapter" in the ODP rather than a "territorial section", that is, a geographical area as referred to by section 73(3) RMA.

[31] Section 79 RMA states:

> **79 Review of policy statements and plans**
>
> (1) A local authority must commence a review of a provision of any of the following documents it has, if the provision has not been a subject of a proposed policy statement or plan, a review, or a change by the local authority during the previous 10 years:
>
> (a) a regional policy statement:
>
> (b) a regional plan:
>
> (c) a district plan.
>
> (2) If, after reviewing the provision, the local authority considers that it requires alteration, the local authority must, in the manner set out in Parts 1, 4, or 5 of Schedule 1 and

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20 Clause 2(1) Schedule 1 RMA.

21 Clauses 3 et ff RMA.

22 Clause 4 Schedule 1 RMA: this is notable for containing the only reference to a "new district plan" in all of Schedule 1.

23 Clause 5 Schedule 1.

24 Section 86F(1)(a) RMA.

25 Section 86F(1) RMA includes the phrase "...(and any previous rule as inoperative)...".

26 Sections 86B and 86D RMA.

27 Section 79(4) RMA.

this Part, propose to alter the provision.

(3) If, after reviewing the provision, the local authority considers that it does not require alteration, the local authority must still publicly notify the provision—

(a) as if it were a change; and

(b) in the manner set out in Parts 1, 4, or 5 of Schedule 1 and this Part.

(4) Without limiting subsection (1), a local authority may, at any time, commence a full review of any of the following documents it has:

...

(c) a district plan.

(5) In carrying out a review under subsection (4), the local authority must review all the sections of, and all the changes to, the policy statement or plan regardless of when the sections or changes became operative.

(6) If, after reviewing the statement or plan under subsection (4), the local authority considers that it requires alteration, the local authority must alter the statement or plan in the manner set out in Parts 1, 4, or 5 of Schedule 1 and this Part.

(7) If, after reviewing the statement or plan under subsection (4), the local authority considers that it does not require alteration, the local authority must still publicly notify the statement or plan—

(a) as if it were a proposed policy statement or plan; and

(b) in the manner set out in Parts 1, 4, or 5 of Schedule 1 and this Part.

(8) A provision of a policy statement or plan, or the policy statement or plan, as the case may be, does not cease to be operative because the provision, statement, or plan is due for review or is being reviewed under this section.

(9) The obligations on a local authority under this section are in addition to its duty to monitor under section 35.

[32] In effect section 79 RMA broadly allows for two types of plan review:

(a) a full review of the sections of (or plan changes to) an entire district plan under section 79(4); or

(b) review of a "provision" (or provisions) of a district plan as set out in section 79(1) ("partial review").

[33] The partial review under section 79(1) to (3) RMA is the third way of replacing (at least in part) the provisions of an operative district plan. The principal differences between a standard one-off plan change (e.g. adding some objectives, policies and methods or simply methods to an operative plan) and a section 79(1) to (3) review are the compulsory nature of the latter, <u>and</u> its review of specific provisions (or sets of provisions) in the operative plan. The fourth method is by a private plan change under section 73 and Schedule 1 to the RMA.

What is meant by "provision" in section 79(1)?

[34] Provision seems to include an objective (see section 32). At first sight a "provision" in a plan is different from a "section" (which loosely corresponds to a "chapter" or (possibly) a "territorial section" under section 73(3) RMA). In her memorandum of 26 April 2019 Ms Hockly submitted that "... the differing use of language in section 79(1) compared to section 79(4) ... is not intended to indicate any distinction between the different types of review"[28]. That leaves the question "then why did Parliament use different language?"

[35] The standard view is that different language is unusually intended to convey a distinction in meaning. Another set of paired provisions is sections 12 and 13 of the RMA. Section 12 refers to several restrictions in the coastal marine area. It states (relevantly):

> **12 Restrictions on use of coastal marine area**
>
> (1) No person may, in the coastal marine area, —
>
> ...
>
> (c) disturb any foreshore or seabed (including by excavating, drilling...)...
>
> ...
>
> (2) No person may...
>
> ...
>
> (b) remove any sand, shingle, shell or other natural material from that area.
>
> ...
>
> (4) In this Act,—
>
> ...
>
> (b) **remove any sand, shingle, shell, or other natural material** means to take any of that material...[so that] the holding of a resource consent, a licence or profit à prendre to do so would be necessary.

Section 12 covers both disturbance of the seabed **and** removal of the material "disturbed".

[36] In contrast, section 13 reads more simply:

> **13 Restriction on certain uses of beds of lakes and rivers**
>
> (1) No person may, in relation to the bed of any lake or river,—
>
> ...
>
> (b) excavate, drill, tunnel, or otherwise disturb the bed; ...

28 Queenstown Lakes District Council memorandum dated 26 April 2019 at [15].

There is no equivalent to section 12(4) RMA. Section 13 is silent about removal from the area of the material "disturbed" (by excavation or otherwise) from the river or lake bed.

[37] In *Christchurch Ready Mix Concrete Limited v Canterbury Regional Council* ("*Ready Mix (EC)*")[29] I wrote[30]:

> Section 13, while it refers to excavation and other disturbance of the river bed, makes no allowance for <u>taking</u> of gravel. That is a sharp and important contrast with section 12(4)(b) of the RMA. The reason for that difference is that the removal of resources (such as gravel) – which have previously been excavated – from the bed of a river or lake is controlled by common law property rights as I discussed in *Brooklands Properties 2000 Limited v Road Metals Company Limited*[31]. That is presumably why a resource consent under section 13 is called a "land use consent"[32]. That description shows that this section – like section 9 – is designed to work with existing land law.

[38] I refused to make a declaration about the priority of an application for disturbance of the river bed and "all aspects of extraction of gravel" on the premise (inter alia) that removal of gravel from riverbed was not covered by section 13 RMA because its wording differed from section 12 RMA. *Ready Mix (EC)* was held to be wrong in *Christchurch Ready Mix Concrete v Canterbury Regional Council ("Ready Mix (HC)"*[33] for some other reason attributed to the Environment Court. So there may be some implicit authority for the proposition that different wording in similar sections of the RMA is not meaningful although Fogarty J's decision never referred to the distinction between sections 12 and 13 RMA. In my opinion *Ready Mix (HC)* should therefore be confined to its facts.

[39] As I have said, the conventional view is that there is a statutory canon[34] (or at least a rule of thumb) that a term used in a statute more than once is usually to be given the same meaning throughout. In *New Zealand Breweries Limited v Auckland City Corporation*[35] FB Adams J wrote (for the Court of Appeal):

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29 *Christchurch Ready Mix Concrete Limited v Canterbury Regional Council* [2011] NZEnvC 195.

30 *Ready Mix (EC)* above n 29 at [29].

31 *Brooklands Properties 2000 Limited v Road Metals Company Limited* C164/2007.

32 Section 87(a) RMA.

33 *Christchurch Ready Mix Concrete v Canterbury Regional Council* (HC) Christchurch CIV 2011-409-1501 at [28].

34 See Burrows and Carter (2015) *Statute Law in New Zealand* 5th edition, LexisNexis p 260.

35 *New Zealand Breweries Limited v Auckland City Corporation* [1952] NZLR 144 (CA) at 158 as adopted in *Elders New Zealand Limited v PGG Wrightson* [2009] 1 NZLR 577 (SCNZ) at [30] per McGrath L.

> While there is no general rule that the same meaning must be given to an expression in every part of a statute ... it is reasonable to suppose that the meaning will be same throughout.

[40] Burrows *Statute Law in New Zealand* (5th ed) cites that and other cases and continues[36]:

> ... there is a presumption that the drafter has used words consistently throughout the Act. This presumption may have added strength when a word or expression is used many times in the Act. "A 'pick and mix' approach to the single word 'offence' defies the normal approach to interpretation". Likewise, it may be presumed that different expressions bear different meanings. Contrasting different provisions is sometimes enlightening.[37] However, like all general rules of construction, these should not be "ridden too hard"; they are very far from infallible.[38]

[41] It is more difficult to find authority for the proposition that the same general formula used with some different words is usually intended to have a different meaning but as *Burrows* notes above that appears to be the logical converse to the first canon. I therefore hold it is likely that "provision" includes "objective", "policy" and "method including a rule" and may include an "issue"; on the other hand, "sections" in section 79(5) means whole sets of "provisions" (or chapters) of operative plans. The difference is that section 79(1) appears to require a one-to-one correspondence between the provisions being altered and the replacement provision, or at least that every provision being changed is identified. In contrast, section 79(5) can simply replace an operative plan, chapter by chapter.

2.2 <u>The contents of a district plan</u>

[42] A district plan must contain objectives, policies and rules (if any)[39]. It may contain other matters.

[43] There is a tendency these days to have an overarching strategic section in district plans, setting objectives and policies to which other sections are more or less subservient. On the whole, that is a useful trend in that it assists in integrated management of the district's resources by identifying the more important objectives of

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36 Burrows and Carter (2015) *Statute Law in New Zealand* 5th edition, LexisNexis p 260,

37 *Hawkes Bay Hide Processors of Hastings v Commissioner of Inland Revenue* [1990] 3 NZLR 313 (CA).

38 *Mayor of Wanganui v Whanganui College Board of Trustees* (1906) 26 NZLR 1167 (CA).

39 Section 75(1) RMA.

the plan. However, having such a chapter does lead, logically, to problems with preparing plans in one swoop. In particular, how far can subsequent, subordinate sections of a proposed plan be resolved until the strategic section is settled?

[44] Questions of coherence have arisen here. In 2016 the question of consequential changes arose in the report of the Independent Hearings Panel ("IHP") on the Auckland Unitary Plan. The IHP wrote[40]:

> It is essential to the effectiveness of the Unitary Plan that it promotes the purpose of the Resource Management Act 1991 in an integrated way. As section 32 requires, the appropriateness of objectives must be evaluated in terms of achieving that purpose; then other provisions, being the policies, rules and other methods, must be evaluated in terms of achieving the objectives. This vertical relationship of the Unitary Plan with the Resource Management Act 1991 is repeated across all of the aspects of the environment in Auckland. ... This context means that amendments to support integration and to align provisions where they are related could be in three dimensions[41]:
>
> (i) down through provisions to give effect to a policy change;
>
> **(ii) up from methods to fill the absence of a policy direction; and**
>
> (iii) across sections to achieve consistency of restrictions or assessments and the removal of duplicate controls.
>
> (Emphasis added)

With respect, the position described in (ii) is a case of the tail wagging the dog[42]. On principle that seems wrong: objectives and policies should drive methods, not the other way around.

[45] That part of the IHP's report was appealed to the High Court. In *Albany North*[43] Whata J held that the IHP:

> ...
>
> (e) Identif[ied] types of consequential change:
>
> i. Format/language changes;
>
> ii. Structural changes;
>
> iii. Changes to support vertical/horizontal integration and alignment, to give effect to policy change, **to fill the absence of policy direction**, and to achieve

---

40 Auckland Unitary Plan IHP Report to Auckland Council – Overview of recommendations on the proposed Auckland Unitary Plan, 22 July 2016, section 4.4.3.

41 I note that the dimensional metaphor is not as useful as first appears, since the IHP only describes two lines in two dimensions ("up" and "down" are in one dimension).

42 *Shaw v Selwyn District Council* (NZEnvC) Decision C183/2000 at [27].

43 *Albany North* above n 16 at [96].

consistency of restrictions or assessments and the removal of duplicate controls; and

iv. Spatial changes, for example where a zone change for one property raises an issue of consistency of zoning for neighbouring properties and creates difficulty in identifying a rational boundary.

(f) On changes supporting vertical integration, following a top down approach so that consequential amendments to the plan to achieve integration with overarching objectives and policies, which were drawn from higher level policy statements. Given the logical requirement for a plan to function in this way, these changes would normally be considered to be reasonably anticipated.

...

(h) Assessed consequential changes in several dimensions, being:

i. Direct effects: whether the amendment would be one that directly affects an individual or organization such that one would expect that person or organization to want to submit on it.

ii. Plan context: how the submission of a point of relief within it could be anticipated to be implemented in a realistic workable fashion; and

iii. Wider understanding: whether the submission or points of relief as a whole provide a basis for others to understand how such an amendment would be implemented.

(Emphasis added, citations omitted)

[46] The Environment Court observed of those decisions in *Federated Farmers v Mackenzie District Council* (Eleventh Decision)[44]:

> It will be seen that the phrase "absence of policy direction" is used at [96](e)(i) but the full phrase in the IHP report "... up from methods to fill the absence of a policy direction" is not used by Whata J.
>
> Whata J held that "[t]he IHP's integrated approach to scope noted at [96](a)(iv)(f) and (g) accords ... more broadly with the orthodox top down and integrated approach to resource management planning demanded by the RMA"[45]. We accept (and are bound by) that. However, we respectfully disagree with the IHP that methods can drive policies to fill a policy vacuum. In our view the policies and rules should be driven from the top down. Policies are to implement objectives and methods to give effect to policies. That is what the High Court described as the orthodox approach and we can see no justification for departing from it. Indeed, it seems to be the only principled approach: anything else would leave the RMA – criticised for its open textured language as it already is – open to almost any application that people want to give for their convenience: think of a rule that suits a special interest or the Government and then write a policy to justify it.

44 *Federated Farmers v Mackenzie District Council (Eleventh Decision)* [2017] NZEnvC 53 at [176] and [177].

45 *Albany North* above n 16 at [114].

[47] Those problems arose in relation to new plans. They are also meaningful, in my view, on a partial review of an operative district plan for this reason. A partial review is intended to be provision-by-provision. Of course, a territorial authority may choose to review all the provisions of a section in a plan. If it chooses to review all the provisions of a strategic chapter (e.g. Section 4 (District-wide) of the ODP of the QLDC) then the Council cannot know in advance what subsequent sections of the ODP need to be consequentially changed.

Implications for the "PDP"

[48] All this has implications for the process followed by the Council. Its public notice and PDP look like a "full review", and indeed a new plan has been prepared. That suggests there has not been a provision-by-provision review despite the fact that the documents quoted earlier show that the Council intended that. If there is intended to be a provision-by-provision, or (since the singular includes the plural[46]) a set of provisions by set of provisions review, then proposed Map 23 may be premature. The reason is that if a top-down approach is to be followed then the provisions of Section 4 of the ODP appear to need to be reviewed or changed.

[49] Further, as I have observed, if a partial review of Section 4 (District-wide) of the ODP was intended, the Council could not know which of the subsequent sections of the ODP might or might not need to be changed until the review of Section 4 was complete. There are two problems with this: first there is minimal mention of Section 4 of the ODP in the section 32 Reports, and certainly no provision-by-provision 'review' as I have said. The Hearing Commissioners did allude[47] to evidence about Section 4 ODP, but their discussions did not say why specific provisions or even the whole of Chapter 3 PDP contained superior objectives to the ODP. Second, the Council has decided in advance that the Industrial sections of the ODP would remain the same. In my view, it simply could not do that until it knew whether Section 4 of the ODP was to be changed. It is beyond the Council's powers under the scheme of its plan, and under section 79(1) to (3) RMA to decide what subordinate (industrial) objectives and policies will remain in place until it has decided what the strategic objectives and policies are to be changed, and what are to remain. This, of course, has direct relevance to TRL's position, since it is concerned about the industrial zoning of its land.

46 Section 33 Interpretation Act 1999.

47 QLDC Chapter 3, Report of the Hearing Commissioners at [751] to [1107].

2.3 Moving from submissions to appeals under Schedule 1 RMA

[50] Once the local authority has chosen its method of giving effect to a review[48] and prepared a section 32 evaluation report, it must then follow the procedures set out in Schedule 1 RMA. After a consultation process there is notification of the proposed district plan to which interested parties may respond by lodging a submission. Clause 6(1) of Schedule 1 states:

> (1) Once a proposed ... plan[49] is publicly notified under clause 5, the persons described in subclauses 2 to 4 may make a submission on it to the relevant local authority. (emphasis added)

[51] Clause 14(1) of Schedule 1, which confers a right of appeal, begins:

> (1) A person who made a submission on a proposed ... plan [change] may appeal ... (emphasis added)

An appeal must be founded on a submission: *Option 5 Inc v Marlborough District Council*[50] (*"Option 5"*). The relief sought must be "fairly and reasonably" within the scope of a submission: *Countdown Properties (Northlands) Limited v Dunedin City Council*[51] ("*Countdown*").

[52] If an appeal is within jurisdiction then the Environment Court must hear[52] the appeal. Although not referred to in Schedule 1, the Environment Court's primary powers, duties and discretion are given in section 290 RMA. Complementing these, clause 15 Schedule 1 gives the court power to direct a local authority under section 293(1) RMA. Section 293(1) and (2) state:

> (1) After hearing an appeal against, or an inquiry into, the provisions of any proposed policy statement or plan that is before the Environment Court, the court may direct the local authority to—
>
> (a) prepare changes to the proposed policy statement or plan to address any matters identified by the court:
>
> (b) consult the parties and other persons that the court directs about the changes:
>
> (c) submit the changes to the court for confirmation.

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48 Under section 79 RMA.

49 'Proposed Plan' includes a 'plan change': section 43AAC(1)(a) RMA.

50 *Option 5 Inc v Marlborough District Council* (HC) CIV 2009-406-144.

51 *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 127 (FC).

52 Clause 15(1) Schedule 1 RMA.

> (2) The court—
>
> (a) must state its reasons for giving a direction under subsection (1); and
>
> (b) may give directions under subsection (1) relating to a matter that it directs to be addressed.

When is a submission 'on' a plan change?

[53] Despite the wording of the strike out application which referred to the requirements of clause 14(1) and (2), the Council's actual argument referred to the authorities on the introductory words of clause 14. Because plan changes are usually circumscribed – often very carefully – by the party promoting them, a specific jurisprudence has sprung up about when a submission is 'on' a plan change. The word 'on' comes from the introduction to clause 14 of Schedule 1 as quoted above. The leading authorities on when a submission is on a variation or a plan change are *Clearwater Resort Limited v Christchurch City Council*[53], *Option 5 Inc v Marlborough District Council*[54] which emphasised[55] the need to consider the "scale and degree" of the alterations suggested by the submission, and *Palmerston North City Council v Motor Machinists Limited*[56] ("*Motor Machinists*").

[54] In *Motor Machinists* Kós J summarised the relevant principles as follows:

> [53] ... William Young J applied a bipartite test.
>
> [54] First, the submission could only fairly be regarded as "on" a variation "if it is addressed to the extent to which the variation changes the pre-existing status quo". That seemed to the Judge to be consistent with the scheme of the Act, "which obviously contemplates a progressive and orderly resolution of issues associated with the development of proposed plans".
>
> [55] Secondly, "if the effect of regarding a submission as "on" variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected", that will be a "powerful consideration" against finding that the submission was truly "on" the variation. It was important that "all those likely to be affected by or interested in the alternative methods suggested in the submission have an opportunity to participate". If the effect of the submission "came out of left field" there might be little or no real scope for public participation. In another part of paragraph [69] of his judgment William Young J described that as "a submission proposing something completely novel".

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53 *Clearwater Resort Limited v Christchurch City Council* (HC) Christchurch AP 34/02.

54 *Option 5* above n 50.

55 *Option 5* above n 50 at [42] and [43].

56 *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290; [2014] NZRMA 519.

Such a consequence was a strong factor against finding the submission to be on the variation.

[55] *Motor Machinists* also emphasised two features of the RMA relevant to those tests: first the section 32 evaluation[57] and, second, the "robust, notified and informed public participation"[58] which is a theme of the RMA.

[56] The High Court authorities have been applied by the Environment Court in a number of cases. In *Well Smart Investment Holdings (NZQN) Ltd v Queenstown Lakes District Council* ("*Well Smart*") I observed that[59]:

> The *Clearwater* approach as explained by *Motor Machinists* now creates the situation that if a local authority's section 32 evaluation is (potentially) inadequate, that may cut out the range of submissions that may be found to be 'on' the plan change. While that does not seem fair to the primary submitters, I must not overlook that it is the fairness to persons with an interest greater than the public generally in the matters raised in a primary submission which I must consider here. Simply because a local authority may have put forward what is possibly an inferior section 32 evaluation at the initial step does not mean that a further wrong should be done to interested persons by denying them the right to participate.

[57] In that decision the court found that potential submitters were not given sufficient notice by the combination of the [section 32] evaluation and the Council's summary. I recorded that[60]:

> It seems potentially unfair that the right of submitters to be heard should be strictly circumscribed by the proponents of a plan change if [use of] those resources possibly should be one of the other reasonably practicable options which should have been considered under section 32 RMA...

However, I felt bound by the High Court's decision in *Motor Machinists* and held that the submission and appeal were beyond the scope of the plan change relating to Central Queenstown.

[58] In *Bluehaven Management Limited v Western Bay of Plenty District Council*[61] ("*Bluehaven*") Smith EJ and Kirkpatrick EJ (sitting together) took another approach. They

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57 *Motor Machinists* above n 56 at [76].

58 *Motor Machinists* above n 56 at [77].

59 *Well Smart Investment Holding (NZQN) Limited v Queenstown Lakes District Council* [2015] NZEnvC 214 at [38].

60 *Well Smart* above n 59 at [41].

61 *Bluehaven Management Limited v Western Bay of Plenty District Council* [2016] NZEnvC 191.

did not refer to *Well Smart*, but succinctly set out the principles in the High Court decisions and then continued[62]:

> While accepting the usefulness of an approach which includes an analysis of the relevant resource management issues in the form the Council is required to undertake pursuant to s 32 to comply with clause 5(1)(a) of Schedule 1 to the Act, we respectfully consider that some care needs to be taken in assessing the validity of a submission in those terms. As Kós J expressly recognises, there is no requirement in the legislation for a submitter to undertake any analysis or prepare an evaluation report in terms of s 32 when making a submission. The extent and quality of an evaluation report under s 32 of the Act depends very much on the approach taken by the relevant regional or district council in preparing it. As provided in s 32A, a submission made under clause 6 of Schedule 1 may be based on the ground that no evaluation report has been prepared or regarded or that s 32 or 32AA[63] has not been complied with.

[59] They summarised the role of the section 32 evaluation in the *Clearwater* tests as follows[64]:

> Our understanding of the assessment to be made under the first limb of the test is that it is an inquiry as to what matters should have been included in the s 32 evaluation report and whether the issue raised in the submission addresses one of those matters. The inquiry cannot simply be whether the s 32 evaluation report did or did not address the issue raised in the submission. Such an approach would enable a planning authority to ignore as relevant matter and thus avoid the fundamentals of an appropriately thorough analysis of the effects of a proposal with robust, notified and informed public participation.

The court in *Bluehaven* then held that the section 32 evaluation in that case <u>should</u> have considered the appellant's land so the fact that it did not (fully) was not a jurisdictional bar to finding that the appellant's submission was beyond scope. This decision was subsequently followed in *Calcutta Farms Limited v Matamata-Piako District Council*[65].

[60] While *Bluehaven*[66] raises similar concerns of injustice to submitters as mentioned in *Well Smart* (thus raising questions whether a plan change (or variation) that is tightly confined by a limited section 32 report may lead to an inefficient use of resources) it does

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62 *Bluehaven* above n 61 at [34].

63 Since the coming into force of the Resource Management Amendment Act 2013 on 4 September 2013, a further evaluation in accordance with the requirements of section 32 may be required pursuant to section 32AA of the Act for any changes made since the first evaluation report was completed.

64 *Bluehaven* above n 61 at [39].

65 *Calcutta Farms Limited v Matamata-Piako District Council* [2018] NZEnvC 187.

66 *Bluehaven* above n 61.

not deal with Kós J's fundamental point in *Motor Machinists*[67] which is that if the section 32 report omits discussion of the alternative resources that the submitter wishes to refer to, then other potential submitters may be prejudiced because they will neither be aware of the alternative resources, nor of the evaluation of their use compared with that in the plan change (and section 32 report). *Bluehaven* appears not to deal with the question of fairness to persons who might have wished to lodge submissions (or on appeal give evidence to the court).

[61] In passing I note that one potential answer (in the Environment Court) to the unfairness to submitters of a limited section 32 report would, in principle, be to declare[68] that section 32 has not been complied with. However, any such course is (probably) precluded by section 32A which states that any challenge to a section 32 report may only be made in a submission. This suggests that it might be a useful precaution, in most submissions on a plan change, to allege that section 32 has not been properly complied with because it has not identified other reasonably practicable options for achieving the objectives.

Conclusions

[62] There appears to be a large difference between the strict rules of engagement prescribed by the High Court for submissions on plan changes and the much looser rules for submissions on new (replacement) plans. Much of that difference can be understood in the context of specific plan changes. For example, if a local authority wishes to change a rule in a plan, submissions on the operative objectives and policies would be beyond jurisdiction as not "on" the plan change. In contrast, on new plans almost everything may be open to challenge as in *Albany North*[69], although the strategic issues I have identified do then often arise.

[63] The courts have long recognised the complexities of the plan preparation process. In *Royal Forest and Bird Protection Society Inc v Southland District Council* ("*Forest and Bird*") Panckhurst J wrote[70]:

67 *Motor Machinists* above n 56.
68 Under section 310 RMA.
69 *Albany North* above n 16 at [72].
70 *Royal Forest and Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 (HC) at p 10.

> The process of public notification, submissions, and hearing before the Council is quite involved. Issues commonly emerge as a result of the participation of diverse interest and the thinking in relation to such issues frequently evolves in the light of competing arguments.

Recognising that, Fisher J stated in *Westfield (NZ) Limited v Hamilton City Council*[71] ("*Westfield*"):

> [72] I agree that the Environment Court cannot make changes to a plan where the changes would fall outside the scope of a relevant reference and cannot fit within the criteria specified in ss 292 and 293 of the Act: see *Applefields,*[72] *Williams and Purvis*[73], and *Vivid*[74].
>
> [73] On the other hand I think it implicit in the legislation that the jurisdiction to change a plan conferred by a reference is not limited to the express words of the reference. In my view it is sufficient if the changes directed by the Environment Court can fairly be said to be foreseeable consequences of any changes directly proposed in the reference.
>
> [74] Ultimately, it is a question of procedural fairness. Procedural fairness extends to the public as well as to the submitter and the territorial authority. Adequate notice must be given to those who might seek to take an active part in the hearing before the Environment Court if they know or ought to foresee what the Environment Court may do as a result of the reference. This is implied in ss 292 and 293. The effect of those provisions is to provide an opportunity for others to join the hearing if proposed changes would *not* have been within the reasonable contemplation of those who saw the scope of the original.

[64] Section 293 has been amended since then, and there is no direct power of notification, only of consultation with persons who might be affected. The court has power to direct the local authority to consult with both parties and other persons. The Environment Court has also held that to achieve fairness to parties not before the court, notification may be necessary: see *Federated Farmers of New Zealand Inc (Mackenzie Branch) v Mackenzie District Council*[75]. I consider that section 293, recognising the complexity of plan preparation, provides both a feedback loop and (potentially) a method to remedy any procedural unfairness to persons not before the court.

2.4 The issues

[65] The questions raised by the Council's application are whether TRL's appeal does

71 *Westfield (NZ) Limited v Hamilton City Council* [2004] NZRMA 556 (HC) at [72] to [74].

72 *Applefields Ltd v Christchurch City Council* [2003] NZRMA 1.

73 *Williams and Purvis v Dunedin City Council* C022/C002.

74 *Re Vivid Holdings Ltd* [1991] NZRMA 467.

75 *Federated Farmers of New Zealand Inc (Mackenzie Branch) v Mackenzie District Council* [2013] NZEnvC 258 (Seventh Decision).

comply with the requirements of subclauses 14(1) and (2) of Schedule 1 RMA. I find that they do. Indeed, as I have recorded, at the hearing the Council did not maintain this line of attack. Rather, the issues for determination in this procedural decision are:

(1) whether the submission (and appeal) are "on" Stage 1 of the PDP?

(2) what are the relevant procedural and superior policy contexts relevant to the section 32 report?

(3) is the procedure fair to third parties (potential cross-submitters)?

(4) if the answer to (3) is no, are there potential remedies?

3. Consideration

3.1 Is the appeal 'on' the plan change?

[66] The Council says that this submission was not on the proposed plan, because TRL's land was expressly excluded from consideration in Stage 1 of the PDP. In support of that are two factors, first that the Note to Notification of Stage 1 of the PDP in the introductory Legend to the maps which expressly states that areas identified as "Operative Zone" are not being reviewed in Stage 1; secondly, that the Council may prepare its new plan in "territorial sections"[76]. The first point would be definitive unless TRL can bring itself within the exception identified by Kós J in *Motor Machinists*[77]:

> Yet the *Clearwater* approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further section 32 analysis is required to inform affected persons of the comparative merits of that change. Such consequential modifications are permitted to be made by decision-makers under Schedule 1, clause 10(2). Logically they may also be the subject of submission.
>
> ...
>
> Plainly, there is less risk of offending the second limb in the event that the further zoning change is merely consequential or incidental, and adequately assessed in the existing section 32 analysis...

[67] I hold that TRL can bring itself within the exception to some extent because its land is immediately adjacent to the proposed Low Density Residential zone. On the other hand, the Industrial B zone is not discussed in the section 32 analysis.

76 Section 73(3) RMA.
77 *Motor Machinists* above n 56 at [81] and [83].

[68] With regards to the second point as to the review by territorial sections, although counsel did not argue initially this point, Ms Hockly submitted in her later (26 April 2019) submissions that TRL's land was in a territorial section not being covered by Stage 1, in an attempt to bring its "Stage 1" of the review within section 73(3) RMA. I would have needed to receive fuller argument on this before deciding to rule out TRL's appeal on this ground. The initial difficulties I see with Ms Hockly's argument are that:

(a) as indicated earlier the "sections" in section 73(3) RMA are "territorial sections" not "sections [of the plan]"[78] i.e. the ODP, as referred to in section 79(5) RMA;

(b) there is no indication in the public notification that the review of the ODP is being conducted in territorial sections only that it is being carried out in temporal stages;

(c) the omission of the Industrial zone from the review raises problems under the NPS-UDC as I elaborate on shortly.

[69] For present purposes I consider that the site, because it is adjacent to the proposed zone, comes within the consequential exception contemplated by Kós J.

3.2 <u>The procedural and superior policy contexts</u>

[70] As I have recorded, the notified PDP looks like a completely new plan (minus some parts which the Council seems to say it will carry over). TRL's submission and appeal have responded to that view of the PDP. That approach is justified by the statement in the public notification that the PDP "affects all properties in the District".

[71] A concern here is that the Council has not undertaken a provision-by-provision review as required by section 79(1) RMA. At first sight the Council has not even undertaken a section-by-section review, let alone a provision-by-provision review of the ODP but has simply drafted a new district plan without reference to the ODP.

[72] For a plan change under a section 79(1)-(3) to be valid, I would expect that:

(1) each provision in Section 4 ODP which is being changed to be identified; and

78 With respect to the Parliamentary draftsperson the word "section" is suffering from overuse in sections 73 and 79 and different synonyms might usefully be substituted.

(2) that each objective in Section 4 of the ODP being changed by the PDP corresponds to at least one objective in the PDP; that is, the set (or domain) of the Section 4 ODP's provisions being changed is injective with the provisions of the set (or co-domain) which is the (strategic) objectives of the PDP.

If the relationship between the ODP and PDP is not injective, then there will be objectives in Section 4 ODP which are not being changed. However, the PDP is completely silent on these issues.

[73] The implication of all this for the validity of the PDP as a whole are not for me to determine. However, since Chapter 3 of the PDP has not yet been determined as having "the most appropriate objectives", then all consequential implementing sections and provisions must logically be indeterminate at present.

[74] The whole process adopted by the Council appears to be contradictory and confused, so there are discretionary issues I should consider later.

[75] As I have indicated there are also further complications with the superior policy context of the review of the ODP. The establishment of objectives and policies to "ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district" is a new function[79] of territorial authorities introduced by the Resource Legislation Amendment Act 2017. That is not applicable to this proceeding, but similar issues are raised by both the NPS-UDC which may apply to appeals on the PDP, and by the new Otago Regional Policy Statement which does apply.

[76] Since relatively flat (developable) land which is not valued for its rural landscape qualities (or as an outstanding natural landscape) is in relatively short supply in the Queenstown Lakes district, whether that land is used for housing or business (including industrial) or rural activities is a crucial issue. If a neighbour to a proposed residential zone submits that its land (however zoned in the ODP) should also be part of the proposed residential zone, then the Council's important integrated management function suggests that issue should be considered (and possibly resolved) sooner rather than later. It is an example of the kind of consequential "spatial change" identified by Whata J

79 Section 31(1)(aa) RMA.

in *Albany North*[80]. At least the issues raised by TRL should not be ruled out of Stage 1 as a jurisdictional matter *in limine*.

[77] While the court must accept that at present the Industrial Zones are not part of the 'very large plan change'[81] constituted by the PDP, the Environment Court recently observed in *Bunnings Limited v Queenstown Lakes District Council*[82] (*"Bunnings"*) that the Industrial provisions in the ODP appear to be inconsistent with the NPS-UDC so it may be that the Council or, on the appeals, the court under section 293 may find it necessary to review those chapters of the ODP also.

3.3 Is allowing the appeal to proceed fair to persons not before the court?

[78] The Council's strikeout is unfair to TRL as landowner. It is being left out of a hearing that it has consistently said it wants to be part of (to resolve the boundaries of the residential and industrial (or other) zones in this locality). It is not a fair or complete answer to say (as the Council does), that when the (operative) industrial zone is the subject of a subsequent stage, TRL can seek residential zoning then. The difficulty with that course is that the crucial arguments as to allocation of land with development capacity to either Residential or Industrial zoning, under the NPS-UDC may have already been resolved at the first stage.

[79] However, I also accept Ms Hockly's submission that the dominant consideration in relation to fairness must be the question of fairness to persons not before the court. Ms Hockly relied on the variation/plan change authorities – *Clearwater*[83] and *Motor Machinists*[84] – particularly the statement by Kós J in the latter that "to override the reasonable interests of people and communities by a submissional side-wind would not be robust, sustainable management of natural resources"[85].

[80] Mr Gresson submitted that *Motor Machinists*[86] is much less relevant to the jurisdictional issue on a "full review" of a plan and the resultant proposed new plan. That is, first, because on a full review all issues have to be the subject of analysis under section

80 *Albany North*, above n 16 at [96](e)(iv).
81 Report 1 of the Independent Commissioners 28 March 2018 at [31].
82 *Bunnings Limited v Queenstown Lakes District Council* above n 3 at [46].
83 *Clearwater Resort Limited v Christchurch City Council* above n 53.
84 *Motor Machinists* above n 56.
85 *Motor Machinists* above n 56 at [82].
86 *Motor Machinists* above n 56.

32 RMA at some time. Second, section 32, as relied on by the High Court in *Motor Machinists*[87], has been replaced since that decision was issued. Third, a new section 32AA has been added which adds an obligation for a "further evaluation" of "changes" (which are not "plan changes") to the PDP as a result of submissions. However, while as I have noted the PDP looks like Stage 1 of a full review, the Council has now produced its resolutions stating that its review was under section 79(1) RMA, not a full review under section 79(4) of the Act. Accordingly, Mr Gresson's argument cannot succeed on this point.

[81] A further argument for the Council was that the "Note" in the Legend for the planning maps may have suggested to persons interested in the use of TRL's site, that questions of the industrial zoning of the site would be left for a subsequent stage of the plan review. A member of the public might have looked at the summary of submissions and, on that basis, decided to lodge a cross-submission[88] only to decide it was not necessary on checking the note. However, why anyone would look at the initial Legend, when there is a separate legend on each planning map (including Map 23) of the PDP is an awkward question for the Council.

[82] If I proceed on the rather unlikely assumption that a reader of Map 23 of the PDP will find the "Note" on the general legend, and if a hearing is allowed to proceed in the Environment Court then a third party may have been left without an opportunity to be heard. That is a concern. However, there may be remedies as I discuss below.

3.4 Are there potential remedies?

[83] First, I consider that the understanding of any third party reading the Note to the Council's Legend is subject to an implicit proviso that a submission (under clause 6 Schedule 1 RMA) may seek to amend the boundaries of the proposed zone in the PDP. That is within the limited exception identified in *Motor Machinists*[89]. Further, in this case all the submissions, the Council's summary of decisions sought, and the notice of appeal are clear that TRL seeks a (low density) residential zone for the site. I do not see anything unfair, inaccurate or misleading about the summary[90]. I hold that it is fair notice to the public of the issues raised by TRL.

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87 *Motor Machinists* above n 56.
88 Under clause 8 Schedule 1 RMA.
89 *Motor Machinists* above n 56.
90 See *Re Montgomery Spur* (1999) 5 ELRNZ 227 at (EnvC) at [15].

[84] A further course open to the Council, if concerned about fairness to neighbours or the wider public, would be to promote a (neutral) variation under clause 16A Schedule 1 RMA (proposing to include the site without supporting it) so that neighbours of TRL's land and the public are notified about its aspirations and may make submissions on them. But even without that a hearing of the TRL appeal can be managed in a way that is fair to persons not present before the court.

[85] If, after hearing the merits, the Environment Court agrees that third parties have (or would) be further prejudiced – either by a potential rezoning of the site to (low density) residential or by the loss of an industrial zoning – then the court can adjourn the final decision about TRL's land to the "industrial" stage hearing or (more accurately) to the hearing about land (including the site) which happens to be zoned industrial under the superseded ODP. If that occurs, then at least TRL has been heard from the beginning and there is an improved probability of an integrated approach being taken in relation to the conflict between residential and industrial uses for a limited land area from which to provide for development capacity, and second the notional third party will also have an opportunity to be heard.

[86] Fair treatment of third parties and the public could be further enhanced by ensuring that neighbours of the site are expressly notified of TRL's proposed change in zoning when public notice of the relevant stage of the PDP dealing with industrial land in general and the site in particular is given.

[87] An alternative (or indeed an additional) step might be for the court to direct consultation (and/or notification) under section 293 RMA. I note that in *Mt Christina Limited v Queenstown Lakes District Council*[91] ("*Mt Christina*") Hassan EJ stated that: "... it would be improper for the court to tolerate a jurisdiction[al] breach in order to position the court to later make section 293 directives". The reference to "position[ing]" the Environment Court to give directions under section 293 RMA is difficult to understand since section 293 is one of only two substantive powers the court has when hearing an appeal under clause 14 of Schedule 1. Indeed section 293 is the <u>only</u> power expressly conferred on such an appeal. The other power – and the one usually, if only implicitly, relied on by the Environment Court – is the general power on appeals conferred by section 290 RMA.

91 *Mt Christina Limited v Queenstown Lakes District Council* [2018] NZEnvC 190 at [20].

[88] Further, since the jurisdictional breach being considered on this type of application is not direct[92], but indirect (the effect of a submission on persons not before the court) it seems desirable, indeed necessary, to leave open consideration by the court of its substantive powers since they confer an opportunity to remedy any unfairness to 'third parties'.

[89] Consequently I do not think it is improper for the court to bear in mind, when deciding a jurisdictional question about the scope of an appeal, that there is a possibility that the Environment Court which hears the merits of the appeal may make orders under section 293 to remedy unfairness to persons not currently before the court. In my respectful view, *Mt Christina* does not recognise the complexities of the plan preparation process. I prefer to follow *Westfield*[93] in considering and leaving open the possibility of action under section 293 RMA as a relevant consideration when considering indirect jurisdictional issues.

[90] I am encouraged in that conclusion by consideration of the following uncertainties, in the past and current process:

- whether the whole process is *intra vires* as a section 79(1) "provision" by "provision" review;
- the fact that the strategic Chapter 3 PDP is not yet resolved with all the possible consequences and uncertainties for subordinate (non-strategic) objectives, polices and methods that implies;
- the fact that Section 4 ODP may or may not be completely replaced by Chapter 3 PDP;
- doubts over whether the Council can leave industrial zonings out of consideration (see *Bunnings*[94]); and
- the relationships between the demand curves for industrial and residential land as discussed in *Bunnings*.

92 For an example of a direct jurisdictional breach – where there is no founding submission – see *CSF Trustees Limited v Queenstown Lakes District Council* [2019] NZEnvC 24.

93 *Westfield* above n 71.

94 *Bunnings Limited v Queenstown Lakes District Council* above n 3.

4. Outcome

[91] I hold that the TRL submission is on the plan change. While it is clear that potential cross-submitters (persons not heard by the Council and not before the court) may be prejudiced by the process the Council has adopted, that is not irremediable. There appear to be a number of options available to remedy that unfairness.

[92] Accordingly, I refuse to strike out any part of TRL's appeal.

J R Jackson
Environment Judge

Attachment A: Map 23 (notified version)

Legend
Historic Heritage Features
Protected Tree
Parcel/Road Boundary
Landscape Classification (ONF,ONL,RLC)
Urban Growth Boundary
Unformed Roads
Designated Areas
Building Restriction
Plan Change Boundary
Local Shopping Centre
Low Density Residential
Large Lot Residential
Rural
Rural Residential
Rural Lifestyle
Water (zoned Rural unless otherwise shown)
Industrial B Zone (Operative)
Rural General (Operative)
Rural Residential (Operative)
Industrial A Zone (Operative)
Special Zones (Operative)

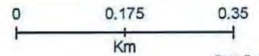
Three Parks
Ballantyne Road Mixed Use
PC 46
RLC
RLC
ONL

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

QUEENSTOWN LAKES DISTRICT COUNCIL

Proposed District Plan Map 23 - Wanaka Rural



Date Published: 19/12/2016

Business Area 5

Tourism & Community Facilities

Tourism & Community Facilities

STATE HIGHWAY 84 WANAKA - LUGGATE ROAD

Road 7

Road 3a

3500m²

1000m²

2000m²

1000m²

Retail Area 1

Retail Area 2

7500m²

2000m²

1750m²

Road 2a

4369m²

1500m²

Road 15

2000m²

Retail Area 3

1000m²

Retail Area 4

1000m²

4000m²

Road 10

Deferred Zone

Deferred zone

Deferred Zone

Visitor accommodation precinct

Serviced Apartments

North Three Parks

Wanaka Sports Facillity

Deferred Mixed Use

Deferred Mixed Use

Deferred Mixed Use

Lifestyle Village

Lifestyle Village

Low Density Residential

Comprehensive Residential

Residential

Future education and facilities site

Future Education & Facilities

Business

Business

Business Main Street

Business

Business

Business

Sir Tim Wallis Drive

Reserve

Road 6

Low Density Residential

Open Space

Residential

BALLANTYNE ROAD

KEY

- TOURISM AND COMMUNITY FACILITIES
- CAMPGROUND
- COMMERCIAL CORE (LARGE & SMALL FORMAT RETAIL)
- LOW DENSITY RESIDENTIAL
- COMPREHENSIVE RESIDENTIAL
- SERVICED APPARTMENTS
- LIFESTYLE VILLAGE
- MIXED USE
- BUSINESS
- BUSINESS MAIN STREET
- PRIVATE OPEN SPACE
- PUBLIC OPEN SPACE
- DEFERRED ZONE
- FUTURE EDUCATION AND FACILLITIES
- RUNNING / CYCLE NETWORKS
- AREA CONTAINING 10,000m² OF FLOORSPACE BEING APPLIED FOR IN ODP

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN: RM171167

Thursday, 14 June 2018

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Client & Location: Willowridge Developments Ltd THREE PARKS WANAKA

Purpose & Drawing Title: OUTLINE DEVELOPMENT PLAN OVERVIEW

Surveyed by:	xxx
Designed by:	sjd/bjm
Drawn by:	bjm
Checked by:	sjd
Approved by:	sjd

Original Size: A3

Scale: 1:5,000 @ A3

DO NOT SCALE

Job No:	Sheet No:	Revision No:	Date Created:
W3850	101	L1	12/06/2018

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Blair Devlin

From: Information Request <informationrequest@qldc.govt.nz>
Sent: Tuesday, 26 May 2020 8:51 AM
To: Blair Devlin
Subject: RE: RE: Record of noise complaints - 21 Gordon Road, Wanaka [#6FA6D]

Hi Blair ,

They were complaints about the noise at 21c Gordon Road, Wanaka .

Ngā mihi,
Poonam

Poonam Sethi | Governance and Official Information Advisor | Chief Executive's Office
Queenstown Lakes District Council
P: +64 3 450 0379

From: Blair Devlin <blair@vivianespie.co.nz>
Sent: Tuesday, 26 May 2020 8:11 AM
To: Information Request <informationrequest@qldc.govt.nz>
Subject: RE: RE: Record of noise complaints - 21 Gordon Road, Wanaka [#6FA6D]

Hi Poonam, thanks very much for that information – just to check one thing in the wording of your email, does that mean the complaints were received from the occupiers of 21C Gordon Road or about the occupiers of 21C Gordon Road?

I think it's from, but I just wasn't sure from the word 'for' in your email.

Many thanks
Blair

From: Information Request <informationrequest@qldc.govt.nz>
Sent: Tuesday, 26 May 2020 7:17 AM
To: Blair Devlin <blair@vivianespie.co.nz>
Subject: RE: RE: Record of noise complaints - 21 Gordon Road, Wanaka [#6FA6D]

Morning Blair ,

As per our regulatory team we have received 4 noise complaints for 21C Gordon road since 1 July 2019.

Please do not hesitate to contact me if you have any questions or require any further information.

Ngā mihi,
Poonam

Poonam Sethi | Governance and Official Information Advisor | Chief Executive's Office
Queenstown Lakes District Council
P: +64 3 450 0379

-----Original Message-----
From: blair@vivianespie.co.nz
Sent: Monday, 25 May 2020 11:22:29 AM
To: "QLDC Services" <SERVICES@QLDC.GOVT.NZ>
Subject: RE: Record of noise complaints - 21 Gordon Road, Wanaka [#6FA1I]

I agree thanks Charlotte

From: QLDC Services <SERVICES@QLDC.GOVT.NZ>
Sent: Monday, 25 May 2020 11:18 AM
To: Blair Devlin <blair@vivianespie.co.nz>
Subject: RE: Record of noise complaints - 21 Gordon Road, Wanaka [#6FA1I]

Hi Blair,

Thank you for getting in touch. In order to disclose this information you will need to apply for a LGOIMA. Please see the link below for information regarding this.

https://www.qldc.govt.nz/your-council/official-information-lgoima

If you agree, I can forward this to the relevant team to process.

Kind regards,

Charlotte

QLDC Customer Service team
Queenstown Lakes District Council
P: +64 3 441 0499
E: services@qldc.govt.nz

www.qldc.govt.nz

-----Original Message-----
From: blair@vivianespie.co.nz
Sent: Monday, 25 May 2020 10:18:05 AM
To: services@qldc.govt.nz
Subject: Record of noise complaints - 21 Gordon Road, Wanaka

Dear QLDC,

Could you please advise if any noise complaints have been received from the residential units located at 21A-N Gordon Road Wanaka?

I understand you won't be able to say who complained, or even what the complaint is about, I am just interested in whether any complaints have been received. In that regard I would be happy with a simple yes / no answer.

The reason I am asking is that there is a submission on the PDP (Stage 3) seeking a Business Mixed Use Zoning instead of an Industrial zoning. I am looking to find out whether existing residential activities like these consented under RM050831 have complained about surrounding activities.

Kind regards

Blair

Blair Devlin MRRP, MNZPI | Senior Resource Management Planner | Vivian + Espie Ltd

p: +64 3 441 4189 m: 021 222 6393 | 1/211B Glenda Drive, Frankton, Queenstown 9300 | PO Box 2514, Wakatipu, Queenstown 9349 | f: +64 3 441 4190 | www.vivianespie.co.nz

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APPENDIX [E]

Assessment of Proposed Rezoning Against the BMUZ Objectives and Policies

16.2 Objectives and Policies
16.2.1 Objective – An area comprising a high intensity mix of compatible residential and non-residential activities is enabled.

The area proposed for rezoning is already a mixed area and the proposed rezoning to BMUZ will result in a high intensity mix of compatible residential and non-residential activities.

Policies
16.2.1.1 Accommodate a variety of activities while managing the adverse effects that may occur and potential reverse sensitivity.
16.2.1.2 Enable a range and mix of compatible business, residential and other complementary activities to achieve an urban environment that is desirable to work and live in.

The proposed area for rezoning can accommodate a variety of compatible activities while managing adverse effects.

16.2.1.3 Avoid activities that have noxious, offensive, or undesirable qualities from locating within the business mixed use Zone to ensure that a high quality urban environment is maintained.

The nature of the existing activities within the area to be rezoned (outside of the Tussock Rise site) is that they do not have noxious, offensive or undesirable qualities.

16.2.1.4 For sites adjoining Gorge Road in Queenstown, [not applicable]
16.2.1.5 Provide appropriate noise limits to minimise adverse noise effects received within the business mixed use Zone and by nearby properties.
16.2.1.6 Ensure that residential development and visitor accommodation provide acoustic insulation over and above the minimum requirements of the building Code to limit the potential for reverse sensitivity effects.

The uncontested acoustic advice from Dr Trevathan is that the BMUZ provisions have provisions that protect future residential uses form the existing activities in the area proposed to be rezoned.

16.2.1.7 Ensure that the location and direction of lights does not cause significant glare to other properties, roads and public places and promote lighting design that mitigates adverse effects on views of the night sky and provide a safe and well-lit environment for pedestrians.
16.2.1.8 Ensure that outdoor storage areas are appropriately located and screened to limit any adverse visual effects on public places and adjoining residential zones.
16.2.1.9 Minimise opportunities for criminal activity through incorporating Crime Prevention through Environmental Design (CPTED) principles as appropriate in the design of lot configuration and the street network, carparking areas, public and semi-public spaces, accessways/pedestrian links/lanes, and landscaping.

These matters can all be addressed through future resource consents that would be required by the zone rules for new buildings in the area rezoned to be BMUZ.

16.2.2 Objective – New development achieves high quality building and urban design outcomes that minimises adverse effects on adjoining residential areas and public spaces.
Policies 16.2.2.1 Require the design of buildings to contribute positively to the visual quality, vitality, safety and interest of streets and public spaces by providing active and articulated building frontages, and avoid large expanses of blank walls fronting public spaces.

16.2.2.2 Require development close to residential zones to provide suitable screening to mitigate adverse visual effects, loss of privacy, and minimise overlooking and shading effects to residential neighbours.
16.2.2.3 Require a high standard of amenity, and manage compatibility issues of activities within and between developments through site layout, landscaping and design measures.
16.2.2.4 Utilise and, where appropriate, link with public open space nearby where it would mitigate any lack of open space provision on the development site.
16.2.2.5 Incorporate design treatments to the form, colour or texture of buildings to add variety, moderate their scale and provide visual interest from a range of distances.
16.2.2.6 Where large format retail is proposed, it should be developed in association with a variety of integrated, outward facing uses to provide reasonable activation of building facades.
16.2.2.7 Allow buildings between 12m and 20m heights in the Queenstown business mixed use Zone in situations when: a. the outcome is of high quality design; b. the additional height would not result in shading that would adversely impact on adjoining Residential zoned land and/or public space; and c. the increase in height would facilitate the provision of residential activity.
16.2.2.8 Apply consideration of the operational and functional requirements of non-residential activities as part of achieving high quality building and urban design outcomes.
16.2.2.9 Encourage the layout and design of new buildings and landscaping to integrate with Horne Creek where feasible.

These objectives and policies focus on achieving high quality buildings and urban design outcomes. They would be applied (along with the proposed BMUZ Design Guidelines) to future developments within the area proposed to be rezoned to BMUZ. New development in the area proposed to be rezoned would need to address the Objective and Policies in any application for resource consent, and would result in a high quality urban environment.

Please note: Objectives and policies relating to the BMUZ at North Frankton Flats have been omitted

APPENDIX [F]

Assessment of Proposed Rezoning Against the Strategic Directions Objectives and Policies (taken from Strategic S42A report and Chapter 3 where not under appeal but Interim Decisions or Consent Orders not yet issued)

3.2.1 The development of a prosperous, resilient and equitable economy in the District (addresses Issue 1)

The proposed rezoning will contribute to the development of a prosperous, resilient and equitable economy by providing for a more flexible zoning that provides for a range of uses in close proximity to the Wanaka town centre. This is all the more important in a post Covid economy (refer evidence of Mr Ballingall).

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

The proposed rezoning to BMUZ would enable well designed visitor accommodation, just 1.2km from the Wanaka town centre. The design requirements are built into the BMUZ and include reference to design guidelines. Visitor industry places such as the lake, QLDC sport and recreation centre and Puzzling World are all in reasonable proximity to the site.

3.2.1.2 The Queenstown and Wanaka town centres[1] are the hubs of New Zealand's premier alpine visitor resorts and the District's economy.

The existing Wanaka industrial area is already mixed use in nature. The proposed rezoning to BMUZ would complement the Wanaka town centre and not threaten it. A specific policy and rule has been added to prevent large format retail activities establishing.

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

The proposed rezoning to BMUZ includes a specific policy and rule regarding large format retail to avoid competing with the Three Parks commercial core area.

3.2.1.5 Local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres[2], Frankton and Three Parks, are sustained.

The proposed rezoning to BMUZ would retain and strengthen the area as a local commercial centre with a strong employment function.

3.2.1.6 Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.

This policy is particularly relevant to the proposed rezoning to BMUZ. The proposed rezoning to BMUZ would achieve this policy through its more flexible zoning that provides for a wider range of activities to establish at a lower cost

3.2.17 – not relevant, relates to agricultural land uses

3.2.18 – not relevant – relates to diversification of rural land uses

3.2.1.9 Infrastructure in the District that is operated, maintained, developed and upgraded efficiently and effectively to meet community needs in a sustainable way. ~~and to maintain the quality of the environment.~~ (also elaborates on SO 3.2.2 following)

The proposed rezoning to BMUZ would not adversely affect infrastructure. The area is fully serviced.

3.2.2 Urban growth is managed in a strategic and integrated manner. (addresses Issue 2)

The proposed rezoning to BMUZ would better provide for urban growth by recognising the strategic context of the Wanaka industrial area. A rezoning to BMUZ better integrates with this strategic context than a rezoning to GIZ.

3.2.2.1 Urban development occurs in a logical manner so as to:
a. promote a compact, well designed and integrated urban form;
b. build on historical urban settlement patterns;
c. achieve a built environment that provides desirable, healthy and safe places to live, work and play;
d. minimise the natural hazard risk, taking into account the predicted effects of climate change;
e. protect the District's rural landscapes from sporadic and sprawling development;
f. ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in;
g. contain a high quality network of open spaces and community facilities; and.
h. be integrated with existing, and planned future, infrastructure. (also elaborates on S.O. 3.2.3, 3.2.5 and 3.2.6 following)

When considering the Strategic Context set out in Section 1 of my evidence, the development of this area under a BMUZ framework is considered to be more 'logical' than under a GIZ framework. With regard to (a), the proposed rezoning to BMUZ will result in a well designed and integrated urban form due to the strong design focus and protections of the BMUZ. With regard to (b), the proposed rezoning builds on the existing mixed nature of the area, and its proximity to the Wanaka town centre. With regard to (c), the proposed rezoning to BMUZ will contribute to Wanaka having desirable, healthy and safe places to live, work and play. Matters (d) and (e) are not applicable. The proposed rezoning will achieve (e) and (f) by allowing higher density housing which is currently not well provided for in Wanaka. With regard to (g), open spaces and community facilities are nearby, or can be provided as part of a development. With regard to (h), the proposed rezoning can be serviced with existing and planned future infrastructure.

3.2.3 A quality built environment taking into account the character of individual communities. (addresses Issues 3 and 5)

The proposed rezoning to BMUZ achieves this objective. The design led focus of the BMUZ will result in a quality built environment.

3.2.3.1 Not relevant, relates to historic heritage values.

3.2.4 – Not applicable – relates to natural environments and ecosystems

3.2.4.1 – 3.2.4. 7 – relates to the above and are not applicable to the proposed rezoning.

3.2.5 - Not applicable, relates to retention of the District's distinctive landscapes

3.2.5.1 – 3.2.5.2 – not applicable, relates to landscapes.

3.2.6 The District's residents and communities are able to provide for their social, cultural and economic wellbeing and their health and safety. (addresses Issues 1 and 6)

The proposed rezoning to BMUZ better achieves this objective than a GIZ framework as it provides for a wider range of activities that could include matters relating to social and cultural wellbeing, as well as economic wellbeing.

3.2.7 The partnership between Council and Ngāi Tahu is nurtured. (addresses Issue 6).

(Strategic Objectives 3.2.7.1 and 3.2.7.2 elaborate on Strategic Objective 3.2.7).

3.2.7.1 Ngāi Tahu values, interests and customary resources, including taonga species and habitats, and wahi tupuna, are protected.

3.2.7.2 The expression of kaitiakitanga is enabled by providing for meaningful collaboration with Ngāi Tahu in resource management decision making and implementation.

The proposed rezoning will not affect the partnership between Council and Ngai Tahu.

3.3.1 – not applicable, relates to maintaining and enhancing visitor industry attractions, facilities and services within the Wanaka town centre.

3.3.1A – not applicable, relates to commercial recreation and tourism related activities that enable appreciation of the district landscapes.

3.3.1B – not applicable, potential Resorts policy

Town Centres and other Commercial and Industrial Areas

3.3.2 Provide a planning framework for the Queenstown and Wanaka town centres that enables quality development and enhancement of the centres as the key commercial, civic and cultural hubs of the District, building on their existing functions and strengths. (relevant to S.O. 3.2.1.2).

Just as the Anderson Heights BMUZ has not affected the Wanaka town centre, the proposed rezoning will not affect Wanaka town centre as the key commercial, civic and cultural hub of the Wanaka area.

3.3.3 Avoid new commercial zoning of land that is likely to ~~could~~ undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity. (relevant to S.O. 3.2.1.2).

With regard to 3.3.3, the proposed BMUZ is a mixed use zone but does have a commercial component. Just as the Anderson Heights BMUZ has not affected the Wanaka town centre, the rezoning is not anticipated to affect the Wanaka town centre as it reflects the existing mixed use nature of the area and has been modified to prevent large format retail activities e.g. a supermarket.

3.3.4 – Not relevant, relates to Frankton

3.3.5 - Not relevant, relates to Queenstown airport

3.3.6 – Not relevant, relates to Frankton commercial centres

3.3.7 Provide a planning framework for the commercial core of Three Parks that enables large format retail development. (relevant to S.O. 3.2.1.4).

The proposed rezoning will not affect the planning framework for large format retail at Three Parks due to the specific additional policy and rule recommended in Appendix **[A]**.

3.3.8 Avoid non-industrial activities not ancillary to industrial activities occurring within areas zoned for industrial activities. (relevant to S.O. 3.2.1.3 and 3.2.1.5).

I have specifically considered this policy in my evidence (refer section 8 paragraphs 11.10- 11.19). The proposed rezoning would result in a new BMUZ adjacent to an industrial zone. This policy is more aimed at consents than rezonings but I acknowledge the explanatory note below:

3.1B.1 For the purpose of plan development, including plan changes, the Strategic Objectives and Strategic Policies in this Chapter provide direction for the development of the more detailed provisions contained elsewhere in the District Plan in relation to the Strategic Issues.

I note that the section 32 report for the rezoning of the ODP Ballantyne Road Mixed Use Zone away from industrial to the proposed Active Sport and Recreation Zone, that such proposal was not considered to be inconsistent with the Strategic Directions chapters given the recognition of there being a large supply of industrial zoned land available in Wanaka. I consider a similar conclusion can be reached for the Tussock Rise relief.

3.3.9 – Not applicable, relates to Township commercial precincts and local shopping centres.

3.3.10	Avoid commercial rezoning that ~~would~~ is likely to undermine the key local service and employment function role that the centres outside of the Queenstown and Wanaka town centres, Frankton and Three Parks fulfil. (relevant to S.O. 3.2.1.5).

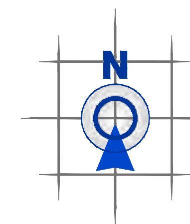
With regard to 3.3.10, this is similar to 3.3.3. The proposed BMUZ is a mixed use zone but does have a commercial component. Just as the Anderson Heights BMUZ has not affected the key local service and employment function performed by the Wanaka town centre, the rezoning is not anticipated to affect the Wanaka town centre or Three Parks as it reflects the existing mixed use nature of the area and has been modified to prevent large format retail activities e.g. a supermarket. Indeed it could easily be argued that the proposed rezoning is entirely consistent with this policy.

3.3.11	Provide for a wide variety of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification. (relevant to S.O. 3.2.1.1, 3.2.1.2, 3.2.1.5, 3.2.1.6 and 3.2.1.9).

The proposed rezoning will provide additional BMUZ land for Wanaka (including some vacant supply) that is not in a single ownership. Again the rezoning is entirely consistent with this policy.

Climate Change	
3.3.12	Encourage economic activity to adapt to and recognise opportunities and risks associated with climate change.

The proposed BMUZ rezoning is a mixed use zone that includes living and working and reduces the need for everyone to commute form single use areas. This reduces commuting and is an opportunity to reduce carbon emissions from vehicle use.



Gordon Rd

Ballantyne Rd

Connell Tce

Frederick St

Lot 2
DP 477622

Lot 1
DP 477622

Lot 8
DP 385288

Lot 7
DP 385288

Lot 6
DP 385288

Lot 5
DP 385288

Lot 1
DP 385288

Lot 2
DP 385288

Lot 3
DP 385288

Lot 4
DP 385288

Lot 2
DP 323536

DP 27842

Lot 2
DP 27842

Lot 1
DP 24855

Lot 2
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Lot 3
DP 24855

Lot 1
DP 425428

Lot 4
DP 17967

Lot 7
DP 19168

Lot 6
DP 19168

Lot 2
DP 19885

Lot 1
DP 19885

Lot 5
DP 18076

Lot 1
DP 21912

Lot 1
DP 26235

Lot 2
DP 26235

Lot 1
DP 372157

Lot 32
DP 332078

Lot 35
DP 332078

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Lot 23
DP 332078

Lot 1
DP 402977

Lot 2
DP 402977

Lot 2
DP 341415

Lot 1

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E wanaka@ppgroup.co.nz

Client & Location:

Tussock Rise Ltd
Wanaka

Purpose & Drawing Title:

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Lot 2 DP 477622

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Checked by:	RLP		
Approved by:	RLP		DO NOT SCALE

Job No:	Drawing No:	Sheet No:	Revision No:	Date Created:
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APPENDIX [H]

Assessment of Proposed Rezoning Against relevant Chapter 4 (Urban Development) Objectives and Policies

The following objectives and policies are considered relevant to the re-zoning.

> *4.2.2 A Objective - A compact and integrated urban form within the Urban Growth Boundaries that is coordinated with the efficient provision and operation of infrastructure and services.*

The proposed rezoning achieves the objective. The land is within the urban growth boundary (UGB) and is already serviced with reticulated infrastructure.

> *4.2.2 B Objective - Urban development within Urban Growth Boundaries that maintains and enhances the environment and rural amenity and protects Outstanding Natural Landscapes and Outstanding Natural Features, and areas supporting significant indigenous flora and fauna. (From Policy 3.3.13, 3.3.17, 3.3.29)*

The proposed rezoning achieves the objective as the area is within the UGB.

> *4.2.2.1 Integrate urban development with the capacity of existing or planned infrastructure so that the capacity of that infrastructure is not exceeded and reverse sensitivity effects on regionally significant infrastructure are minimised.*

The proposed rezoning achieves the objective as the rezoned area can be serviced with existing infrastructure.

> *4.2.2.2 Allocate land within Urban Growth Boundaries into zones which are reflective of the appropriate land use having regard to:*
> *a. its topography;*
> *b. its ecological, heritage, cultural or landscape significance if any;*
> *c. any risk of natural hazards, taking into account the effects of climate change;*
> *d. connectivity and integration with existing urban development;*
> *e. convenient linkages with public transport;*
> *f. the need to provide a mix of housing densities and forms within a compact and integrated urban environment;*
> *g. the need to make provision for the location and efficient operation of regionally significant infrastructure;*
> *h. the need to provide open spaces and community facilities that are located and designed to be safe, desirable and accessible;*
> *i. the function and role of the town centres and other commercial and industrial areas as provided for in Chapter 3 Strategic Objectives 3.2.1.2 - 3.2.1.5 and associated policies; and*
> *j. the need to locate emergency services at strategic locations.*

With regard to (a), the slightly elevated topography of the Tussock Rise site does suit a mixed use development due to its pleasant aspect and proximity to residential houses along Golf Course Road and to the west . Matters (b) and (c) are not relevant. With regard to (d), the location is very well connected with existing urban development and the proposed rezoning achieves better integration with a mixed use zoning rather than a 'pure industrial' zone. With regard to (e), there is no public

transport service in Wanaka but if there was to be such proposed in the future the site is ideally positioned to be serviced by such and to integrate with other areas of the Wanaka township and surrounds . Ballantyne Road is a main arterial route should one be provided, directly adjacent to the area proposed to be rezoned. The proposed rezoning achieves (f) as the BMUZ will allow a mix of housing densities and forms within a compact and integrated urban environment. Matter (g) of the policy is not applicable. With regard to (h), large open spaces are available nearby at the Wanaka Sport and recreation centre and the proposed playing fields on the former Oxidation Ponds site(albeit at a reduced scale as sought by the submission), and smaller reserves can be incorporated into the development. With regard to matter (i), this matter has been covered in my evidence and in the provisions in Appendix **[A].** Matter (j) is not relevant.

> *4.2.2.3 Enable an increased density of well-designed residential development in close proximity to town centres, public transport routes, community and education facilities, while ensuring development is consistent with any structure plan for the area and responds to the character of its site, the street, open space and surrounding area.*

The proposed rezoning achieves the policy as the BMUZ provides for exactly the matters set out in this policy

> *4.2.2.4 Encourage urban development that enhances connections to public recreation facilities, reserves, open space and active transport networks.*

The proposed rezoning to BMUZ means that matters are considered under the objectives policies and rules for consents in the BMUZ, whereas they are not a focus for the GIZ. Notwithstanding this the Tussock Rise site is located in close proximity to lake Wanaka and key existing and proposed recreation facilities and areas

> *4.2.2.5 Require larger scale development to be comprehensively designed with an integrated and sustainable approach to infrastructure, buildings, street, trail and open space design.*

The Tussock Rise site is the only vacant site within the area proposed to be BMUZ with the capacity for large scale development. As it is in single ownership it can be comprehensively designed. Given such the rezoning is entirely consistent with this policy.