

**BEFORE THE HEARINGS PANEL  
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

**IN THE MATTER** of the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of Hearing Stream 08 –  
Business chapters

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**OPENING REPRESENTATIONS / LEGAL SUBMISSIONS FOR  
QUEENSTOWN LAKES DISTRICT COUNCIL**

**Hearing Stream 08 – Business**

**25 November 2016**

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**MAY IT PLEASE THE PANEL:**

**1. INTRODUCTION**

**1.1** These legal submissions are made on behalf of Queenstown Lakes District Council (**Council**) in respect of the Business Zones hearing of the Proposed District Plan (**PDP**), as well as specific subdivision provisions from Chapter 27 and noise provisions from Chapter 36.

**1.2** These opening submissions address the following matters:

- (a) strategic overview of the Business chapters;
- (b) the scope of this hearing;
- (c) scope issues arising from submissions and submitter evidence;
- (d) specific issues relating to the individual chapters (note we do not cover all outstanding matters);
- (e) interpretation and drafting matters;
- (f) national and regional direction; and
- (g) order of witnesses.

**1.3** These submissions address key matters in dispute, but are not a comprehensive response to all evidence that has been filed, which will be covered in the Council's right of reply if necessary.

**1.4** There are a number of issues raised in evidence for submitters that are contested and/or not accepted by the Council. In order to assist the Hearing Panel (**Panel**) and because there is no direction for rebuttal evidence, the summaries of the Council's evidence have responded, at a very general level, to some of the key issues raised in submitters' evidence.

**1.5** The Council refers to and adopts the opening legal submissions presented at the Strategic Direction hearing, in terms of Council's functions and statutory obligations (section 3) and relevant legal considerations (section 4).<sup>1</sup> Those submissions are not repeated

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<sup>1</sup> Opening Representation / Legal Submissions for Queenstown Lakes District Council, Hearing Streams 1A and 1B - Strategic Chapters in Part B of the Proposed District Plan, dated 4 March 2016, at parts 4 and 5.

here, but in summary, the Environment Court gave a comprehensive analysis of the mandatory requirements in *Long Bay-Okura Great Park Society v North Shore City Council*.<sup>2</sup> Subsequent cases have updated the *Long Bay* summary following amendments to the RMA in 2005, the most recent and comprehensive of which was provided by the Environment Court in *Colonial Vineyard Limited v Marlborough District Council*.<sup>3</sup>

## 2. STRATEGIC OVERVIEW OF BUSINESS CHAPTERS

2.1 The starting point for the Council's overall approach to business activity is the Strategic Direction Chapter 3 that sits over the PDP as a whole.<sup>4</sup> This chapter provides a high level policy framework, setting out the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's (**District**) special qualities.<sup>5</sup>

2.2 Under this strategic approach, the Queenstown and Wanaka town centres are the hubs of New Zealand's premier alpine resorts and the District's economy.<sup>6</sup> The planning framework is intended to enable quality development and enhancement of the Queenstown and Wanaka town centres as key commercial, civic and cultural hubs of the District.<sup>7</sup> Commercial rezoning that could undermine the role of those centres is to be avoided.<sup>8</sup>

2.3 The Strategic Direction Chapter promotes growth in the visitor industry, providing for tourism, providing for a wide variety of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification, enhancing the mixed use function of the Frankton commercial area, and recognising

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2 *Long Bay-Okura Great Park Society v North Shore City Council* EnvC Auckland A078/08, 16 July 2008 at [34]. This case related to the district plan provisions controlling urban development behind Long Bay and Grannie's Bay within the North Shore City.

3 *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55.

4 Section 42A Report, Chapter 3 – Strategic Direction dated 19 February 2015 at paragraphs 1.1 and 8.3-8.4.

5 Appendix 1 Recommended Chapter 3 to Reply of Mr Matthew Paetz dated 7 April 2016 at 3.1 Purpose.

6 Appendix 1 Recommended Chapter 3 to Reply of Mr Matthew Paetz dated 7 April 2016 at redraft Objective 3.2.1.1.

7 Appendix 1 Recommended Chapter 3 to Reply of Mr Matthew Paetz dated 7 April 2016 at redraft Policy 3.2.1.1.1.

8 Appendix 1 Recommended Chapter 3 to Reply of Mr Matthew Paetz dated 7 April 2016 at redraft Policy 3.2.1.1.2.

the contribution made by Queenstown Airport to the District.<sup>9</sup> The chapter also promotes urban development in a logical manner that promotes a compact, well designed and integrated urban form, and urban areas that are desirable and safe places to live, work and play.<sup>10</sup>

**2.4** The individual Business zone purposes provide further insight into how the overall strategic approach flows through to the Business chapters. The recommended purposes of the respective zones are as follows.

**2.5 Town Centres:** All of the Town Centres' purposes include to provide a focus for community life, retail, entertainment, business and services, and provide a vital function for serving the needs of residents, and as a key destination for visitors to the District. High visitor flows significantly contribute to the vibrancy and economic viability of the centres. Specific to each centre:

(a) **Queenstown Town Centre (QTCZ):** The Queenstown Town Centre provides a diverse range of visitor accommodation and visitor-related businesses and tourism activities and serves as the principal civic centre for the District. Over time, it is intended to become an increasingly dynamic and vibrant centre, continue to offer a wide range of activities, and will evolve into a higher intensity and high quality urban centre;<sup>11</sup>

(b) **Wanaka Town Centre (WTCZ):** The Wanaka Town Centre will serve a growing resident population and visitor numbers, for which it plays a vital role as the focal point for community activities and amenities. It will be large enough to provide a range of retailing, business and entertainment options, yet remain compact so as to be accessible on foot;<sup>12</sup> and

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9 Appendix 1 Recommended Chapter 3 to Reply of Mr Matthew Paetz dated 7 April 2016 at redraft Objectives 3.2.1.2 and 3.2.1.4 and Policies 3.2.1.1.3, 3.2.1.2.2, 3.2.1.2.4 and 3.2.1.5.1.

10 Appendix 1 Recommended Chapter 3 to Reply of Mr Matthew Paetz dated 7 April 2016 at redraft Objectives 3.2.2.1 and 3.2.3.1.

11 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraphs 7.1 and 9.5, and Appendix 1 Recommended Revised Chapter at 12.1 Zone Purpose. Ms Jones also recommends the addition of the following words to the Zone Purpose, in response to submitter evidence: "*The Queenstown Town Centre Waterfront Subzone makes an important contribution to the amenity, vibrancy, and sense of place of the Queenstown Town Centre, as a whole*".

12 S42A Report, Chapter 13 – Wanaka Town Centre, at paragraph 7.1.

(c) **Arrowtown Town Centre (ATCZ):** Arrowtown's special heritage character attracts those visiting the District, and the town centre provides business and retailing for local residents at a boutique scale. The centre will serve a growing resident population and visitor numbers, and will continue to be a focal point for community activities and amenities. Its compact form enables people to access the town centres on foot. Links and pathways facilitate the movement of pedestrians.<sup>13</sup>

**2.6 Local Shopping Centres (LSCZ):** to enable small scale commercial and business activities in discrete pockets of land that are accessible to residential areas and people in transit. The zone seeks to reduce the necessity for people to travel longer distances to town centres to purchase convenience goods and access services.<sup>14</sup>

**2.7 Business Mixed Use Zone (BMUZ):** to provide for complementary commercial, business, retail and residential uses that supplement the activities and services provided by town centres. Higher density opportunities close to employment and recreational activities are also enabled.<sup>15</sup>

**2.8 Queenstown Airport Mixed Use Zone** (recommended to be renamed **Airport Zone**): to provide for a range of airport and airport related activities at Queenstown and Wanaka Airports and to recognise the unique role of the airports in providing for the social and economic well-being of the community.<sup>16</sup>

**2.9** It is evident from the respective zone purposes that the retail and commercial centres of the District have different roles. The Queenstown and Wanaka town centres are destinations in their own right and are central to the growth of tourism, particularly Queenstown. Ensuring that they have capacity for further quality development is key to the continuing growth of the District's economy. Other major business areas of Queenstown and Wanaka house a mix

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13 S42A Report, Chapter 14 – Arrowtown Town Centre, at paragraphs 6.1 and Zone Purpose in 14.1.  
14 S42A Report, Chapter 15 – Local Shopping Centres, at paragraphs 6.1 and Zone Purpose in 15.1..  
15 S42A Report, Chapter 16 – Business Mixed Used Zone, at paragraphs 6.8, and Zone Purpose at 16.1.  
16 S42A Report, Chapter 17 – Airport Zone, at paragraph 6.1 and Appendix 1 Recommended Revised Chapter at 17.1 Zone Purpose.

of industrial activities and services and retailing, and due to rapid population growth, it is important that these functions can continue to develop.<sup>17</sup>

### 3. SCOPE OF THE BUSINESS HEARING

3.1 The six chapters (including definitions used within), and submissions on them that are being considered in their entirety are those just described in paragraphs 2.5 to 2.8 (together, "**Business chapters**").

3.2 Specific provisions from the PDP subdivision and noise chapters are also being considered in this hearing.

#### **Noise chapter: recommended amendments**

3.3 In Appendix 1 to her Queenstown Town Centre section 42A report, Ms Jones has recommended amending notified Rule 12.5.11 to exempt noise from commercial motorised craft and to clarify that the more enabling limits relating to music, voices and loudspeakers do not apply to the Town Centre Transition Zone. Flowing on from this, Ms Jones has also recommended consequential amendments to chapter 36 (noise) for consistency.<sup>18</sup>

3.4 Appendix 2 to the Queenstown Town Centre section 42A report contains a separate table listing six submitters who lodged submissions on chapter 36 and were considered to be potentially affected by Ms Jones' recommended changes. These submitters were served notice of the Business hearing and provided the opportunity to be heard.

3.5 Mr Kyle for Queenstown Airport Corporation (**QAC**) has recommended the inclusion of a new rule in the LCSZ that would implement the mechanical ventilation requirements proposed in Hearing Stream 5 (Chapter 36, Noise), with a non-complying activity status for breaches (the activity status aligns with Plan Change 35).

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17 Evidence of Dr Philip McDermott dated 19 February 2016 at paragraph 2.1(a), (c), (d), (e) and (h). This statement formed part of the Council's evidence for Hearing Stream 1B – Strategic Direction and Urban Development.

18 Provisions recommended to be changed are the Zone Purpose 36.1 and Clarification 36.3.2.9.

Ms Bowbyes accepts this change, and it is noted that a subsequent amendment will likely be required to chapter 36.

### **Subdivision chapter: recommended amendments**

**3.6** Provisions from Chapter 27 (Subdivision) relating to minimum lot sizes and/or density (and submissions on them) were deferred from Hearing Stream 4 to other zone specific hearings so that those submissions could be considered alongside the standards of the respective zones. This approach was described in the Subdivision s42A report,<sup>19</sup> in opening legal submissions for the Council at the subdivision hearing,<sup>20</sup> and confirmed in the Panel Minute dated 22 September 2016.

**3.7** No submissions were received specifically seeking to amend the minimum lot sizes or density provisions relating to the Business chapters, and therefore no changes were recommended through the relevant s42A reports. The BMUZ is the only Business Chapter zone that has a minimum lot area standard, at 200m<sup>2</sup>.<sup>21</sup>

### **Wanaka Airport: submissions "on" notified Rural General zone**

**3.8** Appendix 2 to the Airport Zone section 42A report contains a separate table listing the submissions on Wanaka Airport that have been transferred from Hearing Stream 02 (Rural), into this hearing stream. All of these submissions have been considered in the context of recommending an Airport Zone for the Wanaka Airport.

## **4. SUBMISSIONS / SCOPE ISSUES**

**4.1** The Panel's powers to recommend (and subsequently the Council's power to decide) are limited in that:

- (a) a submission must first, be *on* the proposed plan;<sup>22</sup> and

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19 S42A Report, Chapter 27 Subdivision dated 29 June 2016 at paragraphs 4.6-4.7 and 14.1.  
20 Legal Submissions for Queenstown Lakes District Council, Hearing Stream 4, dated 22 July 2016, at paragraph 3.3.  
21 Notified 27.5.1, Reply 27.6.1.  
22 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at Parts 5 and 7.

(b) a decision maker is limited to making changes within the scope of the submissions made on the proposed plan.<sup>23</sup>

**4.2** The legal principles addressing these two limbs were addressed in depth in the Council's submissions on Hearing Streams 1A and 1B<sup>24</sup> and in Hearing Stream 2.<sup>25</sup> Those principles are not repeated here but a summary is provided at **Appendix 1** of these submissions.

**4.3** The accept / reject tables attached to the s42A reports indicate the submissions points that are considered to not be "on" the proposed plan.<sup>26</sup>

#### **Transport: approach to submissions**

**4.4** A number of submissions were received on transport issues, with respect to the Queenstown Town Centre, Wanaka Town Centre and Airport Zone chapters. The Council has distinguished between these as follows:

- (a) submissions on non-district plan related transport matters (which have been treated as not "on" the proposed plan and therefore out of scope); and
- (b) submissions on transport matters that the Council considers to be most appropriately dealt with through Stage 2 of the PDP. Submission points falling into this second class have been rejected on the basis that they are better considered when the Transport chapter is notified. These submissions will not be transferred over to Stage 2, but submitters have the opportunity to re-submit on transport issues when the Transport chapter is notified.

**4.5** Ms Jones and Ms Holden have also considered some transportation issues in their s42A reports on the Queenstown Town Centre, Wanaka Town Centre and Airport Zone chapters, limiting their

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23 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2; Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

24 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2.

25 Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

26 Except for the Airport Zone s42A, where Appendix 2 says "reject" where a submission is considered to be out of scope.



discussions to those submissions which are directly on objectives and policies in the notified chapters.<sup>27</sup>

- 4.6 Submitter evidence has requested<sup>28</sup> that the issue of public transport via passenger ferry should be considered in this hearing rather than with other transportation issues. The Council's position is that dealing with transportation in a fragmented manner is unlikely to achieve integrated management of the District's transport network, and it is more appropriate to consider all transportation matters together when the Transport chapter is notified in Stage 2.

#### **S42A recommendations outside the scope of submissions made on the Business Chapters**

- 4.7 A decision maker is limited to making changes within the scope *of the submissions made on the* proposed plan.
- 4.8 The s 42A report authors have identified a number of provisions in the Business Zone chapters that they consider, on the merits, would benefit from improvement. However, even when taking a generous view, it appears that there may not be scope to address these issues within the scope of the submissions received on the Business Chapters.
- 4.9 In these instances the s 42A report authors have provided their views on the merits of certain changes but have noted that there is unlikely to be scope to make them, and therefore the changes are not included in the Appendix 1 recommended chapters.<sup>29</sup>

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27 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraphs 17.1-17.11; Section 42A Report, Chapter 13 – Wanaka Town Centre, dated 2 November 2016, at paragraphs 12.1-12.7; section 42A Report, Chapter 17 – Airport Zone, dated 2 November 2016, at paragraphs 7.21-7.24.

28 Evidence of Jennifer Carter on behalf of Queenstown Wharves GP Limited, dated 18 November 2016, at paragraphs 6.1-6.8.

29 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraphs 18.18-18.20; S42A Report, Chapter 13 – Wanaka Town Centre, at paragraphs 13.15-13.21; S42A Report, Chapter 14 - Arrowtown Town Centre, at paragraphs 14.3 to 14.5; S42A Report, Chapter 15 - Local Shopping Centres, at paragraphs 17.3 to 17.6; S42A Report, Chapter 16 - Business Mixed Use Zone, at paragraphs 13.11 to 13.14; S42A Report, Chapter 17 – Airport Zone, at paragraphs 8.3 – 8.7.

## **Recommendations in submitter evidence outside the scope of submissions made on the Business Chapters**

- 4.10** The Council has identified instances where submitters are seeking relief in evidence that is not within the scope of submissions made on the Business Chapters. The changes sought in evidence are not considered to be ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions, nor are the amendments sought foreseeable consequences of the relief sought in a submission.
- 4.11** As previously submitted to the Panel, and putting the matter of collective scope and Panel recommendations to one side, to the extent that a submitter has not sought relief in their submission and/or has not made a further submission on specific relief, it is submitted that the submitter cannot advance relief.<sup>30</sup>

### **Airport Zone- Wanaka Airport**

- 4.12** The evidence provided by Mr Hunt for Remarkables Park Limited (RPL) and Mr Day on behalf of QAC addresses the fact that the noise limits contained in notified rule 36.5.2 (redraft 36.1.15) and notified Rule 17.5.6, which apply to the Queenstown Airport Zone are more lenient than those that apply to other zones in the District.<sup>31</sup> Mr Chiles addressed this issue in his evidence on Chapter 36 in Hearing Stream 05<sup>32</sup> and addresses it again in his evidence summary to be presented at this hearing. Mr Chiles' view is that there is no justification for the noise limits for the Queenstown Airport Zone being more lenient than for other zones. However, Ms Holden has not been able to identify a submission on notified Rule 36.5.2 (redraft 36.1.15), notified Rule 17.5.6 or the issue more generally.<sup>33</sup> Accordingly, it is the position of the Council that there is no scope to amend the noise standards that apply to Queenstown Airport.

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30 Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

31 Mr Day's evidence at paragraphs 26-31; Mr Hunt's evidence at paragraph 48.

32 Dr Chiles evidence Hearing Stream 05 dated 17 August 2016 at paragraph 8.3.

33 Evidence summary of Ms Rebecca Holden at paragraph 6(e).

- 4.1** Mr Kyle has provided evidence for QAC on the proposed Wanaka Airport Zone and has questioned the scope to introduce the proposed permitted activity status for Airport and Airport related activities set out in proposed Rules 17.4.11 and 17.4.12.<sup>34</sup>
- 4.2** QAC did not seek specific relief in terms of a permitted activity status for Airport and Airport Related Activities. However, the Council submits that QAC's submission requesting bespoke provisions for Wanaka Airport is broad enough to provide scope for the inclusion of the Rules 17.4.11 and 17.4.12. The provision of a permitted activity status for Airport and Airport Related Activities falls reasonably within the general relief sought, being provision for airport and airport related activities at Wanaka Airport.

#### **Queenstown Town Centre**

- 4.3** Ms Black (for Real Journeys Ltd (621) and Te Anau Developments Ltd (607)) and Mr Farrell (for Wellsmart Investments Ltd (308)) appear to have recommended changes outside the scope of their respective clients' submissions.
- 4.4** In their submission Real Journeys Ltd did not raise any concerns about the activity status in notified Rule 12.4.3 and it is submitted Ms Black has no scope to seek amendments to that aspect of the rule. Further, nothing in the submission provides scope for a new definition of 'interface activities' as sought by Ms Black. As to notified Policy 12.2.5.2, the relief sought by the submitter was to replace 'strategic' with 'comprehensive', which does not provide scope for Ms Black to raise concerns about inconsistencies with other provisions.
- 4.5** Ms Black's evidence is also on behalf of Te Anau Developments (607). The relief sought in that submission was more general, namely a separate chapter for surface water activities, and specific provision for tourism activities. Te Anau Developments did not seek a particular activity status or specific amendments to any of the notified tourism-related provisions.

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34 Evidence of Mr John Kyle dated 18 November 2016 at paragraph 6.26.

4.6 The Council understands that the submission (308) by Mr Farrell's client gives Mr Farrell scope to consider changes to 65-67 Shotover Street and 5-15 Hay Street, if any changes recommended in the section 42A report constrain development on those sites. Ms Jones recommends reducing the height limits in P1 and P7. However, Mr Farrell also seeks changes to notified Policies 12.2.2.4 and 12.2.2.5, some of which do not relate to the submission.

## 5. ISSUES RELATING TO TOWN CENTRES<sup>35</sup>

### Comprehensive Development Plans in Queenstown and Wanaka Town Centres

5.1 Redraft Rule 12.5.1 relates to maximum building coverage in the Queenstown Town Centre Transition Subzone and to comprehensive developments. The changes recommended by Ms Jones will trigger the need to comply with a maximum coverage rule of 75% on all developments on a site or sites over 1400m<sup>2</sup> in area.<sup>36</sup> It would also be mandatory for any application for building within the Town Centre Transition Subzone, or for a comprehensive development, to include a Comprehensive Development Plan for an area of at least 1400m<sup>2</sup>.

5.2 Ms Jones considers these changes will more effectively implement the outcomes sought by notified Objectives 12.2.2 and 12.2.4.<sup>37</sup> Those objectives seek development that achieves high quality urban design outcomes and contribute to the town's character, heritage values and sense of place, and a compact town centre.<sup>38</sup>

5.3 For consistency, Ms Jones has also recommended adding a new rule (redraft Rule 13.5.13) imposing the same maximum coverage rule for sites in the Wanaka Town Centre.<sup>39</sup>

5.4 In recommending the above changes Ms Jones has relied on the evidence of Mr Timothy Church, who supports requiring larger sites to be structure planned and has provided analysis of property sizes to

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35 This is not an exhaustive list of the outstanding issues, but focuses on some key issues.

36 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraphs 14.1 and 14.12.

37 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraph 14.13.

38 Appendix 1 Recommended Revised Chapter, S42A Report, Chapter 12 – Queenstown Town Centre.

39 S42A Report, Chapter 13 – Wanaka Town Centre, at paragraph 11.8(d).

support the choice of the 1400m<sup>2</sup> threshold.<sup>40</sup> Ms Jones agrees with Mr Church that it would be useful in due course for the Council to develop non-statutory design guidelines to assist in the preparation and assessment of both Comprehensive Development Plans, and smaller site-by-site designs beyond the SCA.<sup>41</sup>

- 5.5 It is submitted to be desirable to achieve consistency between Queenstown and Wanaka by applying the same rule in both centres.

### **Height limits in Queenstown and Wanaka Town Centres**

- 5.6 The issue of maximum height limits is an outstanding issue in both Queenstown and Wanaka Town Centres. These matters are considered in some detail in the evidence of Mr Church, Ms Gillies (in relation to Queenstown) and Ms Jones for the Council.

- 5.7 In relation to Wanaka, it is foreshadowed that Ms Jones will recommend some further changes to the relevant provisions, after considering the evidence of Ms Wright for Gem Lake Limited.

### **Activity Status of Buildings in Queenstown Town Centre – Controlled or Restricted Discretionary**

- 5.8 Buildings throughout the Queenstown Town Centre are restricted discretionary.<sup>42</sup> A number of submitters requested that all buildings be controlled.<sup>43</sup> Ms Jones will present evidence that restricted discretionary status is more appropriate, as it will provide greater certainty and be more effective at requiring consistency with the SCA Design Guidelines and achieving quality architecture and urban design.<sup>44</sup> Further, in Ms Jones' view there will be economic benefits as relaxing the bulk and location controls that exist in the ODP will counteract the cost of obtaining RD consent.<sup>45</sup>

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40 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraph 14.13.

41 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraph 13.40.

42 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraph 13.26.

43 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraph 13.25.

44 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraph 13.27(a) and (b).

45 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraph 13.27(c).

## Urban Design Panel in Queenstown and Wanaka Town Centres

5.9 Ms Jones does not consider it appropriate to require mandatory review by the Urban Design Panel (**UD Panel**) of all new buildings and significant projects in the Queenstown Town Centre but that this should be determined on a case by case basis. In her view it may be sufficient at times for the Council to commission a review under s 92 of the RMA.<sup>46</sup> Ms Jones also does not consider it would be effective to recommend a rule under which buildings that had been reviewed by the UD Panel had restricted discretionary activity status,<sup>47</sup> noting that the mere fact a proposal had been taken to the UD Panel would not mean the proposal required a less rigorous assessment at the resource consent stage.<sup>48</sup> Ms Jones takes the same view with respect to use of the UD Panel in the Wanaka Town Centre.<sup>49</sup>

5.10 The Council's position with respect to use of the UD Panel remains the same as set out in the Council's submissions as part of the Residential hearing stream 6,<sup>50</sup> namely that non-mandatory use of the UD Panel is adequate, and that the current UD Panel process is functioning well and should remain voluntary.

## Noise, alcohol and the Town Centre Entertainment Precincts in Queenstown and Wanaka

5.11 The appropriateness of the proposed increased noise limits and the introduction of and extent of a Town Centre Entertainment Precinct (**TCEP**) is addressed in some detail by Ms Jones in her evidence. In considering recommendations on this point, Council submits that the role of the Town Centre is important in that the PDP, as set out in the Zone purpose, affords primacy to bars and restaurants over residential and visitor accommodation within the zone. Key issues remaining are understood to be whether noise limits are too lenient or not lenient enough and the boundaries of the TCEP. Council submits that the expert evidence of Mr Chiles on these limits, should be relied on.

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46 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraph 10.10.

47 As suggested by submitter #238 (NZIA).

48 S42A Report, Chapter 12 – Queenstown Town Centre, at paragraph 13.24.

49 S42A Report, Chapter 13 – Wanaka Town Centre, at paragraphs 11.4 and 11.6.

50 Opening Representation / Legal Submissions for Queenstown Lakes District Council, Hearing Stream 6 - Residential Chapters, dated 10 October 2016, at paragraphs 6.10 and 6.12.

- 5.12** Ms Jones has recommended relaxing the activity status of licensed premises to controlled, but retaining the 11pm trigger for consent.

*Relationship between the Resource Management Act 1991 and the Sale and Supply of Alcohol Act 2012 - Queenstown and Wanaka Town Centres*

- 5.13** The Council's position on the relationship between the Resource Management Act 1991 (**RMA**) and the Sale and Supply of Alcohol Act 2012 (**SSAA**) is the same as the position taken by the Christchurch City Council in a recent hearing on the Christchurch Replacement District Plan. The Independent Hearings Panel (**IHP**) accepted that approach.<sup>51</sup> The Council acknowledges that the IHP's decision is not binding on the Panel but submits that guidance may be taken from it.
- 5.14** The Council submits that the RMA and the SSAA are complementary regimes with different purposes.<sup>52</sup> The RMA plays an essential role in regulating a broader range of effects not covered by the SSAA (for example, amenity-related effects such as noise and anti-social behaviour).
- 5.15** Due to the different purposes of the two regimes, it is submitted that the SSAA is not intended to replace the RMA in terms of regulation of environmental effects generated by licensed premises. Rather, several sections of the SSAA suggest that the legislative regimes are complementary.<sup>53</sup> The SSAA contemplates some regulatory overlap with the RMA and does not envisage that the licensing process will replace provisions in planning documents with respect to managing the effects of the sale of alcohol.
- 5.16** The Council therefore submits that RMA planning documents may contain provisions to manage effects of the sale of alcohol, so long as those provisions are for an RMA purpose.

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51 Decision 56 – Chapter 6: General Rules and Procedures (Part) – excluding Noise, Airport matters, and Hagley Park, dated 10 November 2016, at paragraphs 182–184 and 190.

See <http://www.chchplan.ihp.govt.nz/wp-content/uploads/2015/03/Decision-56-Chapter-6-General-Rules-excluding-Noise-Airport-matters-and-Hagley-Park-10-11-2016.pdf>

52 Sections 3 and 4 of the Sale and Supply of Alcohol Act 2012, and section 5 of the Resource Management Act 1991. Statement of Evidence of Sian Swinney dated 2 November 2016 at paragraphs 3.1(b), 4.8-4.9, and 4.16-4.17.

53 For examples, sections 78, 93, and 100 of SSAA refer to the relevance of a district plan.

## Arrowtown Town Centre

5.17 What are understood to be key outstanding matters are very limited for the Arrowtown Town Centre zone. The two matters relating to vehicular access to Buckingham Street and exemptions from maximum building heights for fire stations, will be addressed by Ms Bowbyes.

## 6. ISSUES RELATING TO BUSINESS MIXED USE ZONE<sup>54</sup>

### Types and scale of commercial activities enabled

6.1 Spijkerbosch (392) seeks that visitor accommodation be excluded from the BMUZ. Ms Bowbyes rejected this relief in her section 42A report due to the proximity of the BMUZ to the Wanaka and Queenstown Town Centres (the main tourism centres of the District), and the latter being more appropriate locations for visitor accommodation.<sup>55</sup>

6.2 The submissions<sup>56</sup> seeking to amend the activity status of visitor accommodation from restricted discretionary to controlled was accepted by Ms Bowbyes.<sup>57</sup>

6.3 Finally, it is noted that Ms Bowbyes rejected enabling industrial activities in the BMUZ.<sup>58</sup> In any event, the relevant submission points of Mitchell Daysh Ltd seeking this relief have been withdrawn (252.10 and 252.11).

6.4 The following issues also remain in dispute in the BMUZ:

- (a) should the building recession lines (notified Rule 16.5.1) be relaxed to be applied at an angle of 45 degrees, rather than 35 degrees as notified?,<sup>59</sup> and

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54 This is not an exhaustive list of the outstanding issues, but focuses on some key issues.

55 S42A Report, Chapter 16 – Business Mixed Use Zone, at paragraph 10.14.

56 GH & PJ Hensman (542.3), High Peaks Ltd (545.3), Ngai Tahu Property Ltd (550), Skyline Enterprises Ltd (556), Totally Tourism Ltd (571), Trojan Holdings Ltd (634), and Morrairie Creek (1366).

57 S42A Report, Chapter 16 – Business Mixed Use Zone, at paragraph 10.19.

58 S42A Report, Chapter 16 – Business Mixed Use Zone, at paragraphs 10.5-10.11.

59 Skyline Enterprises Ltd (556), Trojan Holdings Ltd (634), Ngai Tahu Property Ltd (550), GH & PJ Hensman (542).



(b) should a rule be introduced to set a minimum requirement for outdoor living space accompanying residential units?<sup>60</sup>

**6.5** In relation to recession lines, Ms Bowbyes relies on the evidence provided by Tim Church<sup>61</sup> in recommending that the notified recession line rule is relaxed from 35 degrees (as notified) to 45 degrees, but only as it is applied at the northern boundary of a site.<sup>62</sup>

**6.6** In relation to outdoor living, rather than the inclusion of a new standard, outdoor living in conjunction with residential units is recommended to remain a matter of discretion for buildings, providing greater flexibility for the provision of outdoor space, including providing it communally. Mr Church, however is of the view that a minimum standard should be introduced.<sup>63</sup>

#### **BMUZ at Gorge Road**

**6.7** In addition to the zone wide areas of disagreement, for the BMUZ located at Gorge Road there remains a question as to the appropriate maximum building heights.<sup>64</sup>

**6.8** Mr Church supports the retention of the 12m permitted, and 12m – 20m restricted discretionary maximum height limits for the eastern side of Gorge Road (albeit with the exclusion of two sites). His view for the western side of Gorge Road (and the east side exclusions) is that 12m permitted maximum height remains appropriate, but the restricted discretionary height limit should be between 12m and 15m, before non-comply activity status applies.<sup>65</sup>

**6.9** Ms Bowbyes has balanced Mr Church's views against other relevant matters and has recommended that there is no change to the maximum height limits at Gorge Road. She has however recommended additional matters of discretion to redraft Rule 16.5.8.1, the addition of a new rule requiring a stepped frontage for buildings exceeding 3 storeys (redraft Rule 16.5.8.3) and an

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60 NZIA (238).

61 Evidence of Mr Timothy Church, at paragraphs 34.2 to 34.12.

62 S42A Report, at paragraphs 11.25 – 11.28.

63 Evidence of Mr Timothy Church, at paragraphs 36.2 to 36.7. S42A Report, at paragraphs 11.31 to 11.36.

64 Notified Rule 16.5.7.1, redraft Rule 16.5.8.1. Spijkerbosch (392).

65 Evidence of Mr Timothy Church, at paragraph 31.40.

associated redrafted policy (redraft Policy 16.2.2.7), in order to address the submitter's concerns.

### **Urban Design Panel**

**6.10** Similar issues exist for the BMUZ as set out above under the Town Centres section. Ms Bowbyes' recommendations are consistent with Ms Jones.

## **7. ISSUES RELATING TO LOCAL SHOPPING CENTRE ZONE<sup>66</sup>**

### **Types and scale of commercial activities enabled**

**7.1** Ms Bowbyes has recommended changes to the activities enabled in the LSCZ. The position reached by Ms Bowbyes is supported by the evidence of Mr Tim Heath who is an experienced retail analyst.

**7.2** Mr Timothy Heath has also provided evidence in response to the submission of Willowridge Developments Limited (249.11) who seek the introduction of the following controls in the LSCZ:

- (a) a restriction on retail activities to those providing a local service (e.g. dairies, off-licence, bakery); and
- (b) a maximum GFA of retail tenancies of no more than 400m<sup>2</sup>;  
or
- (c) rules to like effect.

**7.3** Mr Heath considered the LSCZ objectives and policies to assist in his evaluation, as the zone seeks the enablement of people to purchase convenience goods and services without the requirements to travel (potentially) greater distances to larger (town) centres.<sup>67</sup> He goes on to state that on a general level the LSCZ purpose, objectives and policies are appropriately pitched to accommodate and facilitate the development of appropriate activity and tenancy types.<sup>68</sup> However,

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<sup>66</sup> This is not an exhaustive list of the outstanding issues, but focuses on some key issues.

<sup>67</sup> Evidence of Mr Timothy Heath dated 2 November 2016, at paragraph 3.4.

<sup>68</sup> Evidence of Mr Timothy Heath dated 2 November 2016, at paragraph 3.13.

in order to give further surety on development outcomes, Mr Heath supported Willowridge's submissions in relation to.<sup>69</sup>

- (a) outlining a maximum gross floor area (**GFA**) for retail tenancies, specifically a proposed limit of 300m<sup>2</sup> per tenancy; and
- (b) restricting some store/activity types which are more suitable and aligned to larger town centres, i.e. fashion stores, electronic and electrical goods stores, appliance stores, and furniture and floor covering stores.

**7.4** Mr Heath also reviewed the LSCZ provisions as they relate to 1 Hansen Road more specifically, where the notified Rules 15.5.4(a) and 15.4.5(b) provide for:

- (a) total GFA dedicated to retail uses shall not exceed 4,000m<sup>2</sup>;
- (b) no individual tenancy larger than 700m<sup>2</sup>;
- (c) no more than 10 retail tenancies across the site in total; and
- (d) total GFA dedicated to office uses shall not exceed 3,000m<sup>2</sup>.

**7.5** Mr Heath's recommendations for the 1 Hansen Road site are to remove the 700m<sup>2</sup> threshold for individual tenancies and the limit of 10 tenancies for that site, which has been included in the revised LSCZ chapter.<sup>70</sup>

**7.6** Ms Bowbyes considered Mr Heath's evidence on the proposed GFA limit and her opinion is that limits on the GFA of office activities within the LSCZ would give further effect to notified Objective 15.2.1 and Policy 15.2.1.2. In addition she recommends that the limit of 200m<sup>2</sup> GFA for office activities suggested by Mr Heath for 1 Hansen Road,<sup>71</sup> should be applied across the entire LSCZ.<sup>72</sup>

**7.7** In relation to restricting some store/activity types, Ms Bowbyes adopts Mr Heath's evidence, as well as the notified definitions of 'Retail Sales/Retail/Retailing', 'Recreational Activities' and 'Residential Activity', and considered that restricting the non-convenience retailing

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69 Evidence of Mr Timothy Heath dated 2 November 2016, at paragraph 3.21 and 3.33.  
70 S42A Report, Chapter 15 Local Shopping Centre Zones, at paragraph 9.20.  
71 Evidence of Mr Timothy Heath, at paragraph 3.33.  
72 S42A Report, Chapter 15 Local Shopping Centre Zones, at paragraph 9.21.

types suggested by Mr Heath would directly assist with ensuring that the Zone Purpose (notified 15.1) is implemented and notified Objective 15.2.1 and Policy 15.2.1.2 are given effect to.<sup>73</sup> She therefore recommends this relief.

**7.8** The matter of height limits also remains in dispute at 1 Hansen Road.<sup>74</sup>

**7.9** For the convenience of the Panel, the recommended changes are summarised in the following table.

<b>Recommended Change</b>	<b>Reasons</b>
Introduce new policy and rule that restricts the establishment of specified non-convenience retailing types. <sup>75</sup>	To ensure that the role of town centres is not threatened by the establishment of non-convenience retailing within the LSCZ. <sup>76</sup>  Mr Heath supports this change. <sup>77</sup>
Introduce maximum permitted gross floor area ( <b>GFA</b> ) for retail activities of 300m <sup>2</sup> . <sup>78</sup>	To ensure that the Zone Purpose is given effect to, insofar as the LSCZ is designed to enable small scale commercial and business activities. The change would also increase the effectiveness of achieving Objective 15.2.1 and implementing Policy 15.2.1.2. <sup>79</sup>  Mr Heath supports this change. <sup>80</sup>
Introduce limiting the permitted GFA of office activities to 200m <sup>2</sup> . <sup>81</sup>	Gives further effect to Objective 15.2.1 and implementing Policy 15.2.1.2. <sup>82</sup>  Mr Heath supports this change. <sup>83</sup>
Reject submission to delete Rule 15.5.5, thereby continuing to restrict residential and visitor accommodation activities from establishing at ground floor level. <sup>84</sup>	The primary function of the LSCZ is to provide small scale business and commercial activities, with the residential and visitor accommodation components of the

73 S42A Report, Chapter 15 Local Shopping Centre Zones at paragraphs 9.6 to 9.10.

74 Spence Farms (698).

75 S42A Report, Chapter 15 – Local Shopping Centres, at paragraph 9.10.

76 S42A Report, Chapter 15 – Local Shopping Centres, at paragraph 9.10.

77 Evidence of Tim Heath, at paragraphs 3.19 and 3.20.

78 S42A Report, Chapter 15 – Local Shopping Centres, at paragraphs 9.13 to 9.14.

79 S42A Report, Chapter 15 – Local Shopping Centres, at paragraph 9.15.

80 Evidence of Tim Heath, at paragraphs 3.14 and 3.15.

81 S42A Report, Chapter 15 – Local Shopping Centres, at paragraph 9.21.

82 S42A Report, Chapter 15 – Local Shopping Centres, at paragraph 9.21.

83 Evidence of Tim Heath dated 2 November 2016, at paragraphs 3.33.

84 S42A Report, Chapter 15 – Local Shopping Centres, at paragraphs 12.1 to 12.7.

Recommended Change	Reasons
	<p>zone being secondary.<sup>85</sup></p> <p>Mr Heath suggested an alternative response for 1 Hansen Road, i.e. that the LSCZ be reduced in size at 1 Hansen Road and the balance area zoned a residential zone.<sup>86</sup> However, a reduction in zone size was not sought by the submitter<sup>87</sup> and therefore was not recommended.</p>

### LSCZ at Cardrona Valley Road

- 7.10** Willowridge (249.26), opposed by the Gordon Family Trust FS1193, has also made a submission to reduce the size of the LSCZ at Cardrona Valley Road. This component of the Willowridge submission has been deferred to the Hearing on Mapping.
- 7.11** As a further submitter seeking that the entire Willowridge submission be rejected, the Gordon Family Trust has lodged economic evidence (by Mr John Polkinghorne) that seeks two larger tenancies, and this relief is within the scope of this hearing. Mr John Polkinghorne has provided evidence for the Gordon Family Trust, recommending a range of activities in the LSCZ including larger tenancy caps and various types of retail. Mr Polkinghorne's evidence relies somewhat on the assumption that the size of the LSCZ at Cardrona Valley Road will remain as notified. Therefore the matter of tenancy sizes cannot be completely removed from the size of the zone in that area. Mr Heath has been asked to consider Mr Polkinghorne's evidence and will advise you on his views in his summary.
- 7.12** The Pinfold and Satomi Enterprises submission (622), where controls are sought in the LSCZ as it adjoins the submitter's land, is also specific to the Cardrona Valley Road LSCZ. This submission raises core matters that are intrinsically linked to the size of the LSCZ, and there could be value in this submitter also being given an opportunity to be involved in the rezoning hearing.

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85 S42A Report, Chapter 15 – Local Shopping Centres, at paragraph 12.3.

86 Evidence of Tim Heath dated 2 November 2016, at paragraphs 3.27.

87 S42A Report, Chapter 15 – Local Shopping Centres, at paragraph 12.6.

## Urban Design Panel

- 7.13 Similar issues exist for the BMUZ as set out above under the Town Centres section. Ms Bowbyes' recommendations are consistent with Ms Jones.

## 8. ISSUES RELATING TO AIRPORT ZONE<sup>88</sup>

### Wanaka Airport

- 8.1 Ms Rebecca Holden has recommended amendments to the Airport Zone chapter to accommodate an Airport Zone for Wanaka Airport.
- 8.2 The background to the proposed Airport Zone at Wanaka Airport is that the land at the airport was notified as part of the Rural Zone of the PDP. However, as part of the Rural Hearing Stream 02 of the PDP, the Panel considered the submission of Queenstown Airport Corporation Limited (**QAC**) that bespoke planning framework be incorporated into the Rural Zone to provide for Wanaka Airport.
- 8.3 In its legal submissions in reply on the Rural Hearing, the Council identified that the submission of QAC on the PDP provides scope for the development of specific zoning for Wanaka Airport.<sup>89</sup> The Panel subsequently directed QAC to transfer the submission of QAC to this hearing stream and to provide draft provisions for the specific zoning of Wanaka Airport.<sup>90</sup>
- 8.4 QAC and the Council's planning experts worked together to prepare a draft set of provisions for the rezoning of Wanaka Airport, which have been used as the base for the s42A recommended chapter. The Council is grateful to QAC for its assistance in the drafting of the proposed Wanaka Airport provisions.
- 8.5 Provisions are proposed to be included in the Airport Zone to accommodate Airport and Airport Related Activities as permitted activities at Wanaka Airport. Standards are proposed to apply to

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88 This is not an exhaustive list of the outstanding issues, but focuses on some key issues.  
89 Legal Submissions for Queenstown Lakes District Council as part of Right of Reply for Hearing Stream 02, dated 03 June 2016, at Part 9.  
90 By way of its minute dated 16 June 2016.

ensure an appropriate level of amenity is retained within surrounding zones, and to ensure that any airport related activity supports the functioning and viability of the airports and core airport activities.

**8.6** The Council's position is that the recommended Airport Zone at Wanaka is more appropriate than the notified Rural zoning of the airport. The evidence of Mr Craig Barr, presented in Hearing Stream 02, is that the purpose of the Rural Zone is fundamentally different to the nature and scale of activities at Wanaka Airport.<sup>91</sup> The Council holds two Designations that provide for airport activities at Wanaka Airport.<sup>92</sup> However, the notified position was that, where the Council does not have financial responsibility for the work, users of the airport would have to comply with the incompatible underlying rural zoning.

**8.7** The Council's position is also that that the recommended Airport Zone is more appropriate than a bespoke planning framework for Wanaka Airport within the Rural Zone. The Council accepts that the creation of a framework for the development and use of the Wanaka Airport within the notified Rural Zone would be likely to create significant inefficiencies with the interpretation and administration of the PDP. Further, it could result in inconsistencies as resource consent applications would be assessed against the Rural Zone objectives and policies, which do not anticipate airport activities of this nature.<sup>93</sup>

**8.8** The proposed express provision for Airport and Airport related activity as part of the proposed Wanaka Airport Zone is a significant change from the activities anticipated by proposed Rural Zone provisions. However, the Council has provided a comprehensive s 32AA assessment on the proposed Wanaka Airport Zone provisions and concluded that the inclusion of the proposed Airport Zone provides:<sup>94</sup>

- (a) better guidance for decision makers;
- (b) better alignment with the Strategic Direction components of the PDP;

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91 S42A Report, Chapter 21 – Rural Zone, dated 7 April, at paragraphs 15.6-15.10;  
92 Designation 64 (Aerodrome Purposes) and Designation 65 (Approach and Land Use Controls (transitional slopes and surfaces).  
93 S42A Report, Chapter 21 – Rural Zone, dated 7 April, at paragraphs 15.6-15.10;  
94 S42A Report, Chapter 17 – Airport Zone, at Appendix 6 (Part 3).

- (c) greater certainty for those seeking to develop airport activities;
- (d) greater integrity to the Rural Zone by reducing the number of non-complying resource consents that are granted for airport activities; and
- (e) reduced potential for unintended outcomes.

**8.9** On this basis, it is the Council's position that, subject to further refinements recommended by Ms Rebecca Holden, the proposed Wanaka Airport Zone provides the most appropriate framework for activities at Wanaka Airport.

### **Queenstown Airport**

**8.10** The provisions contained within the Queenstown Airport Zone provide for airport and airport-related activities to be carried out at Queenstown Airport. Standards apply to manage the effects on amenity values as a result of activities carried out at the airport.

#### *Reference to HSNO Regulations and CAA requirements in the Airport Zone Chapter*

**8.11** Notified Rule 17.5.7 of the Airport Zone chapter requires hazardous substances to be used, stored and transported in accordance with the regulations made under the Hazardous Substances and New Organisms Act 1991 (**HSNO regulations**) and any Civil Aviation Act 1991 (**CAA**) requirements. The planning evidence of Ms Rebecca Holden is that the references are unnecessary and should be removed.<sup>95</sup>

**8.12** As a matter of law, the HSNO regulations and the CAA requirements apply to the management of hazardous substances regardless of any reference contained within the PDP. On this basis it is the Council's position that the references should be removed.

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95 S42A Report, Chapter 17 – Airport Zone, at paragraph 7.82 on the basis of submission 768 (Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited).



### *The expansion of the Queenstown Airport Zone*

- 8.13** Remarkables Park Limited (**RPL**) opposes the extent of activities provided for by the Airport Zone on land outside of the operative Queenstown Airport Mixed Use Zone. Submissions on the proposed boundary of the Zone will be considered in the rezoning hearings. However, the extent of activities provided for is a matter for this hearing.
- 8.14** RPL submits that the impact of further commercial expansion at the airport on the Queenstown Town Centre were not considered in the s 32 report.<sup>96</sup> The likely extent of non-airport commercial activity at Queenstown Airport was however addressed at the Designations hearing. Specifically, Mr Kyle gave evidence that the limited land available for airport uses at Queenstown Airport means that the potential for the establishment of commercial activity that is not central to the operation of the airport is low.
- 8.15** RPL further submits that the s 32 report on the Airport Zone failed to consider all other reasonable alternatives for addressing the resource management issues identified in the report.<sup>97</sup> Specifically, RPL submits that the Council did not consider zoned activities on adjoining land that would be conveniently located for airport users. Ms Holden accepts that the process of looking outside the zone was not carried out as part of the s 32 assessment for the Airport Zone chapter. However, she wishes to hear the evidence for QAC and RPL before providing a view on the merits of this issue.<sup>98</sup>
- 8.16** Although the extent and location of the Airport Zone is a matter for the rezoning hearings, the evidence of Mr David Serjeant on behalf of RPL is that the Council should have considered the option of extending the Airport Zone over parts of the Frankton Flats Special B Zone (**FFBZ**) or the Remarkables Park Zone (**RPZ**).<sup>99</sup> This position appears to be at odds with RPL's clear position presented during the course of hearings on the PDP that the RPZ and FFBZ be excluded

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96 Legal submissions for Remarkables Park Limited dated 18 November 2016, paragraph 2.2(c); Evidence of David Serjeant dated 18 November 2016 at Part 5.

97 Legal submissions for Remarkables Park Limited dated 18 November 2016, paragraph 2.2(c).

98 Ms Rebecca Holden, summary of evidence dated 25 November 2016 at paragraph 7.

99 Evidence of David Serjeant dated 18 November 2016 at paragraph 7.12.

from the district plan review in their entirety. The effect of the exclusion of the RPZ and FFBZ from the PDP is that the Council does not have the option of rezoning this land. Council has also resolved to exclude these two areas from Stage 2 of the PDP, and include the two operative zone chapters in a Volume B of the district plan, that includes geographic areas of land not included in this review process.

- 8.17** Mr Malcom Hunt has given evidence on behalf of RPL and expresses concern that redrafted Rule 17.5.7.1, which provides for visitor accommodation within the Air Noise Boundary (**ANB**) at Queenstown Airport, does not adequately manage noise effects.<sup>100</sup> The evidence of Dr Stephen Chiles for the Council on this matter is that short-stay visitor accommodation within the Queenstown Airport Zone can be appropriately designed to mitigate noise effects.<sup>101</sup> On this basis, it is the Council's position that the provision for visitor accommodation in the Airport Zone is acceptable. However, Ms Holden has recommended that it would be appropriate to include additional controls limiting the provision of outdoor amenity spaces.<sup>102</sup>

## **9. INTERPRETATION AND DRAFTING MATTERS**

### **Demolition of Buildings**

- 9.1** During the Residential hearing, the Panel questioned the approach taken to demolition of buildings. Similar to the Residential chapters, the Business and Rural Zone rules are silent on demolition. Demolition is only specifically covered in Chapter 26 if the building is a listed heritage item. As there are no specific rules for demolition of buildings in the Business chapters, the activity would fall to the default activity status, being permitted, except in the case of the recommended Wanaka Airport Zone where the activity status would be non-complying.
- 9.2** If considered necessary, the Council would need to specifically include demolition as an activity in the Temporary Activities chapter, in Stage 2, in order to include a specific activity status into the PDP.

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100 Evidence of Malcom Hunt dated 18 November 2016 at paragraphs 11- 21.

101 Dr Stephen Chiles, summary of evidence dated 25 November 2016 at paragraph 9(a).

102 Ms Rebecca Holden, summary of evidence dated 25 November 2016 at paragraph 6(d).

## List of Documents Incorporated by Reference

- 9.3** During the course of the Residential hearing, the Panel asked the Council whether it would be appropriate to include a list of all documents that are incorporated by reference into the plan. Council confirms that this suggestion is sensible, although the list will need to be confirmed following Panel recommendations on all chapters. The public notice (for notification of Stage 1) lists the documents that were incorporated into the PDP under Clause 34(2)(c) of the First Schedule of the RMA.<sup>103</sup>
- 9.4** Council's recommendations, as presented through previous hearings such as Subdivision (Hearing Stream 4), means that the list will need to be updated. An updated list can be provided in Hearing Stream 10. It is also noted that the Council's legal right of reply for the Strategic Directions hearing addresses incorporation by reference.<sup>104</sup>

## Matters under the sub-heading "Clarification"

- 9.5** In previous hearings including Rural (Hearing Stream 2) and District Wide (Hearing Stream 5) the Panel questioned the status of the provisions under the heading "Other Provisions and Rules", specifically within the sub-heading "Clarification".
- 9.6** To provide more certainty as to the regulatory status of these provisions, the Council suggested in the Residential hearing that these "Clarification" provisions should be further re-ordered under additional subheadings "General Rules" and "Advice Notes". These changes do not affect the regulatory impact of these provisions and are considered to be non-substantive. Similar changes will need to be made to chapters that have already been heard by the Panel.
- 9.7** The same approach has been followed in the recommended revised Business chapters attached to the s42A reports, by placing "Clarification" provisions under the subheadings "General Rules" and

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103 <http://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/Incorporation-of-Documents-by-Reference/Public-Notice-consultation-to-incorporate-material-by-reference-3.pdf>

104 Legal Submissions, Council's Right of Reply, Hearing Streams 1A and 1B - Strategic Chapters, dated 7 April 2016, at paragraphs 8.7-8.9.

"Advice Notes". For completeness it is noted that changes have also been made to the PDP explanatory table, to align with the other chapters.

## **10. UPDATE ON RELEVANT NATIONAL AND REGIONAL DIRECTIONS**

### **National Policy Statement on Urban Development Capacity 2016**

- 10.1** The National Policy Statement on Urban Development Capacity (**NPS-UDC**) was gazetted on 3 November 2016 and comes into effect on 1 December 2016.<sup>105</sup> Queenstown is categorised as a high-growth urban area<sup>106</sup> and therefore all objectives and policies in the NPS-UDC apply to the Council.
- 10.2** The NPS-UDC includes a number of matters that local authorities must action. These were set out in legal submissions as part of the Council's Right of Reply for the Residential hearing stream.<sup>107</sup>
- 10.3** At the time of making its recommendations on the PDP, the Panel will need to give effect to the relevant objectives and policies of the NPS-UDC. Given the novelty of the NPS-UDC and the complex and interrelated strategy for implementation that will need to be developed, the Council is not yet in a position to address the Panel on the consequences of those objectives and policies.
- 10.4** It is noted however that the NPS-UDC defines "development capacity" in relation to both housing and business land, and also defines "business land" as land that is zoned for business uses in urban environments, including land in commercial, retail, business, centres, and mixed use zones. The NPS-UDC will therefore be directly relevant to the Business chapters.
- 10.5** The Council has initiated a programme of work in order to consider the requirements set out in the NPS-UDC on a comprehensive basis,

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105 The NPS-UDC is discussed in section 2 of Ms Banks' reply evidence dated 11 November 2016

106 "High-growth urban area" is defined at page 7 of the NPS-UDC by reference to Statistics New Zealand definitions. The first introductory guide to the NPS-UDC (ME 1274), which is to be read alongside the NPS-UDC although it does not have statutory weight, lists Queenstown on page 9 as one of five high-growth urban areas (subject to change as population projections are revised)

107 Legal Submissions for Queenstown Lakes District Council as part of Right of Reply for Hearing Stream 06, dated 11 November 2016, at paragraphs 5.1 – 5.4.

as required by s 55 of the RMA and the timeframes set out within the NPS-UDC.

- 10.6** In light of the above, the Council has not attempted to address the implications of the NPS-UDC for the PDP on a piecemeal basis. Accordingly, the s 42A report authors for the Business Zones chapters have not provided evidence on the implications of the NPS-UDC for each of their specific chapters at this stage. The Council respectfully requests that it be afforded the opportunity to provide the Panel with evidence on the implications of the NPS-UDC for Stage 1 of PDP as a whole, at a later date.

### **Proposed Regional Policy Statement**

- 10.7** On 1 October 2016 the Otago Regional Council issued a public notice stating that decisions had been made on submissions on the proposed Regional Policy Statement for Otago (**PRPS**).<sup>108</sup> The Environment Court has extended the date for filing appeals on the PRPS to 9 December 2016.
- 10.8** As noted in the Council's Right of Reply for the Residential hearing<sup>109</sup> and in accordance with the Panel's minute of 7 October 2016, the Council will be filing written submissions and possibly filing further planning evidence if necessary, on the implications of the PRPS for the chapters of the PDP that have already gone to hearing, after the content and scope and any appeals on the Decisions Version are known.
- 10.9** In respect of each of the Business chapters, the implications of the Decisions Version of the PRPS are addressed in the Council's evidence.

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108 Under clause 14 of Schedule 1 of the Resource Management Act 1991, those who submitted on the proposal may appeal the decision to the Environment Court within 30 working days of service of the notice of decision.

109 Legal Submissions for Queenstown Lakes District Council as part of Right of Reply for Hearing Stream 06, dated 11 November 2016, at paragraph 4.2.

## 11. WITNESSES

11.1 The Council will be calling the following evidence in support of its position:

- (a) Dr Stephen Chiles, acoustic engineer (chapters 12, 13, 15, and 17);
- (b) Mr Timothy Church, urban design expert (chapters 12, 13 and 16);
- (c) Mr Timothy Heath, economist (chapters 15 and 17);
- (d) Ms Sian Swinney, liquor licensing expert (chapters 12 and 13);
- (e) Ms Jacqueline Gillies, architecture expert (chapter 12);
- (f) Ms Vicki Jones, Consultant Planner, who is the author of the section 42A reports on the Queenstown Town Centre Chapter 12 and the Wanaka Town Centre Chapter 13;
- (g) Ms Amy Bowbyes, Senior Planner, who will present her 42A reports on the Arrowtown Town Centre Chapter 14; and
- (h) Ms Rebecca Holden, Senior Planner, who is the author of the section 42A report on the Airport Zone Chapter 17; and

- (i) Finally, Ms Bowbyes will present her s42A reports on the Local Shopping Centres Chapter 15 and Business Mixed Use Zone Chapter 16.

**DATED** this 25<sup>th</sup> day of November 2016



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J G A Winchester / S J Scott  
Counsel for the Queenstown Lakes  
District Council

**APPENDIX 1 –  
LEGAL PRINCIPLES ON SCOPE**

1. The legal principles regarding scope and the Panel's powers to recommend (and subsequently the Council's power to decide) are:
  - 1.1 a submission must first, be *on* the proposed plan;<sup>110</sup> and
  - 1.2 a decision maker is limited to making changes within the scope of *the submissions made on the proposed plan*.<sup>111</sup>
  
2. The two limb approach endorsed in the case of *Palmerston North City Council v Motor Machinists Ltd*,<sup>112</sup> subject to some limitations, is relevant to the Panel's consideration of whether a submission is *on* the plan change.<sup>113</sup> The two limbs to be considered are:
  - 2.1 whether the submission addresses the change to the pre-existing status quo advanced by the proposed plan; and
  - 2.2 whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.
  
3. The principles that pertain to whether certain relief is within the scope of a submitter's submission can be summarised as follows:
  - 3.1 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;<sup>114</sup>
  - 3.2 another way of considering the issue is whether the amendment can be said to be a "foreseeable consequence" of the relief sought in a

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110 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at Parts 5 and 7.

111 Council's Legal Reply on Hearing Streams 1A and 1B dated 7 April 2016 at part 2; Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.

112 [2014] NZRMA 519.

113 Council's Opening Legal Submissions on Hearing Streams 1A and 1B dated 4 March 2016 at paragraph 7.3-7.12.

114 *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145, at 166.



submission; the scope to change a plan is not limited by the words of the submission;<sup>115</sup>

**3.3** ultimately, it is a question of procedural fairness, and procedural fairness extends to the public as well as to the submitter;<sup>116</sup> and

**3.4** scope is an issue to be considered by the Panel both individually and collectively. There is no doubt that the Panel is able to rely on "collective scope". As to whether submitters are also able to avail themselves of the concept is less clear. To the extent that a submitter has not sought relief in their submission and/or has not made a further submission on specific relief, it is submitted that the submitter could not advance relief.<sup>117</sup>

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115 *Westfield (NZ) Limited v Hamilton City Council* [2004] NZRMA 556, and 574-575.

116 *Ibid*, at 574.

117 Council's Legal Reply on Hearing Stream 2 dated 3 June 2016 at part 2.