QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Stage 3 Proposed District Plan Provisions

Report and Recommendations of Independent Commissioners

Report 20.1: Introduction

Commissioners

Trevor Robinson (Chair)
Juliane Chetham
Sarah Dawson
Greg Hill
Calum Macleod
Ian Munro
Quentin Smith

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1. PRELIMINARY

1.1 Terminology in this Report

1. In this and accompanying reports 20.2-? inclusive, we use the following abbreviations:

Aurora	Aurora Energy Limited
BMUZ	Business Mixed Use Zone
BRA	Building Restriction Area
CCCL	Cardrona Cattle Company Ltd
Clause 16(2)	Clause 16(2) of the First Schedule to the RMA
Corbridge	Corbridge Estates Limited Partnership
Council	Queenstown Lakes District Council
GFA	Gross Floor Area
GIZ	General Industrial Zone
GISZ	General Industrial and Service Zone
HDRZ	High Density Residential Zone
Kā Rūnaka	Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou, Hokonui Rūnanga, Te Rūnanga o Waihōpai, Te Rūnanga o Awarua, Te Rūnanga o Ōraka-Aparima
LDSRZ	Lower Density Suburban Residential Zone
MDRZ	Medium Density Residential Zone
NPSFM	National Policy Statement for Freshwater Management 2020
NPSET	National Policy Statement for Electricity Transmission 2008
NPSUD	National Policy Statement on Urban Development 2020
ODP	The Operative District Plan for the Queenstown Lakes District as of 19 September 2019

Oil Companies	Z Energy Limited: BP Oil NZ Limited and Mobil Oil NZ Limited
ONF	Outstanding Natural Feature
ONL	Outstanding Natural Landscape
ORC	Otago Regional Council
PDP	The series of Plan Changes to the ODP notified in stages commencing 26 August 2015
QAC	Queenstown Airport Corporation
RMA	Resource Management Act 1991 as at 19 September 2019
RPS	The partially operative Regional Policy Statement for the Otago Region dated 14 January 2019 unless otherwise stated
RVZ	Rural Visitor Zone
Scope	Scope Resources Ltd
Stage 3	The most recent set of PDP Plan Changes (and Plan Variations) to the ODP notified on 19 September and 31 October 2019
Telcos	Spark New Zealand Trading Ltd and Vodafone New Zealand Ltd
Universal	Universal Developments Hāwea Ltd

1.2 Background

2. The purpose of this Report is to provide an introduction to the series of reports containing recommendations on the Plan Changes and Plan Variations comprising Stage 3 of the PDP process. More specifically, Stage 3 comprised:
   (a) Chapter 39 – Wāhi Tūpuna together with related variations to Chapters 2, 12, 13, 14, 15, 16, 25, 26, 27, 29 and 30 of the PDP;
   (b) Chapter 18A – General Industrial Zone, together with related variations to Chapters 25, 27, 29 and 36 of the PDP;
   (c) Residential Design Guidelines, together with related variations to Chapters 7, 8 and 9 of the PDP;
   (d) Business Mixed Use Zone Design Guidelines, together with related variations to Chapters 16 and 31 of the PDP;
   (e) Chapter 19A – Three Parks Commercial Zone together with related variations to Chapters 9, 16, 25, 27 and 31 of the PDP;
   (f) Chapter 20 – Settlement Zone, together with related variations to Chapters 7, 25, 27, 29, 31 and 36 of the PDP;

(g) Chapter 46 – Rural Visitor Zone, together with related variations to Chapters 20, 25, 27 and 31 to the PDP and amendments to the Cardrona Character Guidelines 2012 incorporated by reference in the PDP;

(h) Multiple stand alone variations to the PDP as follows:

i. Variation to Chapter 30 – Energy Utilities, together with related variation to Chapter 2;

ii. Variations to Chapters 21, 22, 23, 24 and 38 of the PDP related to firefighting, water supply and access;

iii. Variation to Chapter 26 related to Chalmers Cottage;

iv. Variations to Chapters 7, 8, 9, 12, 13, 14, 15 and 16 of the PDP related to glare;

v. Variations to Maps 31a, 32 and 37 of the PDP relating to the mapped extend of the area subject to Rules 7.5.1.3 and 7.5.3.3 (Frankton Road height controls);

vi. Variation to Chapter 2 of the PDP relating to the definition of "*residential flat"*;

vii. Variations to Chapters 7, 8 and 9 relating to waste and recycling;

viii. Variations to Chapters 29, 36 and 38 and to Planning Maps 35 and 36 as they relate to the zoning of land on the margins of Queenstown Bay;

ix. Variation to Chapter 27 to amend location specific policies related to Peninsula Bay and Wyuna Station;

x. Variation to Chapter 43 (Millbrook).

3. All of these Plan Changes and Plan variations were publicly notified on 17 September 2019 except Chapter 46 – Rural Visitor Zone and the related variations summarised in (g) above. Those provisions were publicly notified on 31 October 2019, and labelled Stage 3B. As part of that notification, the variations to Chapters 29, 36 and 38 and to Planning Maps 35 and 36 (h)(viii) were renotified to correct defects in the original notification.

4. Submissions on the notified provisions closed on 18 November 2019 and 2 December 2019 respectively.

5. On 30 January 2020, the Council publicly notified the summary of decisions requested in submissions on both Stage 3 and Stage 3B. At that point, Stage 3B effectively merged with Stage 3 for all practical purposes and we do not maintain any distinction between them.

6. Further public notices were made on 20 February 2020, 19 March 2020 and 18 June 2020 to reflect procedural decisions of the Chair (discussed further below) to accept late submissions and to correct the summary decisions already notified, giving rise to further opportunities to make further submissions.

7. Ultimately, some 479 submissions were received along with 89 further submissions. Taking account of submitters who withdrew their submissions, 451 submissions and 89 further submissions required consideration.

8. We note also that on 15 May 2020, Council withdrew wāhi tūpuna overlays located over Quail Rise Special Zone, Remarkables Park Special Zone, Shotover Country Special Zone, Mt Cardrona Station Special Zone, Kingston Village Special Zone and that part of the HDRZ located on the western edge of Gorge Road.

9. As a matter of administrative convenience, the provisions notified as part of Stage 3 were divided into three streams. Stream 16 comprised Chapter 39 Wāhi tūpuna together with the related variations noted above in paragraph 2(a).

10. Stream 17 comprised Chapter 18A – General Industrial Zone, Residential Design Guidelines, Business Mixed Use Zone Design Guidelines and Chapter 19A – Three Parks Commercial Zone, together with the variations related to those provisions as listed in paragraph 2(b)-(e) inclusive.

11. Stream 18 comprised the balance of provisions listed above.

1.3 Appointment of Commissioners:

12. On 27 June 2019, the Council resolved:
    (a) To appoint Trevor Robinson as Chair of the Hearing Panels for Stage 3 of the PDP;
    (b) To appoint Trevor Robinson, Sarah Dawson, Greg Hill and Ian Munro as Commissioners to hear, deliberate and make recommendations on all submissions and further submissions on Stage 3 of the PDP;
    (c) To appoint all Councillors who remained on the Council after the October 2019 Council elections and who had completed the Ministry for the Environment "*Making Good Decisions"* course to sit as additional Commissioners;
    (d) To delegate the authority to determine procedural and jurisdictional matters relating to Stage 3 of the PDP to Trevor Robinson;
    (e) To delegate to Trevor Robinson and the Council General Manager Planning and Development the power to determine the composition of the Hearings Panel for each specified topic and/or individual hearings of submissions on Stage 3 of the PDP.

13. Following the October 2019 Council elections, Councillors Calum Macleod and Quentin Smith qualified to sit on the Hearing Panel.

14. Subsequently, on 30 January 2020, the Council resolved to appoint Juliane Chetham to act as an additional Commissioner on the same basis as above.

15. Pursuant to the powers delegated as above, three separate Hearing Panels were convened, one for each hearing stream as follows:
    (a) Stream 16: Trevor Robinson (Chair), joined by Commissioners Chetham, Dawson, Hill and Smith;
    (b) Stream 17: Trevor Robinson (Chair) joined by Commissioners Dawson, Hill, Macleod, Munro and Smith;
    (c) Stream 18: Trevor Robinson (Chair) joined by Commissioners Dawson, Hill and Macleod.

16. The reports and recommendations following are accordingly the work of the separate panels of Hearing Commissioners allocated to each Stage 3 hearing stream. This Report seeks to pull together material relevant to more than one hearing stream and is accordingly the work of all Commissioners, unless otherwise noted.

17. We record that at the request of the Council, the Stream 18 Hearing Panel prepared and released a standalone report dated 12 September 2020 containing its recommendations in relation to the Variations to Chapter 30 and the related variation to Chapter 2 (paragraph 2(h)(i) above), in advance of the balance of Stage 3 reports.

18. Accompanying this Introductory Report are 10 separate reports as follows:

Stream 16

- Report 20.2: Chapter 39 – Wāhi Tūpuna and related variations;

Stream 17

- Report 20.3: Chapter 18A – General Industrial and Service Zone[1] and related variations;
- Report 20.4: Chapter 19A – Three Parks Commercial Zone and related variations;
- Report 20.5: Chapter 38 – 101 Ballantyne Road;
- Report 20.6: Business Mixed Use and Residential Zone Design Guidelines and related variations;

Streams 18 and 20

- Report 20.7: Chapter 46 – Rural Visitor Zone, including Temporary Filming, and related variations;
- Report 20.8: Chapter 20 – Settlement Zone and related variations;
- Report 20.9: Arthurs Point North mapping, Informal Airports;
- Report 20.10: Chapter 38 Variation – Open Space and Recreation Zones and related variations;
- Report 20.11: General Submissions and balance of Stream 18 variations.

1.4 Procedural Directions

19. In the preparation for and conduct of the hearing, the Chair has issued 38 procedural minutes, as follows:

(a) Minute 1[2]: providing advance notice to parties of the likely hearing timetable;

(b) Minute 2[3]: waiving the failure of a number of submitters to file their submissions, including the statutory information required by the relevant regulations, within time;

(c) Minute 3[4]: waiving late receipt of the submission of Mr and Mrs Blennerhasset;

(d) Minute 4[5]: declining to waive late receipt of a submission on behalf of Rock Supplies NZ Limited;

(e) Minute 5[6]: waiving late receipt of further submissions on behalf of Michael and Louise Lee, Scope and Sport Central; declining to waive late receipt of a further submission on behalf of Neil and Hilary Jackson;

(f) Minute 6[7]: putting in place a prehearing timetable and making directions regarding the conduct of the hearing;

(g) Minute 7[8]: seeking feedback on site visits related to the Residential and Business Mixed Use Zone Design Guidelines;

(h) Minute 8[9]: advising of planned procedural steps responding to Covid-19;

(i) Minute 9[10]: suspending all procedural directions in response to the national Covid-19 lockdown;

(j) Minute 10[11]: declining an application by CCCL[12] to strike out the further submission of Scope[13];

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[1] Reflecting the recommended change of name for the General Industrial Zone
[2] Dated 16 December 2019
[3] Dated 9 January 2020
[4] Dated 10 February 2020
[5] Dated 20 February 2020
[6] Dated 24 February 2020
[7] Dated 2 March 2020
[8] Dated 12 March 2020
[9] Dated 20 March 2020
[10] Dated 24 March 2020
[11] Dated 27 March 2020
[12] Submitter #3349
[13] Further Submitter #3470

(k) Minute 11[14]: providing a draft timetable for resumption of the First Schedule hearing process and inviting feedback from the parties thereon;

(l) Minute 12[15]: putting in place a revised hearing timetable and making consequential directions for conduct of the hearing in line with that timetable;

(m) Minute 13[16]: making supplementary hearing directions responding to queries from the parties;

(n) Minute 14[17]: deferring hearing of the submission of Wayfare Group Limited[18] and the single further submission in support by AirBnB[19] in as far as those submissions related solely to the planning provisions governing the notified RVZ land at Walter Peak to a time to be advised;

(o) Minute 15[20], Minute 16[21] and Minute 17[22]: varying the timetable directions for filing of evidence of specified parties and making consequential directions regarding filing of rebuttal evidence;

(p) Minute 18[23]: waiving late receipt of a submission by LJ Veint and making procedural directions to enable that submission (and any further submissions related to it) to be heard towards the end of the already scheduled hearing;

(q) Minute 19[24]: waiving late receipt of a submission on behalf of Arthurs Point Protection Society Inc and making procedural directions to enable it (and any further submissions related to it) to be heard towards the end of the already scheduled hearing;

(r) Minute 20[25], Minute 21[26], Minute 22[27], Minute 23[28], Minute 24[29]: waiving late receipt of evidence and making consequential directions where required for filing of rebuttal evidence;

(s) Minute 25[30]: making directions regarding substitution of expert witnesses;

(t) Minute 26[31]: declining an application by Arthurs Point Partnership for leave to lodge a further submission in respect of the submission of Arthurs Point Land Trustee Limited;

(u) Minute 27[32]: requesting that Council provide additional information as listed therein;

(v) Minute 28[33]: making procedural directions consequential on gazettal of the NPSUD;

(w) Minute 29[34]: giving leave for Kā Rūnaka [35] to file a limited reply and accepting additional material provided after the hearing by Mr and Mrs Rendel[36];

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[14] Dated 28 April 2020
[15] Dated 5 May 2020
[16] Dated 12 May 2020
[17] Dated 12 May 2020
[18] Submission #31024
[19] Further Submission #31050
[20] Dated 29 May 2020
[21] Dated 3 June 2020
[22] Dated 5 June 2020
[23] Dated 10 June 2020
[24] Released 11 June 2020 but misdated 12 August
[25] Dated 12 June 2020
[26] Dated 15 June 2020
[27] Dated 22 June 2020
[28] Dated 23 June 2020
[29] Dated 24 June 2020
[30] Dated 26 June 2020
[31] Dated 30 June 2020
[32] Dated 3 July 2020
[33] Dated 27 July 2020
[34] Dated 27 July 2020
[35] Submitter #3289
[36] Submitter #3207

(x) Minute 30[37]: providing reasons for the Chair's verbal direction that a lay brief of Mr Giddens (including two technical appendices) for Malaghans Investments Limited[38] would be received as such[39];

(y) *Minute* 31[40]: providing reasons for the Chair declining to give leave for the successor to LJ Veint[41] to file further expert planning evidence;

(z) Minute 32[42]: giving leave for affected parties to file legal submissions responding to the legal argument for Scope on the *scope* to seek rezoning of additional sites;

(aa) Minute 33[43]: setting out the Hearing Panel's written questions for Mr Ben Farrell, expert planning witness for Wayfare Group Limited[44] and Cardrona Alpine Resort Limited[45] and making directions as to his written answer thereof;

(bb) Minute 34[46]: making directions on outstanding procedural issues as at the end of the hearing of submissions and further submissions;

(cc) Minute 35[47]: setting out specific issues on which the Council's response in reply was requested;

(dd) Minute 36[48]: setting out written questions for Dr Rissman, an expert *witness* for Scope, and making directions as to his written answer thereof;

(ee) Minute 37[49]: enlarging the date for filing of the Council's reply on RVZ issues;

(ff) Minute 38[50]: requesting further information from the Council and Kā Rūnaka regarding an aspect of the latter's reply submissions;

(gg) Minute 39[51]: advising of receipt of a memorandum from Counsel for the Council regarding Exception Zones, and inviting feedback from the parties;

(hh) Minute 40[52]: accepting further information submitted by Universal in relation to its rezoning relief into the hearing record;

(ii) Minute 41[53]: giving Hāwea Community Association conditional leave to supply additional information relevant to Universal's relief;

(jj) Minute 42[54]: accepting further information supplied by Hāwea Community Association, and a memorandum of counsel for Council in relation to Universal's relief into the hearing record;

(kk) Minute 43[55] putting in place a timetable for hearing submissions in relation to the Rural Visitor Zone at Walter Peak.

20. As a result of the procedural directions noted above made in the Chair's Minute 14, the submissions of Wayfare Group[56], together with the supporting further submission of Air BnB[57]

[37] Dated 3 August 2020
[38] Submitter #31022
[39] The issues canvassed in this Minute are addressed further in Report **[insert]** discussing that submission.
[40] Dated 7 August 2020
[41] Submitter #31008
[42] Dated 12 August 2020
[43] Dated 17 August 2020
[44] Submitter #31022
[45] Submitter #31018
[46] Dated 18 August 2020
[47] Dated 24 August 2020
[48] Dated 28 August 2020
[49] Dated 2 September 2020
[50] Dated 18 September 2020
[51] Dated 29 October 2020
[52] Dated 29 October 2020
[53] Dated 30 October 2020
[54] Dated 9 November 2020
[55] Dated 7 December 2020
[56] Submitter #31024
[57] Further Submitter #31050

relating to RVZ zoning at Walter Peak were split off and ascribed a separate hearing stream number (Stream 19). The Chair conducted two video conferences with counsel for Wayfare Group Ltd and for the Council after completion of the hearing to discuss when and how Wayfare Group's submissions relating to Walter Peak would be addressed. Following the first of those discussions, Ms Baker-Galloway provided an amended submission on behalf of Wayfare Group restricting its requested Walker Peak relief to a bespoke zone; i.e. deleting those aspects of its relief requesting potentially more general amendments to Chapter 46. Wayfare Group's amended submission is proposed to be heard in the week of 19 April 2021 and a separate recommendation report will be issued thereafter.

21. Further, as a result of the directions made in the Chair's Minutes 18 and 19, the late submissions of LJ Veint and Arthurs Point Protection Society Inc were split off and ascribed a separate hearing stream number (Stream 20). The Chair, together with Commissioners Dawson, Hill and Macleod were allocated to hear that hearing stream.

1.5 Site Visits

22. The Stream 17 and 18 Hearing Panels undertook site visits to a range of sites relevant to those streams in the week of 15 June 2020. This included sites nominated by the Council staff as providing examples relevant to issues covered in the proposed Residential Zone and Business Mixed Use Design Guidelines.

23. The Stream 16 Hearing Panel did not undertake formal site visits in relation to Stream 16 matters, but members of the Panel did undertake informal site familiarisation in the Queenstown and Wānaka areas during the course of the hearing.

1.6 Hearing Arrangements

24. The hearing of submissions and further submissions occupied some 20 days of hearing commencing 29 June 2020 and concluding on 13 August 2020.

25. The format of the hearing reflected the Chair's procedural directions that evidence in chief and rebuttal evidence (where applicable) be pre-circulated. Legal submissions also were generally provided in advance of the hearing, at the Chair's request. As a result, most witnesses presented only a brief summary statement at the hearing and counsel highlighted aspects of their pre-circulated legal submissions. Lay submitters who had not pre-circulated their evidence/representations, were similarly limited to a brief summary statement. In some cases, lay submitters who presented verbal representations helpfully provided us with a written record thereof after their presentation.

26. As a result, the respective Hearing Panels were able to focus on questions of counsel and their witnesses, which we found the most effective way to utilise the hearing time.

27. The first week of hearing (in Queenstown) was largely occupied by presentation of the Council's case. Thus, after an initial introductory address by Mr Edward Ellison for Kā Rūnaka [58] we heard:

- Sarah Scott (Counsel)
- Craig Barr (General and Stream 18)
- Sarah Picard (Stream 16)
- Blair Devlin (Stream 17)

[58] Submitter #3289

- David Compton-Moen (Stream 17)
- Nick Roberts (Stream 17)
- Natalie Hampson (Streams 17 and 18)
- Chris Rossiter (Streams 17 and 18)
- EJ Mathee (Streams 17 and 18)
- Luke Place (Stream 17)
- Mathew Jones (Streams 17 and 18)
- James Dicey (Streams 17 and 18)
- Dr Stephen Chiles (Streams 17 and 18)
- Robert Bond (Streams 17 and 18)
- Richard Powell (Streams 17 and 18)
- Helen Mellsop (Stream 18)
- Bridget Gilbert (Stream 18)
- Emily Grace (Stream 18)
- Emma Turner (Stream 18)
- Amy Bowbyes (Stream 18)
- Roz Devlin (Stream 18)
- Elizabeth Simpson (Stream 18)
- Gabriela Glory (Stream 18)

28. All Commissioners were present for commencement of the hearing. Ordering of the Council case facilitated release of Commissioner Chetham and then Commissioners Smith and Munro at the conclusion of the evidence on Streams 16 and 17 respectively.

29. Thereafter, the submitters were heard in their respective streams. Accordingly, on 7, 8 and 9 July we heard from the following submitters in Queenstown on Stream 16 issues:

- Glenorchy Community Association[59]
  - John Glover
- Faye Robertson[60]
- ORC[61]:
  - Andrew Maclennan
- Nicola and Mark Vryenhoek and Dynamic Guesthouse Limited[62]
  - Nicola Vryenhoek (Counsel)
- Nick Clark[63]
- Wayfare Group Limited[64]
  - Maree Baker-Galloway (Counsel)
  - Ben Farrell

[59] Submitter #3362
[60] Submitter #3194
[61] Submitter #3342
[62] Submitter #3394
[63] Submitter #3036
[64] Submitter #3343

- Sustainable Glenorchy[65]
  - Bruce Farmer and Trish Fraser

- Remarkables Park Limited[66] and Queenstown Park Limited[67]
  - Rowan Ashton (Counsel)

- Transpower New Zealand[68]
  - Ainsley McLeod
  - Andrew Renton

- Michael Clark[69]

- ZJV (NZ) Limited[70]
  - Trent Yeo

- Doug Bailey[71]

- Ewen and Heather Rendel[72]

- Chris Willett[73]

- LJ Veint[74]; Alister McCrae and Dr Penny Wright[75]; Hansen Family Partnership[76]; Chard Farm Limited[77]; Glendhu Bay Trustees Limited[78]; Mt Christina Limited[79]; Soho Ski Area and Blackmans Creek No 1 LP[80]; Ballantyne Barker Holdings Limited[81]; Criffel Deer Limited[82]; Farrow Family Trust[83]; Queenstown Commercial Parapenters[84] and Kelvin Capital Limited as Trustee for Kelvin Gore Trust[85]
  - Maree Baker-Galloway (Counsel)

[65] Submitter #3142
[66] Submitter #3317
[67] Submitter #3318
[68] Submitter #3080
[69] Submitter #3069
[70] Submitter #3320
[71] Submitter #3133
[72] Submitter #3207
[73] Submitter #3398
[74] Submitter #3073
[75] Submitter #3268
[76] Submitter #3295
[77] Submitter #3299
[78] Submitter #3302
[79] Submitter #3303 and Further Submitter #3416
[80] Submitter #3305 and Further Submitter #3419
[81] Submitter #3336
[82] Submitter #3337
[83] Further Submitter #3420
[84] Further Submitter #3432
[85] Further Submitter #3446

- Blair Devlin (also for Sunshine Bay Limited[86]; 3D Development Trust[87]; Cabo Limited[88]; J F Investments Limited[89]; Loch Linnhe Station Limited[90]; Ben Hohneck[91]; Gertrude's Saddlery Limited[92]; Queenstown Mountainbike Club Inc[93] and Lakes Marina Projects Limited[94])

- Barnhill Trust Limited and DE Bunn & Co[95]:
  - Susan Cleaver
  - Carol Bunn

- N Gutzewitz and J Boyd[96]; G & S Hensman and P Hensman[97]; G & P Hensman and Southern Lakes Holdings Limited[98]; A & I Middleton[99]; Middleton Family Trust[100]; Mt Crystal Ltd[101]; NT McDonald[102]; Queenstown Hill Developments Limited and Remarkable Heights Limited[103]; C Campbell and R Neale[104]; Scope[105]; The Station at Waitiri & Waitipu Ltd[106]; Alpha Properties NZ Ltd[107]
  - Nick Geddes

- Ken Muir[108]; Gibbston Valley Station[109]; Cardrona Village Limited[110]; Kingston Lifestyle Properties Limited[111]
  - James Gardner-Hopkins (Counsel)
  - Neville Simpson (only for Kingston Lifestyle Properties Limited)
  - Brett Giddens (also for CCCL[112]; MRGR Semple Trustee, JC Semple and MB Semple[113]; KF and TS Dery[114]; Tomanovich Investments Limited[115]; Silver Creek

[86] Submitter #3067
[87] Submitter #3163
[88] Submitter #3243
[89] Submitter #3187 and #3249
[90] Submitter #3181 and #3239
[91] Submitter #3245 and #3251
[92] Submitter #3171 and #3242
[93] Submitter #3184
[94] Submitter #3188 and #3240
[95] Submitter #3216, #3217, #3332, #3332, #3333, #3429
[96] Submitter #3168
[97] Submitter #3170
[98] Submitter #3172
[99] Submitter #3173
[100] Submitter #3175
[101] Submitter #3176
[102] Submitter #3177
[103] Submitter #3179
[104] Submitter #3180
[105] Submitter #3182
[106] Submitter #3183
[107] Submitter #3219
[108] Submitter #3211
[109] Submitter #3350
[110] Submitter #3404
[111] Submitter #3297
[112] Submitter #3349
[113] Submitter #3344
[114] Submitter #3345
[115] Submitter #3346

Limited[116]; The Station at Waitiri Limited[117]; R Buckham[118]; and New Zermatt Properties Limited[119])

- Federated Farmers of New Zealand Inc[120]
  - Darryl Sycamore
- Neville Bryant[121]
- Al Angus[122]

30. Sitting in on 14 and 15 July 2020, the Stream 16 Hearing Panel heard from the following submitters:

- Minaret Station Limited[123]
- Grant and Janet Cochrane, James and Jonelle Cochrane and Stayrod Trustees (Cochrane Limited)[124]
- Eco Sustainability Development Limited[125]
- Run 505 Limited[126]
- Upper Clutha Transport Limited[127]
- Craig Jolly, Maree Shaw and Lindsey Dey[128]; IC Trustees Limited and Judith Muir[129]; Zozzy Limited[130]; Tim Burdon[131]; Benjamin Gordon[132]; Cattle Flat Station Limited and Aspiring Helicopters Limited[133]; Mathew Chapman[134]
  - Scott Edgar
  - Jonathan Wallis
- Chris Barker[135]

[116] Submitter #3347
[117] Submitter #3351
[118] Submitter #3395
[119] Submitter #3396
[120] Submitter #3443
[121] Submitter #3198
[122] Submission #3309
[123] Submitter #3208 and Further Submitter #3424
[124] Submitter #3227 and Further Submitter #3426
[125] Submitter #3230
[126] Submitter #3236 and further Submitter #3425
[127] Submitter #3256 and #3270
[128] Submitter #3276
[129] Submitter #3277
[130] Submitter #3279
[131] Submitter #3304
[132] Submitter #3330
[133] Submitter #3399 and Further Submitter #3422
[134] Further Submitter #3431
[135] Submitter #3206

- Hāwea Community Association Inc[136]; Lesley and Jerry Burdon[137]; Beech Cottage Trustees Limited[138]; Hutton Nolan Family Trust[139]; Alpha Burn Station Limited[140]; Orange Lakes (NZ) Limited[141]; Richard and Sarah Burdon[142]; Dingleburn Holdings Limited[143]; Graeme Todd and Ben Gresson (Counsel) (also for Graeme Rodwell[144]; Quartz Commercial Group Limited[145] and Lake Hāwea Holdings Limited[146])
  - Hayley Mahon (also for Lake Hāwea Station147
  - Jerry Burdon (for Lesley and Jerry Burdon)
  - Richard Burdon (for Richard and Sarah Burdon)
  - Sarah Burdon (for Richard and Sarah Burdon
  - Lesley Burdon (for Lesley and Jerry Burdon)
  - Robert White (for Hāwea Community Association)

- Lindsay Williams[148]

- Patterson Pitts Limited Partnership[149]; Sunnyheights Limited, P and R Masfen[150]; Larches Station Trust[151]
  - Duncan White
  - Michael Botting

- Bruce Hebbard[152]

- Aurora[153]
  - Simon Peirce (Counsel)
  - Joanne Dowd

- D L Kenton Family Trust[154]
  - Di Kenton

31. The final day of the Stream 16 hearing was 21 July 2020 in Queenstown, when the only submitter heard from was Kā Rūnaka, represented by:
  - Rob Enright (Counsel)
  - Edward Ellison
  - David Higgins
  - Dr Lynette Carter

[136] Submitter #3287 and Further Submitter #3449
[137] Submitter #3312
[138] Submitter #3326
[139] Submitter #3334
[140] Submitter #3341
[141] Submitter #3400
[142] Submitter #3401
[143] Further Submitter #3443
[144] Submitter #3293
[145] Submitter #3328
[146] Submission #3331
[147] Submitter #3377
[148] Submitter #3226
[149] Submitter #3384
[150] Submitter #3193
[151] Submitter #3386
[152] Submitter #3012
[153] Submitter #3153
[154] Submitter #3197

- Maree Kleinlangevelsloo
- Michael Bathgate

32. The Stream 18 Hearing Panel then heard submitters in the period 28 July-30 July (in Queenstown) and 4-6 August 2020 (in Wānaka) as follows:

- Christine Byrch[155]

- ORC[156]
  - Andrew Maclennan
  - Dr Ben Mackey

- Arthurs Point Woods Limited Partnership[157]
  - Josh Leckie and Kelsey Barry (Counsel)
  - Stephen Skelton
  - Scott Freeman

- Marc Scaife[158]

- M & K Scott/Loch Linnhe Station[159]
  - Jayne Macdonald (Counsel)
  - Ben Espie
  - Carey Vivian

- John and Toni Glover[160]
  - John Glover

- Queenstown Wharves (GP) Limited[161]
  - Rowan Ashton (Counsel)
  - Tim Williams

- Barnhill Corporate Trustee Limited, DE and ME Bunn and LA Green[162]
  - Vanessa Robb (Counsel)
  - Debbie MacColl
  - Susan Cleaver
  - Ben Espie
  - Scott Freeman

- Kingston Village Limited[163] and Greenvale Station Limited[164]
  - Megan Justice
  - Mike Wilkins

[155] Submission #31030
[156] Submitter #3342
[157] Submitter #31031
[158] Submitter #31062
[159] Submitter #31013
[160] Submitter #3006
[161] Submitter #3319
[162] Submitter #31035
[163] Submitter #3306
[164] Further Submitter #3435

- Waterfall Park Developments Limited[165]
  - Warwick Goldsmith (Counsel)

- Heron Investments Limited[166]
  - Jayne Macdonald (Counsel)
  - Carey Vivian
  - Jillian Mackenzie
  - Rik Deaton

- Matakauri Lodge Limited[167]
  - Mike Holm (Counsel)
  - Rebecca Lucas
  - Jason Bartlett
  - Scott Freeman

- Fred van Brandenburg[168]

- Arthurs Point Trustee Limited[169]
  - Josh Leckie and Kelsey Barry (Counsel)
  - Emma Ryder

- Coronet Peak Properties Limited[170]
  - John Edmunds

- Gibbston Valley Station Limited[171]
  - James Gardner-Hopkins (Counsel)
  - Greg Hunt
  - Tony Milne
  - Andy Carr
  - Brett Giddens

- Malaghans Investments Limited[172]
  - James Gardner-Hopkins (Counsel)
  - Brett Giddens
  - Tony Milne
  - Ben Farrell

- Robert Stewart[173]
  - Vanessa Robb (Counsel)
  - Ben Espie

[165] Submitter #3063
[166] Submitter #31014
[167] Submitter #31033
[168] Submitter #3294
[169] Submitter #31042
[170] Submitter #31040
[171] Submitter #31037
[172] Submitter #31022
[173] Submitter #31038

    - Carey Vivian
    - Robert Stewart

- Kingston Lifestyle Properties Limited[174]
    - James Gardner-Hopkins (Counsel)
    - Neville Simpson
    - Tim Grace

- Cardrona Village Limited[175]
    - James Gardner-Hopkins (Counsel)
    - Mike Lee
    - Stephen Brown
    - Tim Grace

- Pounamu Holdings 2014 Limited[176]
    - Mike Holm (Counsel)
    - Paul Brainerd
    - Fraser Colegrave
    - Scott Freeman

- L J Veint successor[177]
    - Vanessa Robb (Counsel)
    - Tim Edney
    - Carey Vivian

- Sustainable Glenorchy[178]
    - Bruce Farmer

- Southern Ventures Property Limited[179]
    - Phil Page (Counsel)
    - Mark Cruden
    - Ian Greaves
    - Scott Edgar

- Albert Town Village Holdings Limited[180]
    - Russell Ibbotson

- Lake McKay Limited Partnership[181]
    - Dan Curley
    - Michael Botting

[174] Submitter #3297
[175] Submitter #3404
[176] Submitter #3307
[177] Submitter #31034
[178] Submitter #3142
[179] Submitter #3190
[180] Submitter #31045
[181] Submitter #3196

- Universal Developments Hāwea Limited[182]
  - Maree Baker-Galloway (Counsel)
  - Lane Hocking
  - Peter Forest
  - Ben Espie
  - Mike Copeland
  - Andy Carr
  - Luc Waite
  - Tim Williams
  - Glenn David (not required to appear)

- Quartz Commercial Group Limited[183]
  - Graeme Todd (Counsel)
  - Tim Williams

- Hāwea Community Association[184]
  - Robert White, Cherilyn Walthew and Laura Soleback

- Glen Dene Holdings Limited, Glen Dene Limited, Richard and Sarah Burdon[185]
  - Graeme Todd (Counsel)
  - Sarah Burdon
  - Richard Burdon
  - Ben Espie
  - Duncan White

- Waterfall Creek Residents: Jan Houghton, Viv Milson, Hilary Johnstone, Rob and Jean Johnstone, Malcolm and Sally Law, Lloyd and Debs Morshuis, Kym and Simon Marshall, Marc and Tanya Simmonds[186]
  - Ella Hardman

- Mandalea Properties Limited and Goldstream Properties Limited[187]
  - Blair Devlin
  - Sam and Alan Reece

- Streat Developments Limited[188]
  - Chris Streat

- Corbridge[189]
  - Bridget Irving (Counsel)
  - Jason Watkins
  - Marcus Lane
  - Ryan Brandeburg

[182] Submitter #3248
[183] Submitter #3328
[184] Submitter #3287 and Further Submitter #3449
[185] Submitter #31043
[186] Further Submitter #31073
[187] Submitter #31028
[188] Submitter #3221 and 3222
[189] Submitter #31021

- Peter Marshall
- Garth Falconer
- Michael Botting
- Fraser Colegrave
- Michael Smith
- Ben Espie
- Dan Curley
- Scott Edgar

33. The final three days of hearing on 11-13 August were principally occupied by submitters on Stream 17 matters. However, because all members of the Stream 18 Panel were also on the Stream 17 Panel, some submitters who sought to address Stream 18 matters were able to be accommodated in that week also. Accordingly, we heard:

- Aurora[190]
  - Simon Peirce (Counsel)
  - Joanne Dowd

- Rae and David Wilson[191]

- Upper Clutha Transport Limited[192] and H W Richardson Group[193]
  - Stephen Christensen (Counsel)
  - Megan Justice
  - Mark Cruden
  - Andy Carr
  - Ben Espie
  - Scott Edgar

- Ministry of Education[194]
  - Keith Frentz
  -
- Cadence Holdings Limited[195]
  - Scott Edgar

- Telcos[196]
  - Graeme McCarrison
  - Stephen Holding
  - Shannon Bray
  - Chris Horne

- Rod Macleod[197]

[190] Submitter #3153 and #31020
[191] Submitter #3017
[192] Submitter #3256
[193] Submitter #3285
[194] Submitter #3152 and Further Submitter #3467
[195] Submitter #3231 and Further Submitter #3460
[196] Submitter #3032
[197] Submitter #3379

- Aspiring Athletes Club[198]
    - Barbara Beable

- Tussock Rise Limited[199]
    - Graeme Todd (Counsel)
    - Paul Miller and Grant Bissett
    - Andy Carr
    - Jeremy Trevathan
    - John Ballingal
    - Blair Devlin (also for Bright Sky Land Limited200 and Alpine Estates Limited[201])

- Upper Clutha Maternity Trust[202]
    - Morgan Weathington
    - Ian Greaves

- Henley Property Trust[203]
    - Ian Greaves

- CCCL[204]
    - Pru Steven QC
    - Ray Edwards
    - Geoff Angus
    - Brett Giddens
    - Tony Milne

- Ballantyne Properties Limited[205]
    - Robin Patterson and Neil Machitt

- Marama Hill Limited[206] and Nicholas Cashmore[207]
    - Wayne Foley
    - Jeff Brown

- J C Breen Family Trust[208], The Breen Construction Company Limited[209]; Alpine Nominees Limited[210]; 86 Ballantyne Road Partnership[211]; NPR Trading Limited[212]
    - John Edmonds
    - Jerry Rowley
    - John Breen

[198] Submitter #3037
[199] Submitter #3128
[200] Submitter #3130
[201] Submitter #3161
[202] Submitter #3403
[203] Submitter #3269
[204] Submitter #3349 and #31039
[205] Submitter #3056
[206] Submitter #3280
[207] Submitter #3203
[208] Submitter #3235
[209] Submitter #3234
[210] Submitter #3266
[211] Submitter #3286
[212] Submitter #3298

- Phil Smith
- Ben Ackland

- Bush Creek Property Holdings Limited and Bush Creek Property Holdings No 2 Limited[213]; Bush Creek Investments Limited[214]; MJ Thomas[215]:
  - Josh Leckie (Counsel)
  - John Edmonds

- Willowridge Developments Limited[216]
  - Ben Gresson (Counsel)
  - Fraser Colegrave
  - Antoni Facey
  - Paula Costello
  - Alison Devlin

- Scope[217]
  - Derek Nolan QC
  - Vanessa van Uden
  - Jason Bartlett
  - Nick Geddes

- Reavers (NZ) Limited[218]
  - Daniel Thorne

- Shona and Bob Wallace[219]
  - Shona Wallace

- Sport Central[220]
  - Kelvin (Tiny) Carruthers

- Friends of Wakatipu Gardens and Reserves and Associated Residents[221]
  - Jay Cassells

34. In addition to the submitters noted above, the two submissions making up Stream 20 were also heard in that week, on 12 August (Arthurs Point Protection Society) and 13 August (Veint). We did not need to hear from the Section 42A author in relation to the Arthurs Point Protection Society submission (Emma Turner), but we did hear briefly from Mr Michael Clarke on behalf of the Society. On 13 August we heard from the Section 42A author on the Veint submission (Emily Grace) followed by Vanessa Robb (Counsel) and Carey Vivian for the submitter.

[213] Submitter #3353
[214] Submitter #3354
[215] Submitter #3355
[216] Submitter #3320
[217] Further Submitter #3470
[218] Submitter #3340
[219] Submitter #3154
[220] Submitter #3029
[221] Submitter #3241

35. Two witnesses pre-circulated expert evidence, but for differing reasons were unable to be heard. Mr Ben Farrell, the expert planning witness for Wayfare Group Limited[222], and Cardrona Alpine Resort Limited[223] was scheduled to be heard via zoom in the final week of hearing on both Stream 17 and 18 issues. Earlier submitters over-ran their allotted time and we were unable to reschedule Mr Farrell's appearance before the end of the hearing. Accordingly, we provided him with written questions, and he supplied written answers in a supplementary evidence brief dated 24 August. The expert evidence of Dr Clint Rissman was pre-circulated on behalf of Scope[224]. Dr Rissman was unable to appear because of illness. As with Mr Farrell, we posed written questions to Dr Rissman, which he answered in an undated commentary.

36. We also received tabled material in lieu of an appearance as follows:
    (a) Representations by Ken Gousmett of behalf of Cavell Heights Trust[225] in relation to Stream 16 issues;
    (b) A letter from Daniel Hamilton on behalf of Transpower New Zealand Limited[226] in relation to Stream 17 and 18 issues;
    (c) A Statement of Evidence of Gerard Thompson for Sky City Entertainment Group[227] in relation to its submission on Frankton Road height controls (Stream 18);
    (d) We received legal submissions from Counsel for QAC in relation to its further submission[228] (Rebecca Wolt) opposing the submission of Corbridge. Ms Wolt advised that she did not seek to appear to present her submissions in person.

37. QAC also pre-circulated evidence, (of Melissa Brook) in relation to its submissions #3316 and 31010. Ms Brook did not make arrangements to appear before us and accordingly, we have treated her evidence as 'tabled'. The evidence of Dan Curley for Susan Robertson[229] and Roger Moseby[230] was in the same category. We have likewise treated Mr Curley's evidence as being 'tabled'.

38. We had other input from the parties on a variety of subjects, so, for Council, we received:
    (a) A Memorandum of Counsel dated 21 July 2020 providing the information requested in minute 27;
    (b) A Memorandum of Counsel dated 31 July 2020 setting out in summary form, the Council's position on the interpretation and implementation of the NPSUD;
    (c) A comprehensive written reply with legal submissions supported by reply evidence from the Council witnesses we had previously heard from, as above, together with reply evidence from Andrew Edgar on transport issues in relation to the Skippers Road that the Stream 18 Hearing Panel has discussed in Report 20.7;
    (d) A Memorandum of Counsel dated 25 September 2020 providing information regarding the relief sought by Kā Rūnaka , as requested in Minute 38;
    (e) A Memorandum of Counsel dated 28 October 2020 advising of progress in the resolution of appeals on Stages 1 and 2 of the PDP and requesting that the Hearing Panel recommend that Chapter 3 be amended to identify the RVZ as an 'Exception Zone';

[222] Submitter #31022
[223] Submitter #31018
[224] Further Submitter #3470
[225] Submitter #3028
[226] Further Submitter #3437
[227] Submitter #3060
[228] Further Submission #31054
[229] Submitter #3143
[230] Submission #3110

(f) A Memorandum of Counsel dated 6 November 2020 confirming that Council's position on the Universal submission had not changed as a result of the additional information supplied by the submitter.

39. The Council also provided us with an updated online mapping tool which enabled us to analyse the notified Wāhi Tūpuna areas with reference to the 400, 500 and 600masl contours.

40. From submitters in relation to Stream 16:
    (a) Mr and Mrs Rendel[231] provided us with more detailed mapping of the Closeburn area relative to Wāhi Tūpuna #16 Punatapu;
    (b) Pursuant to leave given in Minute 29, Counsel for Kā Rūnaka filed legal submissions in reply on selected issues dated 13 August 2020 attaching revised versions of Chapter 39 and recommended changes to the Wāhi Tūpuna mapped areas.
    (c) At our request, Counsel for Lesley and Jerry Burdon[232] provided us with an electronic copy of a book Mrs Burdon had referred to, "*A Pretty Good Place to Live: Lake Hawea & Hawea Flat"*, Barbara Chinn (Author) and a Cultural Values Report for Glen Dene Station dated February 2004 also referred to by Mrs Burdon.

41. In relation to Stream 17 issues:
    (a) Upper Clutha Transport Limited[233] provided a supplementary statement of evidence of Scott Edgar dated 13 August 2020;
    (b) For CCCL[234], Tony Milne provided an additional graphic attachment providing an analysis of views into the submitter's site from State Highway 6.

42. In relation to Stream 18 issues:
    (a) Under cover of a letter dated 31 July 2020, Counsel for Matakauri Lodge Limited[235] provided us with a Memorandum from his planning witness, Scott Freeman, responding to a request we had made, addressing the inter-relationship between the rules in Chapters 29 (Transport) and 46 (RVZ).
    (b) Responding to queries from the Panel, Counsel for Gibbston Valley Station[236] and Malaghans Investments Limited[237], Mr Gardner-Hopkins provided supplementary legal submissions dated 5 August 2020.
    (c) Also at the Hearing Panel's request, Tony Milne provided an additional graphic attachment clarifying the location of proposed development areas on Gibbston Valley Station land when viewed from the Crown Range Road.
    (d) Counsel for Aurora[238], Mr Peirce filed a synopsis of the verbal submissions he had presented to us.
    (e) At our request, Counsel for Corbridge[239] provided us with revised plan provisions, structure plan and sensitivity mapping, together with the answers to specific questions we had posed, under cover of a Memorandum dated 13 August 2020;
    (f) Under cover of a Memorandum of Counsel dated 22 October 2020, Universal provided additional information on infrastructure upgrades relevant to its submission;

[231] Submitter #3207
[232] Submitter #3312
[233] Submitter #3256 and #3270
[234] Submitter #3349 and #31039
[235] Submitter #31033
[236] Submitter #31037
[237] Submitter #31022
[238] Submitter #3153
[239] Submitter #31021

(g) The Vice Chair of Hāwea Community Association, Mr White, supplied us with information on intersection and wastewater system upgrades relevant to the Universal submission under cover of a document dated 6 November 2020, including a technical paper and factsheet sourced from NZTA;

(h) Counsel for Barnhill Corporate Trustee Ltd and DE, ME Bunn and LA Green, Counsel for The Station at Waitiri Ltd, Counsel for Malaghans Investments Ltd and Gibbston Valley Station, Counsel for Matakauri Lodge Ltd, and Ms Christine Byrch supplied us with a commentary/submissions on the Council's request to add the RVZ as an 'Exception Zone' in Chapter 3 pursuant to the invitation to provide feedback in Minute 39.

43. Separately, we received legal submissions, all dated 21 August 2020, from a number of parties responding to the legal argument of Mr Nolan QC for Scope, pursuant to the leave granted in Minute 32, as follows:

(a) Matakauri Lodge Limited;
(b) Upper Clutha Transport Limited;
(c) Barnhill Corporate Trustee Limited and DE, ME Bunn and LA Green;
(d) Universal;
(e) Corbridge.

1.7 General Approach to Reports

44. The Hearing Commissioners' role is to recommend to the Council a decision on the PDP and the matters raised in submissions, including the reasons for that recommended decision[240]. The consideration of submissions and further submissions is the exception to this general position. It is not necessary to address each submission individually[241]. Rather, the Hearing Panels' reports can address decisions by grouping submissions[242].

45. On some topics, the relatively small number of submissions and the discrete range of issues raised in submissions have lent themselves to a submitter-by-submitter examination of issues. In others, the number of submissions (many hundreds in some cases) have required analysis of the issues raised in groups of submissions.

46. In addition, because of the requirement in section 32AA of the RMA (discussed in section 2.10 below) to evaluate changes from the notified version of the Proposed Plan provisions before us, we have generally focussed on submissions seeking changes from what was notified, and evidence supporting those changes.

47. Parties can be assured, however, that the respective Hearing Panels have taken all submissions (including further submissions) into account.

2. STATUTORY CONSIDERATIONS

48. As part of her opening legal submissions for Council, Ms Scott outlined the general statutory framework that is relevant to our consideration of submissions and further submissions, drawing on the comprehensive summary provided by the Environment Court in *Colonial Vineyard Limited v Marlborough District Council*[243], but including matters made relevant by subsequent amendments to the Resource Management Act 1991. In the Hearing Panel's Stage 2 Report 18.1, it noted in particular the effect of amendments made in 2017 drawn to the Hearing Panel's attention by Ms Scott, more specifically:

[240] Clause 10(1) First Schedule to the Act
[241] Clause 10(3) First Schedule to the Act.
[242] Clause 10(2)(a) First Schedule to the Act
[243] [2014] NZ EnvC 55

(a) The incorporation of reference in Section 6(g) to *"the management of significant risks from natural hazards" (*which we are required to recognise and provide for); and

(b) The addition of a specific function of the District Council (in Section 31(1)) related to "*the* establishment*, implementation and review of objectives, policies and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district".*

49. No party suggested that we adopt a materially different approach to our task than that suggested by Ms Scott, and accordingly we adopt her submissions in that regard.

50. Having said that, when applying the principles suggested by Ms Scott, we need to take account of the content of the higher order documents guiding (and in some cases directing) how we proceed.

51. At the highest level, the Hearing Panel has to consider the relevance of the NPSFM and the NPSUD, both of which were gazetted after the commencement of our hearings, but which have taken effect prior to the completion of our recommendations.

52. No party sought to persuade us that these new national policy instruments were not relevant to our deliberations or should for some reason be disregarded because they have only just come into effect. We therefore proceed on that basis. Of the other national policy instruments, the NPSET is in the one that appears of potential relevance to our deliberations.

2.1 NPSFM

53. The NPSFM took effect on 7 September 2020. When gazetted, it formed part of a package **of** reforms related to fresh water that included National Environmental Standards for Freshwater (that have since been amended) and regulations related to stock exclusion and measurement of water takes.

54. The nature of the issues before us mean that it is the NPSFM rather than the accompanying instruments that we need to look closely at. In that regard, we note Objective 2.1 which sets clear priorities as between different considerations with the health and wellbeing of water bodies and freshwater ecosystems being the number one priority, with the ability of people and communities to provide for their social, economic and cultural well-being ranked at a lower level.

55. We note also new policies directing greater emphasis on management of freshwater to give effect to Te Mana o te Wai, directing active involvement of tangata whenua in freshwater management, management of freshwater in an integrated way considering the effects of use and development of land, provisions to safeguard natural inland wetlands, with no further loss of their extent and promotion of their restoration, and protection of the habitats of indigenous freshwater species, among other things.

56. As regards the concept of Te Mana o te Wai, we note the statement in clause 1.3 of the NPSFM that Te Mana o te Wai encompasses six principles informing the NPSFM and its implementation, one of which is:

"Mana whakahaere: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater."

57. We will return to the NPSFM in the reports that follow. It is sufficient to note for present purposes that the provisions summarised above appear particularly relevant to aspects of Stream 16.

2.2 NPSUD

58. The NPSUD took effect on the 20 August 2020.

59. The NPSUD assumed significant prominence in the hearing, partly because it took effect after the hearings had commenced, but principally because of the urban focused nature of some of the plan changes before us (eg the industrial, commercial and residential provisions). We were told, for instance, that it was relevant, and directive of the outcome of aspects of all three Streams. That opinion advanced for a number of submitters was, however, directly contrary to the case put to us by counsel for the Council, who suggested that with certain exceptions, the NPSUD did not involve a material shift in position, at least as regards the matters before us, compared to its predecessor, the National Policy Statement on Urban Development Capacity 2016. That conflict indicates a need to examine the content of the NPSUD in rather more detail than might otherwise be the case.

60. The first thing to note about the NPSUD is that it appears to have a strong enabling 'theme' for urban development; to have well-functioning urban environments; the need to provide sufficient development capacity to meet the different needs of people and communities; supporting competitive land and development markets (to improve housing affordability); enabling more people to live in, and more businesses and community services to be located in, areas of urban development; and an explicit recognition that urban environments (and amenity values) change over time.

61. Unlike its predecessor, the NPSUD has a much more comprehensive set of definitions. We note for instance, the new definition of nationally significant infrastructure that includes state highways, the national grid and any airport used for regular air transport services by aeroplanes capable of carrying more than 30 passengers.

62. We note also amendment to the definition of urban environment which is now stated to mean:

> *"Any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:*
>
> *(a) Is, or is intended to be predominantly urban in character; and*
>
> *(b) Is, or is intended to be, part of a housing and labour market of at least 10,000 people."*

63. From our perspective, this amended definition is helpful because it resolves some of the problems previous hearing panels have encountered identifying the extent of the urban environments in the district under the previous definition "[244]

64. We think, for instance, that it is now clear that the settlements of Hāwea and Luggate are part of the Wānaka urban area for the purposes of the NPSUD.

65. We asked Mr Michael Copeland, giving economic evidence for Universal, whether Wānaka and Queenstown were part of the same housing and labour market. His response was that there is some connection between the two, but it's a lesser connection than between Hāwea and

[244] Refer for instance to Stage 1 Report 16 at section 2.9

Wānaka for instance, which he regarded as being in the same market. The Council's case was presented on the premise that Queenstown and Wānaka remain separate urban areas and we approach them in that light.

66. Queenstown is defined as a Tier 2 urban environment, which means that the NPSUD policies providing direction for the management of Tier 1 urban environments do not apply to it. The distinction between Tier 2 and other urban environments is less important to us because the provisions turning on that difference relate more to the Council's future actions than to any immediate actions we might need to consider.

67. One thing that has not changed is the definition of short, medium and long term, as with the previous National Policy Statement, the short term is the next three years, medium term is between three and ten years and long term is between ten and thirty years.

68. Turning to the substantive elements of the NPSUD, the initial focus (in Objective 1) is on well-functioning urban environments that enable people and communities "*to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future."*

69. Policy 1 fleshes out what well-functioning urban environments are and recognises the role of planning decisions as contributing to them. Such environments are described in terms that mean they, "*at a minimum:*
   (a) have or enable a variety of homes that:
      (i) meet the needs, in terms of type, price, and location, different households; and
      (ii) enable Maori to express their cultural traditions and norms; and
   (b) have or enable a variety of sites that are simple for different business sectors in terms of location of site size; and
   (c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and
   (d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and
   (e) support reductions in greenhouse gas emissions; and
   (f) are resilient to the likely current and future effects of climate change."

70. While the more general concepts in Objective 1 largely reflect the content of the previous NPS, as counsel for the Council pointed out in her Memorandum of 31 July, many of the criteria in Policy 1 are new.

71. Objective 2 draws the link between housing affordability and competitive land and development markets, seeking an outcome where planning decisions support those markets.

72. Objective 2 is supported by Policy 2, that requires all local authorities with urban environments within their boundaries to "*at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term and long term".*

73. This Policy needs to be read together with the detailed implementation provisions in Part 3 of the NPSUD. Clause 3.4 clarifies that provision of long term capacity in terms of the policy, does not necessarily require that land be zoned and infrastructure be in place to enable development to occur.

74. Thus, in the long term, what is required is that at minimum, sufficient development capacity is available on land identified by the local authority for future urban use and infrastructure to support it is identified as part of its Long Term Plan.

75. In these respects, the NPSUD largely parallels its predecessor, although as counsel for the Council acknowledged in her 31 July Memorandum, what is new are the words "*at least*". While she submitted that this did not make any difference, submitters sought to emphasise both this aspect of the NPSUD and the way in which Policy 1 refers to a "*minimum"*. The case for Universal, in particular, was that supply (in that case of residential homes) was a key element in giving effect to the NPSUD. As Mr Lane Hocking memorably put it to the Stream 18 Hearing Panel the answer is "*supply, supply, supply".*

76. Submitters emphasised in this regard the requirement of the NPSUD for building in a "*competitiveness margin"*[245]*.* However, we did not regard this either as greatly different in concept or content to policy PC1 that formerly applied to this Council in relation to its high-growth urban areas.

77. Ms Baker-Galloway, counsel for Universal, agreed that this was an issue of emphasis and therefore a merits point, rather than a matter of what was required to give effect to the National Policy Statement given that the substantive margins required had not changed.

78. In contrast, Stream 17 submitters arguing that too much land had been zoned for industrial use in Wānaka, sought to downplay these aspects of the NPSUD, and to emphasise the economic inefficiency of providing land to an extent that is not required by the market. We discussed this aspect with Mr John Ballingall, giving economic evidence for Tussock Rise Limited, for instance.

79. For our part, we think that there is a greater emphasis in the NPSUD on enhanced supply of land in urban environments for residential and business purposes, but this is an issue of degree, and therefore discretion. The NPSUD does not direct provision of an infinite number of sites for residential or business use, without regard for the extent to which this might actually be required. We therefore consider that the correct interpretation lies between the competing submitter viewpoints we have summarised. We also agree with counsel for the Council that, at least as regards long term housing and business requirements, the NPSUD gives the Council time to get its long term plans in place, before the District Plan needs to provide for those plans.

80. Objective 3 seeks to prioritise specific areas within the urban environments for more intensive development. Accordingly, district plans should enable "*more people"* to live in and *"more business and community services"* to be located in particular areas of an urban environment. The areas identified are those near a Centre Zone[246] or other area with many employment opportunities, areas that are well serviced by existing or planned public transport and/or areas where there is high demand for housing or business land relative to other areas within the urban environment.

81. This objective raises a number of questions. The view of submitters as to what might be considered "*near"* in this context seemed to us to be reasonably flexible. It was suggested to us, for instance that Arthurs Point North is 'near' Queenstown because it is closer to it than Frankton. We did not find the comparison particularly persuasive (it is nearer to Queenstown

[245] Refer implementation clause 3.22

[246] Defined to include Town Centre Zones, Local Centre Zones or Neighbourhood Centre Zones

than Christchurch as well). Similarly, the emphasis seemed to be on the existence of public transport rather than whether the nature and extent of that public transport meant that the area was "*well-serviced"* for the purposes of his objective. Lastly, as we discussed with Mr Gresson, appearing as counsel for Willowridge Developments Limited, the reference in this objective to "*more people"* provides little guidance in the absence of clarification; specifically, more than what? And how much more? Mr Gresson's response was that it's a question of context, how much is appropriate for the area, which , in our view, tends to bring you back to Policy 1, and what outcomes provide for a well-functioning urban environment.

82. Policy 3 provides more specific answers to these questions, but only in respect of Tier 1 urban environments, which do not arise in this district.

83. However, Policy 5 does provide some guidance for other urban environments with a direction that such environments "*enable heights and density of urban form commensurate with the greater of:*

(a) the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or

(b) relative demand for housing and business use in that location."

84. Objective 4 focusses attention on the fact that urban environments, including their amenity values, develop and change over time.

85. This objective is supported by Policy 6 which, among other things, directs that the urban form in an NPSUD compliant planning document may involve significant changes to an area that "*may detract from amenity values appreciated by some people."* However, it is stated that those changes "*are not, of themselves, an adverse effect"*.

86. Mr Page, counsel for Southern Ventures Property Limited, suggested to us that this policy has the effect that adverse amenity effects on neighbours (in that case of expanding a zone boundary) "*are no longer relevant adverse effects"*. Ms Baker-Galloway for Universal put it even more strongly, suggesting to us that Policy 6(b) has the effect that such changes are "*deemed to be not adverse"*[247]. We queried Mr Page as to whether a policy document, even one as elevated as a National Policy Statement, can alter the facts. One of the standard texts on statutory interpretation tells us that statutes "*often deem things to be what they are not or deem something to be the case when it may or may not be the case"*[248]. This is merely an instance of the sovereign power of Parliament[249]. However, unlike statute law, the power to promulgate subsidiary legislation is not unlimited. We do not therefore think that an RMA policy document can deem something to be a fact[250] when that is not correct[251], particularly in a context where section 7 requires particular regard be had to maintenance and enhancement of relevant amenity values[252].

87. Having reflected on it, Mr Page agreed that it was problematic to state what is or is not a fact in a policy document. He tended to agree with our suggestion that the key words were "*of themselves"*. In our view, this suggests that it should not be assumed that change represents

[247] Opening Legal Submissions for Universal at paragraph 18

[248] Bennion on Statutory Interpretation, 7th edition at 17.8

[249] See the discussion in Constitutional and Administration Law in New Zealand, 4th edition, PA Joseph at page 515

[250] An 'alternative fact', perhaps

[251] Compare Hawkes Bay and Eastern Fish and Game Councils and Others v Hawkes Bay Regional Council [2014] NZ HC 3191 at [152]

[252] See s7(c)

an adverse effect on amenity values. Evidence is required to demonstrate that there is such an adverse effect. Having considered the issue, Ms Baker-Galloway advanced a similar interpretation: a change to amenity values is not *inherently* an adverse effect. We agree with that approach to Policy 6.

88. We note also Objective 5, seeking that planning decisions relating to urban environments take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). Policy 9 amplifies that, directing, among other things, that local authorities "*provide opportunities and appropriate circumstances for Maori involvement in decision-making on resource consents… including in relation to sites of significance to Maori and issues of cultural significance".* We will return to those provisions in the context of Stream 16.

89. The 2016 National Policy Statement had a clear emphasis on integration of development and infrastructure. Objective 6 of the NPSUD retains that emphasis, requiring it be "*integrated with infrastructure planning and funding decisions*", but couples it with a direction that local authority decisions on urban development are "*strategic"* over the medium and long term and "*responsive"*. Policy 8 picks up on the requirement for responsiveness emphasising the need to respond to plan changes *"that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity it:*
(a) unanticipated by RMA planning documents; or
(b) out-of-sequence with planned land release."

90. Implementation clause 3.8 provides another level of detail, requiring local authorities to have particular regard to the developed capacity provided by a plan change "*If that development capacity:*
(a) would contribute to a well-functioning urban environment; and
(b) is well-connected along transport corridors; and
(c) meets the criteria set under subclause (3)."

91. Subclause 3 requires the Regional Council to include criteria for determining what a significant addition is for this purpose in its regional policy statement. For obvious reasons, ORC has not yet undertaken that task.

92. Submitters understandably emphasised to us the need to be responsive to plan change proposals which, in this context, is a new requirement for the NPSUD.

93. It was suggested to us that Environment Court decisions like that in *Foreworld Developments Limited and Others v Napier City Council*[253] would need to be reconsidered, as a result. In that case, the Environment Court stated:
"It is bad resource management practice and contrary to the purpose of the Resource Management Act – to promote the sustainable management of natural and physical resources; to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it."[254]

94. We think that such submissions go too far.

95. Quite apart from the fact that the Environment Court was providing guidance as to the correct implementation of the purpose of the RMA, which has not changed, the NPSUD does not

[253] W008/2005
[254] Ibid at [15]

remove the requirement for urban development to be integrated with infrastructure planning and funding decisions. Rather, we interpret the NPSUD as an instruction that local authorities not be so wedded to their own development strategies that they refuse to change course and reallocate infrastructure capacity if a good proposal with significant upside in terms of development capacity appears "*from left field".*

96. While we are addressing infrastructure in an urban setting at this point, we should note the submission of counsel for Corbridge, that the principle we have down from *Foreworld* is not relevant to RVZ rezoning issues (or at least, not the RVZ zoning she was advancing). We do not think it is as simple as an urban/rural distinction (and we should emphasise that Ms Irving did not put it in those terms). The Environment Court cited, among other previous authorities, the decision of the High Court in *Coleman v Tasman District Council*[255]. That case related to a rural road. We think, therefore, that it depends on the nature of the infrastructure, and whether the proposed development is reliant on upgrading of the infrastructure by Council (or some other public authority). An RVZ proposal could be advanced on the basis that wastewater (for instance) would be addressed on site, by the landowner. The issue then would be whether the proponent has provided sufficient evidence to confirm that this is a credible option, given the nature and scale of the development rezoning would enable, and the site.

97. The NPSUD also expresses a focus on climate change, with Objective 8 seeking that urban environments support reductions in greenhouse gas emissions and are resilient to the current and future effects of climate change. As already noted, Policy 1 states that a well-functioning urban environment is one that supports reductions in greenhouse gas emissions.

98. At a more general level, we note implementation clause 3.35 that directs territorial authorities in the position of the Council to ensure that:

"(a) the objectives for each zone in an urban environment in its district describe the development outcomes intended for the zone over the life of the plan and beyond; and

(b) the policies and rules in its district plan are individually and cumulatively consistent with the development outcomes described in the objectives for each zone."

99. We regard Point (a) as good planning practice, but worth emphasising in this context. Similarly, we think that clause 32 would require the outcome described in Point (b) in any event.

100. Lastly, we note the specific point in Clause 3.38 of the NPSUD directing that objectives, policies, rules and assessment criteria that have the effect of requiring a minimum number of carparks to be provided must be removed other than as they relate to "*accessible carparks"* [256].

101. Clause 4.1 of the NPSUD directs local authorities to amend their district plans (in this case) to give effect to the NPSUD as soon as practicable. We read that requirement as meaning that where we have scope to recommend outcomes that would give effect to the NPSUD, we should do so.

102. In a number of instances, Council reporting officers have accordingly recommended that we delete provisions in the chapters before us referring to or requiring minimum parking standards. We consider that may not be either appropriate or authorised by the NPSUD, for two reasons.

[255] Wellington High Court AP224/97, Doogue and Neazor JJ

[256] The term used in Chapter 29 is "*mobility carparks"*

103. The first is that a simple deletion of all reference to minimum parking standards would remove the ability to require mobility parking, which the NPSUD obviously does not intend. At most, existing references to minimum parking need to be qualified to ensure provision for mobility parking remains.

104. The second reason is that the structure of Chapter 29 is that mobility parking requirements are derived (In Rule 29.5.5.) from the total number of parks required (in Table 29.4). Deleting the latter would have the effect of rendering rule 29.5.5 nugatory.

105. More generally, where minimum parking standards are embedded in provisions providing for a range of vehicle/traffic management issues, a simple 'fix' is not possible. A more comprehensive solution is required. That must necessarily be a matter for Council to consider.

106. In the interim, while we think there is room to delete some provisions that would have the effect of imposing minimum parking requirements, we have approached the issue on the basis that we should only delete text when an NPSUD-compliant solution is obvious. Where a more complex response is required, we have left the issue to be addressed by Council in a more comprehensive manner.

2.3 NPSET

107. The NPSET is relevant to us more because of what it doesn't say than for what it does. Ms McLeod, giving evidence for Transpower New Zealand Limited, confirmed our impression that the NPSET does not direct how cultural issues raised by the operation, upgrading and extension of the National Grid might be managed suggesting, in turn, scope to rely on the direction provided by the RPS and the strategic chapters of the PDP (discussed below) as to how section 6(g) of the RMA is fleshed out in this District.

2.4 Regulations

108. In the next level of national instruments, the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 provide an important background to the case put by the Telcos in Streams 17 and 18 for a more enabling approach to telecommunication facilities in the relevant zones.

109. The National Planning Standards 2019 were relied on by the Ministry of Education, in particular, who sought that the definitions contained within those standards be imported into the PDP. Clearly this is not required, as yet, because the Council has nine years (from 2019) within which to adopt the definitions contained within the National Planning Standards. We have therefore approached that request on the merits rather than it being determined by those standards. The Stream 18 Hearing Panel discusses the point further in Report 20.8 and 20.11.

2.5 RPS

110. At the next level of higher order instruments, the RPS plays an important role. Unlike in previous stages of the PDP, when the RPS was in the process of development and both it and its 1998 predecessor needed to be considered, we were advised by Mr Craig Barr for Council that the Otago Regional Policy Statement 1998 has now been entirely superseded. Mr Barr advised us further that the operative regional policy statement, that we must give effect to[257], is comprised partly by the RPS and partly by the subsequent consent orders made by the Environment Court, copies of which Mr Barr supplied to us.

[257] Pursuant to Section 75(3)(c) of the RMA

111. The RPS covers the entire range of issues relating to use, development and protection of the natural and physical environment. It defies easy summary, and rather than extend this report by attempting to do so, we have adopted the approach of referring to the relevant parts of the RPS and subsequent Environment Court consent orders in relation to the specific issues addressed in our subsequent reports.

112. We record that the advanced stage the RPS has reached and its comprehensive nature means that, in our view, there is likely to be little scope or need to refer back to the purpose and principles of the RMA, applying the decision of the majority of the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited*[258]. The very recent release of the NPSFM and NPSUD means, however, that we can not rely on the RPS capturing all elements of those documents.

2.6 Iwi Management Plans

113. At the next level of relevant instruments, Ms Kleinlangevelsloo, giving evidence for Ka Runaka, referred us to relevant iwi management plans: Ka Tahu ki Otago Natural Resource Management Plan 2005 and Te Tangi Tauria 'The Cry of the People', Nga Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008, which we will discuss in greater detail in our Stream 16 Report.

2.7 Strategic Chapters of PDP

114. Stating the obvious, this is the third stage of development of the PDP. The structure of the PDP is one where Chapter 3 provides strategic direction, and Chapters 4-6 elaborate on that strategic direction.

115. A number of the provisions of Chapters 3, 4 and 6 (but not Chapter 5) were the subject of appeal to the Environment Court. Mr Craig Barr, for Council, gave us a detailed update of the progress of resolution of those appeals in his evidence in chief. Mr Barr referred us in particular, to the Environment Court's interim decisions in *Darby Planning Limited Partnership v Queenstown-Lakes District Council*[259] and *Upper Clutha Environmental Protection Society Inc v Queenstown-Lakes District Council*[260].

116. Mr Barr provided us with a marked-up version of Strategic Chapters 3 and 6 reflecting the directions given by the Court in its interim decisions. Mr Barr described those provisions as effectively settled although not yet the subject of final orders from the Environment Court (because unrelated matters in Chapters 3 and 6 are still awaiting resolution).

117. On 21 September 2020, the Environment Court issued further interim decisions[261] providing further clarification on the content of the Chapter 3 provisions related to management of rural landscapes.

118. Following release of those decisions, Counsel for the Council supplied us with a revised 'working copy' of Chapters 3 and 6 incorporating the direction of the Court. As previously, these are not yet final, in the sense of being the subject of directions from the Court to amend the relevant provisions. However, to the extent that the revised provisions indicate a shift in

[258] [2014] NZSC 38
[259] [2019] NZ EnvC 133
[260] [2019] NZ EnvC 205
[261] [2020] NZEnvC 157 and [2020] NZEnvC 159

direction (from the Council Decisions Version), we find that we should place considerable weight on the direction of the Environment Court is clearly indicating to us to be appropriate.

119. Another Council witness (Mr Place) provided us with the consent order version of Chapter 28 – Natural Hazards, which is consequently now beyond appeal. Lastly, we note that with the Council's reply, we were supplied with a copy of the Environment Court's consent order dated 20 August 2020, resolving the Chapter 3 and 4 provisions related to urban development. Again, we can therefore treat those provisions as beyond appeal.

120. Importantly, Mr Barr's marked up version of Chapter 3 (and the subsequent iteration we received) confirms a revised version of the strategic issues set out in the Council Decisions version and more specific guidance as to the interpretation and application of Chapter 3 worded as follows:
"For the purposes 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."

121. The revised Chapter 3 contains separate guidance as to the role of the strategic objectives and strategic policies for the purposes of plan implementation, but since it is plan development, and the development of plan changes in particular, that we are engaged upon, the wording quoted above is obviously what we need to keep in mind.

122. In the reports that follow, we therefore take direction from the revised Chapters 3 and 6 the Council has provided to us, together with the provisions of Chapters 3, 4 and 5 that are beyond appeal, taking direction from them in order that as far as we can, we ensure that the end result is an integrated and consistent set of Plan provisions.

123. Before leaving the discussion of the strategic provisions of the PDP, we should address one specific point that arose in the Stream 17 hearings. This relates to the weight that should be given to Policy 3.3.8:

"Avoid non-industrial activities not ancillary to industrial activities occurring within areas zoned for industrial activities."

124. This provision was not the subject of appeal and on the basis of the general approach signalled above ought to be given significant weight. In her evidence for two groups of submitters[262] Ms Hayley Mahon provided written evidence calling this policy into question on the grounds that it goes beyond RPS Policy 5.3.3. Ms Mahon also referred us to the Environment Court's decision in *Bunnings Limited v QLDC* [2019] NZ EnvC 59 interpreting that policy.

125. Ms Mahon was unable to appear at the hearing, but Mr Edmonds appeared in her stead, adopting her evidence.

126. RPS Policy 5.3.3 reads:

"Manage the finite nature of land suitable and available for industrial activities, by all of the following:
….
b. Restricting the establishment of activities in industrial areas that are likely to result in:

[262] JC Breen Family Trust et al and Bush Creek Property Holdings Limited et al

i. Reverse sensitivity effects; or
ii. Inefficient use of industrial and or infrastructure."

127. The Policy indicates situations where the establishment of activities in industrial areas should be restricted. It is not expressed exclusively. There may be other situations where there are good grounds for restriction.

128. We do not therefore regard Policy 3.3.8 as ultra vires, because it goes further than RPS Policy 5.3.3. We consider that all that it means is that it cannot be said that Policy 3.3.8 was required in order to give effect to the RPS.

129. Potentially more problematic is the fact that as part of the Environment Court's decision, the Court opined that Policy 3.3.8 appeared inconsistent with Policy PA3 of the National Policy Statement on Urban Development Capacity 2016[263] and noted that the Report recommending it had not considered the 2016 National Policy Statement[264].

130. We observe that so far as we can identify, there is no parallel policy to PA3 in the NPSUD. Efficiency of land use (the particular point emphasised by the Court) is not advanced as a reference point in the NPSUD. Rather, the focus of the NPSUD is on ensuring that planning decisions contribute to well-functioning urban environments. We do not read NPSUD Policy 1 as precluding the allocation of land for specific purposes, and we think that NPSUD Policy 2 can be read to support providing sufficient development capacity to meet the expected demand for industrial land over the short, medium and long term.

131. We are also conscious that the ink is barely dry on Policy 3.3.8 and that it was not appealed. Nor have we identified any suggestion in the Environment Court's interim decisions on the Stage 1 appeals, insofar as they address similar provisions governing other zones, that would call this policy into question (a point emphasised by Ms Scott for Council).

132. In summary, we do not find that we should give Policy 3.3.8 no weight because of the criticisms of it in the Environment Court's *Bunnings* decision.

133. On the contrary, we find it is an important policy in terms of the nature and scale of activities envisaged in the GISZ for example. Limiting the range of 'incompatible' activities such as new Offices, Commercial and Retail activities will assist in GISZ land being available for industrial and service activities. We find this would be consistent with a well-functioning urban environment as well as making a contribution to providing development capacity as set out in (Policy 6 (c) and (d) of the NPSUD. This is discussed in more detail in Report 20.3.

2.8 Non-Statutory Plans

134. In his evidence, Mr Barr drew our attention to community plans for Hāwea, Luggate, Cardrona and Makarora that were considered as part of the development of the Stage 3 PDP provisions. The extent to which such plans should determine the content of the PDP was the subject of some controversy, particularly in relation to the location of commercial development in Cardrona. The Stream 18 Hearing Panel discusses that issue in its Report 20.8 discussion of the submission of Cardrona Village Limited.

[263] Ibid at [68]
[264] Ibid at [159]

2.9 Zoning Principles

135. In previous PDP stages, the relevant Hearing Panels have found it useful to apply a set of assessment principles to assist in answer the question as to what the most appropriate zoning is for a given area of land.

136. As Mr Barr observed, the purpose of the zoning principles is not to replace the guidance provided in the *Colonial Vineyards* decision already noted, but rather to elaborate on the relevant statutory tests in a manner that focuses attention on the particular issues zoning questions give rise to.

137. The zoning principles previously applied need to be adapted a little, among other things to reflect progress in development of the RPS, but we are satisfied that they remain broadly applicable.

138. We concur with previous Hearing Panels that as amended, these principles are of assistance and we have used them as a touchstone in the zoning issues addressed in our subsequent reports. The principles are:

(a) 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;

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

(c) The overall impact of the rezoning gives effect to the RPS;

(d) Relevant issues debated in recent Plan changes are considered;

(e) Changes to zone boundaries are consistent/considered alongside PDP maps that indicate additional overlays or constraints (e.g. Airport obstacle limitation surfaces, SNAs, BRAs, ONFs and ONLs;

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

(g) Zone changes 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;

(h) 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;

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

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

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

2.10 Section 32

139. Last, but certainly not least, we note the requirement in Section 32AA to undertake a fresh evaluation of any changes that we recommend to the Proposed District Plan provisions before us. A further evaluation needs to employ the same tests that should already have been applied in the Council's initial Section 32 evaluation.

140. Section 32AA(1)(c) directs that our further evaluation must be undertaken at a level of detail corresponding to the scale and significance of the changes.

141. We have the option of either preparing a separate report or referring to those matters in our recommendation reports[265].

142. We have adopted the latter approach. Accordingly, there is no separate s32AA evaluation report(s) in this case. Our recommending reports contain our reasoning in terms of s32AA.

143. One practical consequence of the requirement to undertake the further evaluation required by section 32AA is that the Hearing Panel requires evidence to support such an evaluation. That evidence might have come from Council or from submitters. From the Hearing Panel's perspective, it is the quality of the evidence that counts, not where it has come from. But in the absence of any evidence to support a particular change sought in a submission, unless we could be satisfied it was of minor effect in terms of Clause 16(2) of the First Schedule, we have necessarily had to recommend rejection of the submission.

144. One such minor change we have made (pusuant Clause 16(2)) is to insert macrons where we have identified that to be appropriate in the relevant Plan provisions.

3. BROADER LEGAL ISSUES

3.1 Scope to Entertain Rezoning of Greenfield Land

145. As part of her opening submissions, Ms Scott provided us with an outline of the legal principles regarding the scope for us to recommend changes to the notified PDP provisions. She observed[266] that two preconditions arise:

(a) A submission must first, be *on* the Proposed Plan; and

(b) A decision-maker is limited to making changes within the scope *of the submissions* made *on the* Proposed Plan.

146. As regards to the former test, Ms Scott referred us to the well-known decision in the High Court in *Palmerston North City Council v Motor Machinists Limited*[267], but then said that the Council had shifted its position compared to previous stages, accepting that a submission might legitimately seek rezoning of land that has not been notified in Stage 3 provided the zone sought to be applied is a Stage 3 zone. Later in her submissions[268], Ms Scott explained that the Council had approached all of the submissions seeking a rezoning of greenfield land to Stage 3 zones "*as if they were 'on' Stage 3"* because of the staged approach taken to the Plan review, and fairness matters.

147. However, addressing us for Scope, Mr Nolan QC submitted that that was not an option open to the Council (or us). The context of Mr Nolan's submissions was that Scope opposes the submission of CCCL seeking to rezone its land at Victoria Flat, GIZ. The CCCL land was zoned Rural in Stage 1 of the PDP process. As Mr Nolan observed, that decision was not appealed. He argued, accordingly, that the Council is functus officio in respect of that zoning, that is to say, it has no ability to revisit the Stage 1 zoning decision.

148. As regards Ms Scott's suggestion of potential issues of fairness, Mr Nolan suggested that fairness cuts both ways and that it was only the good work of Scope's planning advisor, Mr Geddes, noting the significance of the CCCL relief, that caused it to recognise the need to

[265] Section 32AA(1)(d)
[266] Opening Legal Submissions for Council at 4.2
[267] [2013] NZRMA 519
[268] Ibid at 6.5

protect its position with a further submission. He asked, somewhat rhetorically, how many other affected parties had not been so fortunate.

149. Mr Nolan suggested that CCCL could have challenged the rural zoning at Stage 1, but it did not do so. Alternatively, it could have convinced the Council to include its land within the notified Stage 3, but it did not do that either. Mr Nolan referred us to a brief discussion of that possibility in the Section 32 Report, noting that in the opinion of the Section 32 author, the information supplied by the landowner was insufficient to justify the rezoning of the land.

150. Most fundamentally, Mr Nolan submitted that we are bound by the High Court's decision in *Motor Machinists* and have no option but to refuse CCCL's submission.

151. If valid, Mr Nolan's line of reasoning would have applied equally to a number of submitters who sought RVZ zoning over their land. Given that the Council had opened its case on the basis that such submissions would be accepted, the Chair gave parties with an interest in the issue the opportunity to lodge legal submissions. As already noted, a number of parties did so.

152. We distinguish cases where non-stage 3 land sought to be rezoned is directly adjacent to notified Stage 3 land. As Ms Scott identified, Kos J stated in his *Motor Machinists* decision that incidental or consequential extensions of zoning changes proposed are permissible, and logically may be the subject of submission. We put the submissions of Lake McKay Limited Partnership, Southern Ventures Property Limited, Universal and Streat Developments Limited, among others, in that category. That is not to say each of those developments is actually incidental or consequential, in the sense that Kos J described. That has to be considered on a case by case basis. But we think it can be said that they are in a different category and that the argument made by Mr Nolan does not apply to them (as he agreed when addressing us on his legal submissions).

153. We do not find Mr Nolan's submissions suggesting that the Council is functus officio to be persuasive. Clearly, land has been rezoned in successive stages of the PDP. The fact that an earlier stage has addressed the zoning of the land does not, therefore, mean that a subsequent stage cannot reconsider that zoning. The question is whether it does so in this case.

154. To answer that question, the starting point in considering the validity of Mr Nolan's submissions is to determine what the High Court's decision in *Motor Machinists* actually decided. The High Court's decision records that the Plan Change in issue was an extensive review of the Inner and Outer Business Zone provisions of the operative District Plan. The Plan Change provided for a less concentrated form of development in the Outer Business Zone (OBZ), but as the High Court noted, did not materially alter the objectives and policies applying to that zone. It also proposed to rezone some 7.63 hectares of previously residentially zoned land to OBZ[269].

155. The respondent's site was in the same block but geographically separated from the land proposed to be rezoned: the juxtaposition of the two is shown on a map the High Court reproduced. The respondent sought that it also be zoned OBZ.

156. The High Court examined the statutory framework applying to plan changes under the First Schedule. It rejected a submission for the Council that a neighbour affected by an additional

[269] [2013] NZHC 129 at [10]

zoning change proposed in a submission, rather than in the Plan Change itself, had no ability to lodge a further submission. However, it recorded that such parties depend on noting publication of the summary of submissions, interrogating that summary in sufficient detail to identify that they are in fact affected, and then lodging a further submission. The view of the High Court[270] was that there was therefore a need for caution in monitoring the jurisdictional gateway for further submissions.

157. Looking at the substantive issues before the Court, Kos J referred at length and ultimately applied the reasoning in an earlier decision, that of William Young J in *Clearwater Resort Limited v Christchurch City Council*[271]. In *Clearwater,* William Young J had adopted an approach to determining the scope of a Plan variation which focused on the extent to which the variation alters the Proposed Plan, and rejected a more open ended test which would allow submissions "*in connection with"* the variation. More specifically, a submission could only fairly be regarded as "*on"* a variation if first, it is addressed to the extent to which the variation changes the pre-existing status quo. Second, if the effect of regarding a submission as being "*on"* a variation would be to permit a planning instrument to be appreciably amended "*without real opportunity for participation by those potentially affected"* than in William Young J's view that would be a "*powerful consideration"* against finding that the submission was truly *"on"* the variation.

158. Reviewing that reasoning, Kos J agreed with counsel for the appellant that a submission on a Plan Change "*is not designed as a vehicle to make significant changes to the management regime applying to a resource not already addressed by the Plan Change"*[272]. In Kos J's view:

> *"Permitting the public to enlarge significantly the subject matter and resources to be addressed through the Schedule 1 Plan Change process beyond the original ambit of the notified proposal is not an efficient way of delivering Plan changes. It transfers the cost of assessing the merits of the new zoning of private land back to the community, particularly where shortcutting results in bad decision-making"*[273].

159. It followed, in Kos J's view, that a submission had to address the Proposed Plan Change, that is to say the alteration of the status quo brought about by that change. He described that test, drawn from the earlier *Clearwater* decision, as a filter, being the dominant consideration.

160. Kos J went on, however, to reframe the test as being one where "*the submission must reasonably be said to fall within the ambit of the Plan Change"*[274] He suggested that one way of analysing that is to ask whether the submission "*raises matters that should have been addressed in the s32 evaluation and report".* Another way, in his view, was to ask whether "*the management regime in a District Plan for a particular resource (such as a particular lot) is altered by the Plan Change"*. If the answer to the latter was in the negative, then in Kos J's view, "*a submission seeking a new management regime for that resource is* ***unlikely*** *to be "on" the Plan Change".* [emphasis added]

161. Recognising that the *Clearwater* approach does not exclude altogether zone extension by a submission, Kos J stated that incidental or consequential extensions of zoning changes proposed in a Plan Change are permissible "*provided that no substantial further s.32 analysis*

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[270] Ibid at [43]
[271] High Court Christchurch AP34/02, 14 March 2003
[272] Ibid at [79]
[273] Ibid
[274] Ibid at [81]

is required to inform affected persons of the comparative merits of that change". Kos J likened such changes to those permitted under Clause 10(2) of the First Schedule.

162. The Judge went on to say that these considerations are subject to the second limb of the *Clearwater* test quoted above, namely whether there is a real risk that affected parties have been denied an effective response to those additional changes in the Plan Change process. Justice Kos described this as addressing the risk of "*submissional side-wind[s]"*, stating that that would not be robust, sustainable management of natural resources.

163. On the face of the matter, Mr Nolan has a point. The submissions in issue are seeking a "*new management regime"* for the land resource in question, when that has not been altered by the Plan Change.

164. Subsequent cases, however, cast further light on the principles discussed by Kos J. We note, for instance, the discussion by the Environment Court in *Bluehaven Management Limited v Western Bay of Plenty District Council*[275] as follows:

> *"… one might also ask, in the context of the first limb of the Clearwater test, whether the submission under consideration seeks to substantially alter or add to the relevant objective(s) of the Plan Change, or whether it only proposes an alternative policy or method to achieve any relevant objective in a way that is not radically different from what could be contemplated as resulting from the notified Plan Change. The principles established by the decisions of the High Court discussed above would suggest that submissions seeking some major alternations to the objectives of a proposed plan change would likely not be "on" that proposal, while alterations to policies and methods within the framework of the objectives may be within the scope of the proposal."*

165. We note also the Environment Court's decision in *Hawkes Bay Fish and Game Council v Hawkes Bay Regional Council*[276]. In that case, the Court found that neither the section 32 report nor the public notice of a plan change are determinative of scope, but each is a document that can assist interpretation of the intention of notified plan change[277].

166. Addressing first the significance of the section 32 report, the decision of the High Court in *Mackenzie v Tasman District Council*[278] is to similar effect. There the High Court approved a statement in the decision under appeal to the effect that the s32 evaluation is not a test in its own right, but rather a means of analysing the status quo in issue.

167. There is conflicting Environment Court authority, however, on the significance in that analysis of a failure on the part of the section 32 evaluation report to consider particular alternatives. The joint decision of Judges Smith and Kirkpatrick in *Bluehaven Management Limited v Western Bay of Plenty District Council,* supported by the subsequent decision of Judge Harland in *Calcutta Farms Limited v Matamata-Piako District Council*[279]*,* holds that the question is whether the section 32 evaluation should have considered a particular alternative, not whether as a matter of fact, it did or did not do so.

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[275] [2016] NZ EnvC 191 at [37]
[276] [2017] NZ EnvC 187
[277] Ibid at [42]
[278] [2018] NZHC 2304
[279] [2018] NZ EnvC 187

168. The decision to the contrary was that of Judge Jackson in *Tussock Rise Limited v Queenstown Lakes District Council*[280] in which His Honour found the *Bluehaven* approach did not deal with the question of fairness to persons who might have wished to lodge submissions, but did not[281].

169. Ultimately, however, Judge Jackson found the relevant submission to be "*on"* the plan change by employing what we would respectfully characterise as a wide reading of the consequential exception in *Motor Machinists*.

170. For ourselves, we think there is force in the point made in the *Bluehaven* decision to the effect that an inquiry simply as to whether an s32 evaluation report did or did not address the issue raised in a submission *"would enable the planning authority to ignore as relevant matters and thus avoid the fundamentals of an inappropriately thorough analysis of the effects of a proposal with robust, notified and informed public participation"*[282].

171. We accept that this raises issues of potential unfairness to interested parties, but we consider that that needs to be addressed at the second stage of the inquiry.

172. Returning to the relevance of the form in which a plan change was notified we note the statement from *Hawkes Bay Fish and Game Council v Hawkes Bay Regional Council*[283] to the effect that "*the public notice is a document directly relevant to procedural fairness dimension of the test in Clearwater and therefore, to determining whether a submission is "on" a plan change."*

173. In this case, the relevant provisions were the subject of separate public notices. The public notice relevant to the GIZ noted that it included a review of, among other things, the ODP Industrial A and B Zones, introduced the GIZ as a new zone and "*also introduces newly zoned land"*.

174. A separate paragraph noted that the plan change proposed *"a number of new zonings, mapping annotations and variations an amendment to land and provisions decided through Stages 1 and 2 of the PDP".* Chapter 21: Rural was one of the identified chapters.

175. The public notice also contained the following statement:

> *"It is important to be aware that the Council's decisions on the provisions and plan maps notified as part of Stages 1 and 2 of the Proposed District Plan have been issued. Any submissions relating to provisions, zones and mapping annotations not notified as part of Stage 3 of the Proposed District Plan are likely to be considered "out of scope", and will not be able to be considered."*

176. While the public notice was not inviting submissions seeking rezoning of previously Rural Zone land, we think that the overall impression created by this notice is one of advice that as a result of this set of plan changes, Rural Zone land might be the subject of rezoning. In terms of the qualification quoted above, such submissions relate to the GIZ Zone being sought, not to the Rural Zone previously applied to the land. We read that qualification as precluding submissions seeking, for instance, rezoning of previously Rural Zone land to Rural Residential.

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[280] [2019] NZ EnvC 111
[281] Ibid at [60]
[282] [2016] NZ EnvC 191 at [39]
[283] [2017] NZ EnvC 187 at [46]

177. The public notice related to the RVZ[284] stated:

"Stage 3b is the result of reviewing Section 12 – Special Zones (Rural Visitor Zones) in the Operative District Plan. It introduces a new Chapter 46 Rural Visitor Zone and a series of zoning proposals, mapping notations, and variations of amendments to parts of zones and chapters that were decided through Stages 1 and 2…".

178. A subsequent paragraph describes the principal areas the subject of zoning and includes the comment that with the exception of land adjacent to Wānaka Airport, the RVZ proposals affect land identified as ONL.

179. Once again, we read this public notice as saying that this Plan Change encompasses proposals to rezone land previously zoned in a earlier stage of the PDP process.

180. Turning to the Section 32 evaluation reports, that for the GIZ analyses each site notified to be rezoned but, as far as we can identify, does not consider rezoning of any alternative sites.

181. The Executive Summary states[285] that no other land, other than that already the subject of an ODP Industrial Zone will be considered as part of this review.

182. The s32 evaluation report for the RVZ states[286] that:

"The RVZ is designed to provide for visitor industry facilities on sites that are too small to likely be appropriate for resort zoning (i.e. a stand alone special zone), and the principal activity is visitor accommodation and smaller scale commercial recreation activities, rather than a separate resort or special zone that is centered around substantial recreation activities (i.e. Millbrook Chapter 43 and the establishment and ongoing use of golf courses).

183. The focus of the s32 evaluation is on the sites already zoned Rural Visitor Special Zone under the ODP. The assessment of alternatives appears to have been limited to those sites only.

184. We consider that counsel for Corbridge, Ms Irving, had a point when she submitted that the section 32 evaluation should not have limited itself to the existing ODP Rural Visitor Special Zone areas, but should rather have considered what the zone was trying to achieve, and then considered what areas would appropriately be zoned in the light of the outcomes sought. The same point could be made in relation to the GIZ Report.

185. Put in the terms of the *Bluehaven* decision summarised above, we consider that the section 32 evaluation reports both for the GIZ and RVS should have considered the potential for rezoning greenfield sites, including those that were the subject of submissions and evidence before us.

186. These indications suggest that at least at the first stage of the *Motor Machinist* inquiry, the submissions in issue might be considered 'on' the Plan Change. There is also a broader question as to whether *Motor Machinists* applies to the particular situation before us.

[284] Dated 31 October 2019
[285] At 1.2
[286] At 1.2

187. The immediate answer of Ms Steven QC to Mr Nolan QC's argument was to suggest to us that *Motor Machinists* could be distinguished by reason of the staged nature of the PDP process. Other counsel, seeking to support RVZ rezonings, amplified the point, pointing to the complexity of the District Plan process[287], Council advice that the correct time to seek a new zoning was when the zone was being reviewed, not when the land was being reviewed[288] and the practical difficulty submitters faced when the logical zone for them to seek had not been drafted, let alone notified[289].

188. We find that all of these submissions have some validity. The staged nature of the PDP process was always going to need careful explanation if people were not going to 'fall between the cracks'. In this case, Judge Jackson has described at some length the mixed messages in the language adopted by the Council, certainly at Stage 1, in his *Tussock Rise* decision, characterising the whole process as "*contradictory and confused"*[290]*.*

189. We also agree with submissions we received that although legally taking the form of a series of plan changes, the end result, certainly from the perspective of potential submitters is a complete review of the ODP, albeit one occurring over time and in stages. We think this is an important distinction from the situation Kos J faced in *Motor Machinists*, and in the earlier decisions on which he relied.

190. We agree with the parties who suggested to us that it was impractical and unreasonable to have expected them to seek a zone which at Stage 1 of the PDP process, did not exist, quite apart from the suggestions we have noted that the Council was actively telling parties to wait for a subsequent stage. We make no finding of fact in that regard, but the submissions we have noted on behalf of Barnhill Corporate Trustee Limited and others accord with our understanding of the basis on which the Council has proceeded.

191. If these various considerations point to our taking a broad view as to the scope of the Plan changes before us, we are very alive to the concerns expressed both in Judge Jackson's *Tussock Rise* decision and underpinning Kos J's reasoning in *Motor Machinists* regarding potential unfairness to third parties. In particular, to parties who may not have appreciated that their neighbours could and had sought rezoning of their properties, and who failed to lodge a further submission. We are fortified, however, by the fact that further submissions have been lodged opposing rezoning applications: Mr Scaife both lodged a further submission on Matakauri Lodge's rezoning application and appeared in support of it. QAC lodged a further submission on the Corbridge rezoning application and tabled legal submissions in support of that further submission. Scope did note the submission of its neighbour, CCCL seeking to rezone its property and did lodge a further submission. While Mr Nolan QC was at pains to emphasise this was fortunate and down to the good work of Mr Geddes, we find it difficult to accept that the possibility that greenfield sites might be the subject of rezoning applications came completely as a surprise to Scope given that Mr Nolan's instructing solicitor, Ms Macdonald, appeared before us for two other parties seeking rezoning of greenfield sites as RVZ.

[287] Supplementary submissions for Upper Clutha Transport Limited dated 21 August at paragraph 7

[288] Supplementary submissions for Barnhill Corporate Trustee Limited and DE, ME Bunn & LA Green dated 21 August at paragraphs 11 and 13

[289] Supplementary submissions for Gibbston Valley Station and Malaghans Investments Limited dated 21 August at paragraph 7

[290] [2019] NZ EnvC 111 at [74]

192. Ms Robb for the Barnhill parties told us that no party had joined its Stage 2 appeal on the Rural Visitor elements, giving us comfort that no-one is likely to have an interest in the reduced relief sought before us.

193. We can never be totally comfortable that there are no people that we have not heard from, because they did not make a further submission, but these matters tend to support the submission we had for Gibbston Valley Station and Malaghans Investments Limited that:

"It is well known throughout the district that landowners need to be vigilant as to the potential impacts of each stage, and submissions on each stage, on their interests."

194. Accordingly, we find that people have had a real opportunity to participate in the zoning questions before us.

195. In summary, for the above reasons, we do not find that we are precluded from considering submissions seeking rezoning of greenfield sites that have been zoned at earlier stages of the PDP process on their merits. Accordingly, we do not accept the legal argument presented to us by Mr Nolan QC for Scope.

3.2 Scope of Submissions

196. As we have already noted, the fact that a submission may be "*on*" the relevant Plan Change is not the end of the matter. Submissions that are *"on"* the Plan Change(s) provide scope for amendment to the Plan Change(s). In her opening submissions, Ms Scott for the Council suggested that there were three tests that we had consider:

"(a) The paramount test is whether or not amendments are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the PDP. This will usually be a question of degree to be judged by the terms of the PDP and the content of submissions;

(b) Another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought in a submission; the scope to change a plan is not limited by the words of the submission; and

(c) Ultimately, it is a question of procedural fairness, and procedural fairness extends to the public as well as to the submitter."

197. Separately, Ms Scott referred us to the well-known test derived from *Re Vivid Holdings Limited*[291] to the effect that the permissible ambit of relief is determined by what is fairly and reasonably within the scope of the original submission, or the Proposed Plan as notified, or somewhere in between.

198. All of these points are both well known and well accepted. The reason why we address it here is because Mr Farrell, giving expert planning evidence for Malaghans Investments Limited, suggested to us that in the Environment Court, the consideration of appeals focuses on the most appropriate response irrespective of scope as derived from the original submissions.

[291] Environment Court decision C86/99

199. We struggle to believe that that would be the view of the Court, whatever the parties before it might advocate, and if Mr Farrell was implying that we ought to take a 'relaxed' view of scope issues, we do not accept that suggestion.

200. While it might be inconvenient to some parties to be pulled back to the ambit of relief created by their original submission, in our view, that remains the law.

201. Similarly, while Malaghans Investments Limited, among others, sought to preserve maximum freedom of action by framing its relief very generally in its original submission, the practical application of the tests we have quoted from Ms Scott's opening submissions mean that there are limits to the scope that might be derived from such submissions based on procedural fairness and what might fairly and reasonably be derived from the submission. We address such issues in the context of the specific relief sought in the relevant report.

202. Just as submitters are limited to the scope provided by their submissions, so too are further submitters limited by scope of the primary submission they support or oppose.

203. For that reason, in the summary tables we attach to each report indicating our recommendation in relation to each submission (variously "*Accept", "Accept in Part"* or "*Reject"*). We have not listed further submissions separately. Our recommendations must necessarily follow the recommendation on the primary submission.

204. Similarly, a number of submitters included catchall consequential relief provisions out of an abundance of caution[292]. We have not specifically considered such submissions separately from the primary relief requested in the submission.

3.3 Extent of Power to Amend Activities through Conditions

205. Through the course of the hearings, a number of parties sought controlled activity status for specific activities. We were told that this status provided sufficient controls over activities to ensure that adverse effects were appropriately managed.

206. We refer, for instance to the legal submissions for Barnhill Corporate Trustee Limited and DE, ME Bunn & LA Green in which its counsel, Ms Robb, referred us to Environment Court authority upholding conditions that limited the scale and intensity of an activity, including the ability to reconfigure a proposed subdivision layout.

207. This particular issue was extensively discussed in Report 7, as part of the Stage 1 PDP hearing process, responding to submissions seeking that the default activity status for subdivisions be a Controlled Activity.

208. The Hearing Panel concluded there[293] that the ambit of valid conditions is ultimately an issue of degree and that the efficacy of the power to impose conditions depends on the quality of what it is that one starts with – if the starting product is a well designed proposal, there will probably be scope to improve that design through discussion between the applicant and the Council, enforced through conditions, but if the starting point is a poor quality proposal from an applicant who refuses to shift its ground, then it is neither practically nor legally possible for the Council to achieve an acceptable outcome through conditions.

209. We discussed this issue with Mr Gardner-Hopkins, counsel for Gibbston Valley Station

[292] Clause 10(2)(b) of the First Schedule already provides scope for consequential relief

[293] At paragraphs 125 and 126

and Malaghans Investments Limited, who followed it up with a helpful set of supplementary submissions confirming that there is no authority directly on point, but submitting that it must be a matter of fact and degree as to the bounds of what a consent authority can imposed by way of conditions. Mr Gardner-Hopkins posed the hypothetical example of a condition to reduce a proposed controlled activity subdivision by one or two lots. He suggested that that was likely to be within scope if the proposal comprises a large number of lots, but outside scope if the proposal comprises a small number of lots.

210. His submission was that there is unlikely to be a bright line in the middle. We agree with that, essentially for the reasons set out in the Hearing Panel's Report 7, which we adopt.

211. We also approach consent status on the practical basis that activities should not have Controlled Activity status if we can reasonably foresee a scenario in which Council might need to reject the application.

212. Having said that, it is important also to bear in mind the direction from the Environment Court in *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council*[294] that where the purpose of the RMA and the objectives of the relevant plan can be met by a less restrictive regime, then that regime should be adopted – or put another way, that the least restrictive regime consistent with the purpose of the Act and the objectives of the Plan should be adopted.

3.4 Site-Specific Plan Provisions

213. We heard a number of submissions, in the Streams 17 and 18 hearings in particular, in which submitters sought to tailor zone provisions to their specific properties. In some cases, this took the form of more restrictive provisions than notified (to facilitate rezoning) and in other cases, greater flexibility was sought through less restrictive standards.

214. This has been a common feature through earlier stages of the PDP process[295].

215. The approach generally adopted in those earlier PDP hearing stages has been that while no issue can be taken regarding the jurisdiction to insert site-specific plan provisions if a submission has sought that relief, a proliferation of such site-specific provisions raises issues in terms of the Plan administration. Potentially, it can cause the Plan to lose overall direction and coherence, adversely affecting its usability.

216. Since those reports were written, we now have the overlay of the National Planning Standards that, although not required to be followed yet in Queenstown Lakes District, support a move towards greater standardisation in Plan provisions, rather than the reverse.

217. Accordingly, we have adopted a general approach that having considered the submissions on the relevant zone provisions, and made our recommendations accordingly, we ought to apply the zones as recommended unless there is good reason not to do so.

3.5 Lists

218. Some submissions sought clarification of provisions with a list of sub-items, querying whether all items need to apply, or just one. We have adopted a general drafting convention of inserting a conjunction after the penultimate item in a list, to provide clarification as to what is intended.

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[294] 2017 NZ EnvC 051 at [59]

[295] See Report 16 at Section 2.5, Report 17.01 at Section 2.3, and Report 18.1 at Section 2.2

Trevor Robinson
Chair
Stage 3 Hearing Panels

Dated: 12 January 2021