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

3 STRATEGIC DIRECTION

QUEENSTOWN LAKES DISTRICT COUNCIL

3.1 Purpose

This chapter sets 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 special qualities:

a. dramatic alpine landscapes free of inappropriate development;

b. clean air and pristine water;

c. vibrant and compact town centres;

d. compact and connected settlements that encourage public transport, biking and walking;

e. diverse, resilient, inclusive and connected communities;

f. a district providing a variety of lifestyle choices;

g. an innovative and diversifying economy based around a strong visitor industry;

h. a unique and distinctive heritage;

i. distinctive Ngāi Tahu values, rights and interests.

The following issues need to be addressed to enable the retention of these special qualities:

a. Issue 1: Economic prosperity and equity, including strong and robust town centres, requires economic diversification to enable the social and economic wellbeing of people and communities.

b. Issue 2: Growth pressure impacts on the functioning and sustainability of urban areas, and risks detracting from rural landscapes, particularly its outstanding landscapes.

c. Issue 3: High growth rates can challenge the qualities that people value in their communities.

d. Issue 4: The District's natural environment, particularly its outstanding landscapes, has intrinsic qualities and values worthy of protection in their own right, as well as offering significant economic value to the District.

e. Issue 5: The design of developments and environments can either promote or weaken safety, health and social, economic and cultural wellbeing.

f. Issue 6: Tangata Whenua status and values require recognition in the District Plan.

This chapter sets out the District Plan's strategic Objectives and Policies addressing these issues. High level objectives are elaborated on by more detailed objectives. Where these more detailed objectives relate to more than one higher level objective, this is noted in brackets after the objective. Because many of the policies in Chapter 3 implement more than one objective, they are grouped, and the relationship between individual policies and the relevant strategic objective(s) identified in brackets following each policy. The objectives and policies in this chapter are further elaborated on in Chapters 4 – 6. The principal role of Chapters 3 - 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan. In addition, they also provide guidance on what those more detailed provisions are seeking to achieve and are accordingly relevant to decisions made in the implementation of the Plan.

3.2 Strategic Objectives

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

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

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

3.2.1.3 The Frankton urban area functions as a commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin.

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

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

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

3.2.1.7 Agricultural land uses consistent with the maintenance of the character of rural landscapes and significant nature conservation values are enabled. (also elaborates on SO 3.2.4 and 3.2.5 following)

3.2.1.8 Diversification of land use in rural areas beyond traditional activities, including farming, provided that the character of rural landscapes, significant nature conservation values and Ngāi Tahu values, interests and customary resources, are maintained. (also elaborates on S.O.3.2.5 following)

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

[1] Defined by the extent of the Town Centre Zone in each case
[2] Defined by the extent of the Town Centre Zone in each case

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

3.2.2.1 Urban development occurs in a logical manner so as to:

a. promote a compact, well designed and integrated urban form;

b. build on historical urban settlement patterns;

c. achieve a built environment that provides desirable, healthy and safe places to live, work and play;

d. minimise the natural hazard risk, taking into account the predicted effects of climate change;

e. protect the District's rural landscapes from sporadic and sprawling development;

f. ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in;

g. contain a high quality network of open spaces and community facilities; and.

h. be integrated with existing, and planned future, infrastructure.

(also elaborates on S.O. 3.2.3, 3.2.5 and 3.2.6 following)

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

3.2.3.1 The District's important historic heritage values are protected by ensuring development is sympathetic to those values.

3.2.4 The distinctive natural environments and ecosystems of the District are protected. (addresses Issue 4)

3.2.4.1 Development and land uses that sustain or enhance the life-supporting capacity of air, water, soil and ecosystems, and maintain indigenous biodiversity.

3.2.4.2 The spread of wilding exotic vegetation is avoided.

3.2.4.3 The natural character of the beds and margins of the District's lakes, rivers and wetlands is preserved or enhanced.

3.2.4.4 The water quality and functions of the District's lakes, rivers and wetlands are maintained or enhanced.

3.2.4.5 Public access to the natural environment is maintained or enhanced.

3.2.5 The retention of the District's distinctive landscapes. (addresses Issues 2 and 4)

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

3.2.5.2 The rural character and visual amenity values in identified Rural Character Landscapes are maintained or enhanced by directing new subdivision, use or development to occur in those areas that have the potential to absorb change without materially detracting from those values.

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

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

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

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

3.3 Strategic Policies

Visitor Industry

3.3.1 Make provision for the visitor industry to maintain and enhance attractions, facilities and services within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone. (relevant to S.O. 3.2.1.1 and 3.2.1.2)

Town Centres and other Commercial and Industrial Areas

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

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

3.3.4 Provide a planning framework for the Frankton urban area that facilitates the integration of the various development nodes. (relevant to S.O. 3.2.1.3)

3.3.5 Recognise that Queenstown Airport makes an important contribution to the prosperity and resilience of the District. (relevant to S.O. 3.2.1.3)

3.3.6 Avoid additional commercial zoning that will undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will undermine increasing integration between those areas and the industrial and residential areas of Frankton. (relevant to S.O. 3.2.1.3)

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

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

3.3.9 Support the role township commercial precincts and local shopping centres fulfil in serving local needs by enabling commercial development that is appropriately sized for that purpose. (relevant to S.O. 3.2.1.5)

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

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

Climate Change

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

Urban Development

3.3.13 Apply Urban Growth Boundaries (UGBs) around the urban areas in the Wakatipu Basin (including Jack's Point), Wanaka and Lake Hawea Township. (relevant to S.O. 3.2.2.1)

3.3.14 Apply provisions that enable urban development within the UGBs and avoid urban development outside of the UGBs. (relevant to S.O. 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2)

3.3.15 Locate urban development of the settlements where no UGB is provided within the land zoned for that purpose. (relevant to S.O. 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2)

Heritage

3.3.16 Identify heritage items and ensure they are protected from inappropriate development. (relevant to S.O. 3.2.2.1, and 3.2.3.1)

Natural Environment

3.3.17 Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna, as Significant Natural Areas on the District Plan maps (SNAs). (relevant to S.O. 3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.4.3 and 3.2.4.4)

3.3.18 Protect SNAs from significant adverse effects and ensure enhanced indigenous biodiversity outcomes to the extent that other adverse effects on SNAs cannot be avoided or remedied. (relevant to S.O. 3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.1.2, 3.2.4.3 and 3.2.4.4)

3.3.19 Manage subdivision and / or development that may have adverse effects on the natural character and nature conservation values of the District's lakes, rivers, wetlands and their beds and margins so that their life-supporting capacity and natural character is maintained or enhanced. (relevant to S.O. 3.2.1.8, 3.2.4.1, 3.2.4.3, 3.2.4.4, 3.2.5.1 and 3.2.5.2)

Rural Activities

3.3.20 Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with significant nature conservation values or degrade the existing character of rural landscapes. (relevant to S.O. 3.2.1.7, 3.2.5.1 and 3.2.5.2)

3.3.21 Recognise that commercial recreation and tourism related activities seeking to locate within the Rural Zone may be appropriate where these activities enhance the appreciation of landscapes, and on the basis they would protect, maintain or enhance landscape quality, character and visual amenity values. (relevant to S.O. 3.2.1.1, 3.2.1.8, 3.2.5.1 and 3.2.5.2)

3.3.22 Provide for rural living opportunities in areas identified on the District Plan maps as appropriate for rural living developments. (relevant to S.O. 3.2.1.7, 3.2.5.1 and 3.2.5.2)

3.3.23 Identify areas on the District Plan maps that are not within Outstanding Natural Landscapes or Outstanding Natural Features and that cannot absorb further change, and avoid residential development in those areas. (relevant to S.O. 3.2.1.8 and 3.2.5.2)

3.3.24 Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character. (relevant to S.O. 3.2.1.8, 3.2.5.1 and 3.2.5.2)

3.3.25 Provide for non-residential development with a functional need to locate in the rural environment, including regionally significant infrastructure where applicable, through a planning framework that recognises its locational constraints, while ensuring maintenance and enhancement of the rural environment. (relevant to S.O. 3.2.1.8, 3.2.1.9 3.2.5.1 and 3.2.5.2)

3.3.26 That subdivision and / or development be designed in accordance with best practice land use management so as to avoid or minimise adverse effects on the water quality of lakes, rivers and wetlands in the District. (relevant to S.O. 3.2.1.8, 3.2.4.1 and 3.2.4.3)

3.3.27 Prohibit the planting of identified exotic vegetation with the potential to spread and naturalise unless spread can be acceptably managed for the life of the planting. (relevant to S.O.3.2.4.2)

3.3.28 Seek opportunities to provide public access to the natural environment at the time of plan change, subdivision or development. (relevant to S.O.3.2.4.6)

Landscapes

3.3.29 Identify the District's Outstanding Natural Landscapes and Outstanding Natural Features on the District Plan maps. (relevant to S.O.3.2.5.1)

3.3.30 Avoid adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor and or not temporary in duration. (relevant to S.O.3.2.5.1)

3.3.31 Identify the District's Rural Character Landscapes on the District Plan maps. (relevant to S.O.3.2.5.2)

3.3.32 Only allow further land use change in areas of the Rural Character Landscapes able to absorb that change and limit the extent of any change so that landscape character and visual amenity values are not materially degraded. (relevant to S.O. 3.2.19 and 3.2.5.2)

Cultural Environment

3.3.33 Avoid significant adverse effects on wāhi tūpuna within the District. (relevant to S.O.3.2.7.1)

3.3.34 Avoid remedy or mitigate other adverse effects on wāhi tūpuna within the District. (relevant to S.O.3.2.7.1)

3.3.35 Manage wāhi tūpuna within the District, including taonga species and habitats, in a culturally appropriate manner through early consultation and involvement of relevant iwi or hapū. (relevant to S.O.3.2.7.1 and 3.2.7.2)

QUEENSTOWN LAKES DISTRICT COUNCIL

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

Commissioners
Denis Nugent (Chair)
Lyal Cocks
Cath Gilmour
Trevor Robinson
Mark St Clair

PART B - CHAPTER 3

2. OVERVIEW/HIGHER LEVEL PROVISIONS

66. As notified, Chapter 3 contained a Statement of Purpose (in 3.1) and then seven subsections (3.2.1-3.2.7 inclusive) each with its own "*goal",* one or more objectives under the specified goal and in most but not all cases, one or more policies to achieve the stated objective. The specified goals are as follows:

> *"3.2.1 Goal Develop a prosperous, resilient and equitable economy;*
> *3.2.2 Goal The strategic and integrated management of urban growth;*
> *3.2.3 Goal A quality built environment taking into account the character of individual communities;*
> *3.2.4 Goal The protection of our natural environment and ecosystems;*
> *3.2.5 Goal Our distinctive landscapes are protected from inappropriate development;*
> *3.2.6 Goal Enable a safe and healthy community that is strong, diverse and inclusive for all people.*
> *3.2.7 Goal Council will act in accordance with the principles of the Treaty of Waitangi and in partnership with Ngāi Tahu."*

67. The initial question which requires determination is whether there should be a strategic chapter at all. UCES[125] sought that some aspects be shifted out of Chapter 3 into other chapters, but otherwise that the entire chapter should be deleted. We note in passing that in terms of collective scope, this submission would put virtually all relief between Chapter 3 as notified and having no strategic chapter, within scope.

68. As Mr Haworth explained it to us, the UCES submission forms part of a more general position on the part of the Society that, with some specified changes, the format and context of the ODP should remain unchanged. At the core of his argument, Mr Haworth contended that the ODP was generally working well and should simply be rolled over, certainly as regards the management of the rural issues of interest to UCES. He appeared to put this in part on the basis of the character of the PDP process as a review of the ODP and in part on his own, and UCES's, experience of the ODP in operation. He referred specifically, however, to a Council's monitoring report[126], quoting it to the effect that "*Council should consider carefully before setting about any comprehensive overhaul".*

69. We note that the quotations Mr Haworth extracted from the 2009 monitoring report were somewhat selective. He omitted mention of what was described[127] as the major qualification, a concern that the Plan may not be effective in avoiding cumulative adverse effects on the landscape and in preventing urban style expansion in some areas.

70. Nor do we think there is anything in this being a *'review'* of the ODP. The discretion conferred by section 79 is wide, and in this case the Council has considered whether changes are required and determined that a different approach, employing a greater degree of strategic direction, is needed. That said, where submissions (such as those of UCES) seek reversion to the

---

125 Submission 145: Opposed in FS1162, FS1254, FS1313

126 District Plan Monitoring Report: Monitoring the Effectiveness and Efficiency of the Rural General Zone, QLDC April 2009

127 At page 3

structure and/or content of the ODP, section 32 requires that we consider that as a possible alternative to be recommended.

71. In that regard, Mr Haworth also drew attention to the increased complexity of management of rural subdivision and development which, under the PDP as notified, is split between Chapter 3, Chapter 6 and Chapter 21. He also criticised the content of those provisions which provided, as he saw it, a weakening of the ability to protect landscape values in the rural environment, but we regard that as a different point, which needs to be addressed in relation to the provisions of the respective chapters.

72. While there is much that can be learned from the decisions that gave rise to the ODP, equally, it needs to be recognised that those decisions are now more than 15 years old. The evidence of the Council on the extent of growth in the District over that period is clear. While the Environment Court remarked on those trends in its 1999 decision, particularly in the Wakatipu Basin, the District is now significantly further along the continuum towards an optimal level of development (some might say it is already sub-optimal in some locations). Mr Haworth himself contended that there is more pressure on the ONLs of the District.

73. Case law has also advanced. The Supreme Court's decision in *King Salmon* in particular, provides us with guidance that was not available to the Environment Court in 1999.

74. Lastly, the jurisdiction of the Environment Court was constrained by the document that was the result of Council decisions, and the scope of the appeals before it. We do not know if the Environment Court would have entertained a strategic directions chapter in 1999. It does not appear to have had that option available to it, and the Court's decisions do not record any party as having sought that outcome.

75. We also accept Mr Paetz's evidence that there is a need for a greater level of strategic direction than the ODP provided to address the challenging issues faced by the District[128].

76. In summary, we do not recommend complete deletion of Chapter 3 as sought by UCES. While, as will be seen from the discussion following, there are a number of aspects of Chapter 3 that might be pared back, we think there is value in stating strategic objectives and policies that might be fleshed out by the balance of the PDP. Put in section 32 terms, we believe that this is the most appropriate way to achieve the purpose of the Act in this District at this time. Similarly, while we do not recommend complete substitution of the ODP for the existing strategic chapters, there are aspects of the ODP that can usefully be incorporated into the strategic chapters (including Chapter 3). We discuss which aspects in the body of our report.

77. If Chapter 3 is to be retained, as we would recommend, the next question is whether its structuring is appropriate. Queenstown Park Limited[129] sought that the strategic direction section be revised "*so that the objectives and policies are effects based, and provide a forward focussed, strategic management approach".* Those two elements might arguably be seen as mutually contradictory, but the second half of that relief supports a view that we would agree with, that there needs to be a focus on whether what is provided is indeed forward looking and genuinely *'strategic'*. Put another way, the guidance it provides needs to be pitched at a high level, and not focus on minutiae.

---

128 Most of the other planners who gave evidence appeared to take the desirability of having one or more 'strategic' chapters as a given. Mr Tim Williams, however, explicitly supported the concept of having higher order provisions (at paragraph 10 of his evidence).

129 Submission 806

78. In terms of general structuring, the submission of Real Journeys Limited[130] that provisions should be deleted where they duplicate or repeat other provisions might be noted. We agree that where provisions are duplicated, that duplication should generally be removed. The challenge is of course to identify where that has occurred.

79. The telecommunication companies[131] sought that the relationship of the goals, objectives and policies with the other Chapters of the Plan be defined and that the goals be deleted but retained as titles. Another variation on the same theme was provided by Darby Planning LP[132], which sought that the goals be deleted and incorporated into the relevant objective.

80. Remarkables Park Limited[133] and Queenstown Park Limited[134] also sought deletion of the goal statements "*to remove confusion as to their status and relationship to objectives and policies".*

81. We think that the starting point when looking at the structuring of Chapter 3, both internally and with respect to the balance of the PDP, is to decide what the goals are, and what purpose they serve. When counsel for the Council opened the hearing on 7 March 2016, he suggested that the goals were a mixture of objectives and issues, or alternatively a mixture of issues and anticipated environmental results. Consistent with that view, in his reply evidence, Mr Paetz stated:

"The goals are more than the description of an issue, having the aspirational nature of an objective."

82. He opposed, however, relabelling them as objectives as that would potentially create structural confusion with objectives sitting under objectives. In Mr Paetz's view, the use of the term "*goal"* is commonly understood by lay people and he saw no particular problem with retaining them as is.

83. We do not concur.

84. As Mr Paetz noted, lay people have a reasonably clear understanding what a goal is. However, as counsel for Darby Planning LP pointed out to us, that understanding is that a goal is an objective (and vice versa)[135]. It is inherently unsatisfactory to have quasi-objectives with no certainty as their role in the implementation of the PDP. Objectives have a particular role in a District Plan. Other provisions are tested under section 32 as to whether they are the most appropriate way to achieve the objectives. As Mr Chris Ferguson[136] noted, they also have a particular legal significance under section 104D of the Act. Accordingly, it is important to know what is an objective and what is not. We recommend that the goals not remain stated as *'goals'*.

---

130 Submission 621

131 Submissions 179, 191, 781: Opposed in FS1132; Supported in FS1121

132 Submission 608: Opposed in FS1034

133 Submission 807

134 Submission 806

135 *Ngati Kahungunu Iwi Inc v Hawkes Bay Regional Council* [2015] NZEnvC50 at [42] citing the Concise Oxford Dictionary

136 Planning witness appearing for Darby Planning LP, Soho Ski Area Ltd, Treble Cove Investors, Hansen Family Partnership

85. There appear to be at least four alternative options. They could be deleted or alternatively converted to titles for the respective subsections, as the telecommunication submitters suggest. The problem with the goals framed as titles is that they would then add little value and would not reflect the process by which the objectives and policies were developed, which as we understand it from the evidence of Council, reflected those goals.

86. That would be still more the case if they were simply deleted, as Remarkables Park Ltd and Queenstown Park Ltd seek.

87. They could be incorporated into the objectives, as Darby Planning LP suggests. That would preserve the work that went into their formulation, but the submission does not identify how exactly the objectives should be revised to achieve that result[137].

88. Logically there are two ways in which the goals might be incorporated into the objectives. The first is if the wording of the goals were melded with that of the existing objectives. We see considerable difficulties with that course. On some topics, there are a number of objectives that relate back to a single goal. In other cases, a single objective is related to more than one goal. It is not clear to us how the exercise could be undertaken without considerable duplication, and possibly an unsatisfactory level of confusion.

89. The alternative is to reframe the *'goals'* as higher-level objectives, each with one or more focused objectives explicitly stated to be expanding on the higher-level objective. This avoids the problem of excessive duplication noted above, and the fact that some of the existing objectives relate back to more than one *'goal'* can be addressed by appropriate cross-referencing. It also addresses the problem Mr Paetz identified of potential confusion with objectives under objectives. We recommend this approach be adopted and Chapter 3 be restructured accordingly. We will discuss the wording of each goal/higher-level objective below.

90. One problem of expressing the goals as higher-level objectives is that they fail to express the issues the strategic objectives seek to address[138]. The result is something of a leap in logic; the high-level objectives come 'out of the blue' with little connection back to the special qualities identified in section 3.1.

91. The reality is, as the section 32 report for this aspect of the Plan makes clear[139], that the *'goals'* were themselves derived from a series of issues, worded as follows:

> *"1. Economic prosperity and equity, including strong and robust town centres;*
> *2. Growth pressures impacting on the functionality and sustainability of urban areas, and risking detracting from rural landscapes;*
> *3. High growth rates can challenge the qualities that people value in their communities;*
> *4. Quality of the natural environment and ecosystems;*
> *5. The District's outstanding landscapes offer both significant intrinsic and economic value for the District and are potentially at threat of degradation given the District's high rates of growth;*
> *6. While median household incomes in the District are relatively high, there is significant variation in economic wellbeing. Many residents earn relatively low wages, and the cost of living in the district is high – housing costs, heating in winter, and transport. This affects the social and*

137 Mr Chris Ferguson, giving planning evidence on the point, supported this relief (see his paragraph 109) but similarly did not provide us with revised objectives illustrating how this might be done.

138 A role both counsel for the Council and Mr Paetz identified, the goals as having, as above.

139 Section 32 Evaluation Report – Strategic Direction at pages 5-11

economic wellbeing of some existing residents and also reduces the economic competitiveness of the District and its ability to maximise productivity. The design of developments and environments can either promote or deter safety and health and fitness.

7. *Tangata whenua status and values require recognition in the District Plan, both intrinsically in the spirit of partnership (Treaty of Waitangi), but also under Statutes;"*

92. These issues have their faults. There is an undesirable level of duplication between them. The fourth issue is not framed as an issue. The sixth issue is in fact two discrete points, the first of which, as well as being extremely discursive, is actually an aspect of the first issue.

93. Even given these various faults, however, we consider a modified version of the section 32 report issues would add value as part of the background information in Section 3.1, explaining the link between the special qualities it identifies and the objectives set out in Section 3.2. Unlike the objectives, the issues have no legal status or significance and we regard them as merely clarifying the revised higher-level objectives by capturing part of what was previously stated in the *'goals'*.

94. We will revert to how the *'issues'* might be expressed in the context of our more detailed discussion of Section 3.1.

95. More generally in relation to the structuring of Chapter 3, we have formed the view that the overlaps between goals, and the separation of each subsection of Chapter 3 into a goal, followed by one or more objectives, with many of those objectives in turn having policies specific to that objective, has created a significant level of duplication across the chapter. In our view, this duplication needs to be addressed.

96. We are also concerned that there has been a lack of rigour in what has been regarded as *'strategic'*, which has in turn invited suggestions from some submitters that Chapter 3 ought to be expanded still further [140].

97. We recommend that the best way to approach the matter is to collect together the strategic objectives in one section and the strategic policies in a separate section of Chapter 3. Objectives and policies duplicating one another are then no longer required and can be deleted.

98. It is recognised that it is still important to retain the link between objectives and policies, but this can be done by insertion of internal cross referencing. As previously discussed, we consider it is helpful to set out the issues that have generated the higher-level objectives, and we suggest a similar cross referencing approach to the links between the issues and the higher-level objectives. The revised PDP Chapter 3 attached to this report shows how we suggest this might best be done.

99. We also concur with the suggestion in the telecommunication submissions that there is a need for clarification as to the relationship between Chapter 3 and the balance of the PDP initially, and then the relationship of Part Two[141] with the balance of the Plan. The apparent intent (as set out in Mr Paetz's Section 42A Report) is that they should operate as a hierarchy with

---

140 Counsel for DJ and EJ Cassells, Bulling Family and M Lynch and Friends of Wakatipu Gardens and Reserves for instance suggested to us that this was required to provide balance

141 Comprising Chapters 3-6 inclusive

Chapter 3 at the apex, but the PDP does not actually say that. The potential confusion is enhanced by the fact that the ODP was drafted with the opposite intent[142].

100. The last paragraph of Section 3.1 is the logical place for such guidance. Mr Chris Ferguson[143] suggested we might utilise a similar paragraph to that which the independent Hearing Panel for the Replacement Christchurch District Plan approved – stating explicitly that Chapter 3 has primacy over all other objectives and policies in the PDP, which must be consistent with it. That wording, however, reflected the unique process involved there, with the Strategic Directions Chapter released before finalisation of the balance of the Plan, and we think a more tailored position is required for the PDP to recognise that we are recommending revisions to the whole of Stage 1 of the PDP to achieve an integrated end product. Combining this concept with the need to explain the structure of the revised chapter, we recommend that it be amended to read as follows:

"This Chapter sets out the District Plan's high-level objectives and policies addressing these issues. High level objectives are elaborated on by more detailed objectives. Where these more detailed objectives relate to more than one higher level objective, this is noted in brackets after the objective. Because many of the policies in Chapter 3 implement more than one objective, they are grouped, and the relationship between individual policies and the relevant strategic objective(s) identified in brackets following each policy. The objectives and policies are further elaborated on in Chapters 4-6. The principal role of Chapters 3-6 collectively is to provide the direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan. In addition, they also provide guidance on what those more detailed provisions are seeking to achieve, and are accordingly relevant to decisions made in the implementation of the Plan."

2.1. Section 3.1 - Purpose

101. With the exception of clarification of the relationship between the different elements of Chapter 3 and the balance of the PDP, as above, the submissions seeking amendments to the Statement of Purpose in Section 3.1[144] appear to be seeking to incorporate their particular aspirations as to what might occur in future, rather than stating the special qualities the District currently has, which is what Section 3.1 sets out to do. Accordingly, we do not recommend any change to the balance of Section 3.1.

102. We note that the amendments sought in Submission 810 was withdrawn when the submitter appeared at the Stream 1A hearing.

103. To provide the link between the specified special qualities and the high-level objectives in Section 3.2, we recommend the issues set out in the section 32 report be amended.

104. As discussed above, the sixth issue is effectively two issues with the first part an overly discursive aspect of the first issue. Looking both at the first part of sixth issue and the explanation of it in the section 32 report, the key point being made is that not all residents are able to provide for their social economic wellbeing due to a low wage structure and a high cost of living. The concept of an equitable economy in the first issue captures some of those issues,

142 C180/99 at [126]

143 Planning witness for Darby Planning LP

144 Submission 238: Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1299; and Submission 598: Supported in FS1287

but it also suggests a need to highlight both the need for greater diversification of the economy[145] and for enhanced social and economic prosperity.

105. The second, fourth and fifth issues refer variously to rural landscapes, the natural environment and outstanding landscapes. There is significant overlap between these elements. The outstanding landscapes of the District are generally rural landscapes. They are also part of the natural environment. The fourth issue also separates ecosystems from the natural environment when in reality, ecosystems are part of the natural environment. It is also not framed as an issue. Clearly outstanding landscapes require emphasis, given the national importance placed on their protection, but we recommend these three issues be collapsed into two.

106. Lastly, the reference to the reasons why Tangata Whenua status and values require recognition is unnecessary in the statement of an issue and can be deleted without losing the essential point.

107. In summary, we recommend that the following text be inserted into Section 3.1 to provide the linkage to the objectives and clarification we consider is necessary:

a. *"Issue 1: Economic prosperity and equity, including strong and robust town centres, requires economic diversification to enable the social and economic wellbeing of people and communities.*
b. *Issue 2: Growth pressure impacts on the functioning and sustainability of urban areas, and risks detracting from rural landscapes, particularly its outstanding landscapes.*
c. *Issue 3: High growth rates can challenge the qualities that people value in their communities.*
d. *Issue 4: The District's natural environment, particularly its outstanding landscapes, has intrinsic qualities and values worthy of protection in their own right, as well as offering significant economic value to the District.*
e. *Issue 5: The design of developments and environments can either promote or weaken safety, health and social, economic and cultural wellbeing.*
f. *Issue 6: Tangata Whenua status and values require recognition in the District Plan."*

2.2. Section 3.2.1 – Goal – Economic Development

108. The goal for this subsection is currently worded:

"Develop a prosperous, resilient and equitable economy".

109. Submissions specifically on this first goal (apart from those supporting it in its current form) sought variously that it be amended by a specific reference to establishment of education and research facilities[146] and that the word "*equitable"* be deleted[147].

110. As part of UCES's more general opposition to Chapter 3, Mr Haworth opposed Goal 1 on the basis that it was not required because the economy was already flourishing, and elevating recognition of the economy conflicted with the emphasis given to the importance of protecting the environment in a manner that is likely to threaten landscape protection.

---

145 Submission 115 sought that the first goal refer specifically to establishment of education and research facilities to generate high end jobs which we regard as an example of economic diversification

146 Submission 115

147 Submission 806

111. Mr Paetz did not recommend any amendment to this goal.

112. The RPS contains no over-arching objective related to the economy that bears upon how this goal is expressed. We should note, however, Policy 1.1.2 of the Proposed RPS which reads:

"Provide for the economic wellbeing of Otago's people and communities by enabling the use and development of natural and physical resources only if the adverse effects of those activities on the environment can be managed to give effect to the objectives and policies of the Regional Policy Statement."

113. This is in the context of an objective[148] focussing on integrated management of resources to support the wellbeing of people and communities.

114. If the restructuring we have recommended is accepted, so that each goal is expressed as a high-level objective expanded by more focussed objectives, we believe that the concerns underlying the submissions on this goal would largely be addressed. Thus, if Goal 1 has what is currently Objective 3.2.1.3 under and expanding it, the Plan will recognise the diversification that Submission 115 seeks, albeit more generally than just with reference to education and research facilities.

115. Similarly, while we can understand the concern underlying Submission 806, that reference to equity could be read a number of different ways, provision of a series of more focused objectives to flesh out this goal assists in providing clarity.

116. We do not accept Mr Haworth's contentions either that a high-level objective focussing on economic wellbeing is unnecessary or that it threatens environmental values, including landscape values. The evidence we heard, in particular from Mr Cole[149], indicates to us that economic prosperity (and social wellbeing) are not universally enjoyed in the District. We also intend to ensure that it is clear in the more detailed provisions expanding on this broad high-level objective that while important, economic objectives are not intended to be pursued without regard for the environment (reflecting the emphasis in the Proposed RPS quoted above).

117. In summary, therefore, the only amendments we recommend to the wording of Section 3.2.1 are to express it as an objective and to be clear that it is the economy of this district which is the focus, as follows:

"*The development of a prosperous, resilient and equitable economy in the District."*

118. We consider a higher-level objective to this effect is the most appropriate way to achieve the purpose of the Act.

2.3. Section 3.2.1 – Objectives – Economic Development

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

---

148 Proposed RPS Objective 1.1

149 For Queenstown Lakes Community Housing Trust.

120. A common feature of each of the objectives in Section 3.2.1 is that they commence with a verb: recognise, develop and sustain; enable; recognise; maintain and promote.

121. Nor is Section 3.2.1 alone in this. This appears to be the drafting style employed throughout Chapters 3, 4 and 6 (and beyond). Moreover, submitters have sought to fit in with that drafting style, with the result that almost without exception, the amendments sought by submitters to objectives would be framed in a similar way[150].

122. We identified at the outset an issue with objectives drafted in this way. Put simply, they are not objectives because they do not identify "*an end state of affairs to which the drafters of the document aspire"*[151].

123. Rather, by commencing with a verb, they read more like a policy – a course of action[152] (to achieve an objective).

124. We discussed the proper formulation of objectives initially with Mr Paetz and then with virtually every other planning witness who appeared in front of us. All agreed that a properly framed objective needed to state an environmental end point or outcome (consistent with the *Ngati Kahungunu* case just noted). At our request, Mr Paetz and his colleague Mr Barr (responsible for Chapter 6) produced revised objectives for Chapters 3, 4 and 6, reframing the notified objectives to state an environmental end point or outcome. Counsel for the Council filed a memorandum dated 18 March 2016 producing the objectives of Chapters 3, 4 and 6 reframed along the lines above. As previously noted, the Chair directed that the Council's memorandum be circulated to all parties who had appeared before us (and those who were yet to do so) to provide an opportunity for comment.

125. We note that because the task undertaken by Mr Paetz and Mr Barr was merely to reframe the existing objectives in a manner that explicitly stated an environmental end point or outcome, rather than (as previously) just implying it, we do not regard this is a scope issue[153], or as necessitating (to the extent we accepted those amendments) extensive evaluation under section 32.

126. Similarly, to the extent that submitters sought changes to objectives, applying the drafting style of the notified plan, we do not regard it as a scope issue to reframe the relief sought so as to express objectives so that they identify an environmental end point or outcome. We have read all submissions seeking amendments to objectives on that basis.

127. As notified, Objective 3.2.1.1 read:

"Recognise, develop and sustain the Queenstown and Wanaka central business areas as the hubs of New Zealand's premier alpine resorts and the Districts economy."

128. The version of this objective ultimately recommended by Mr Paetz and attached to counsel's 18 March 2016 Memorandum read:

---

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

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

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

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

"The Queenstown and Wanaka town centres are the hubs of New Zealand's premier alpine resorts and the District's economy."

129. We think that substituting reference to Queenstown and Wanaka town centres is preferable to referring to their "*central business areas"* because of the lack of clarity as to the limits of what the latter might actually refer to. Although the evidence of Dr McDermott for the Council suggested that he had a broader focus, the advantage of referring to town centres is because the PDP maps identify the Town Centre zones in each case. Mr Paetz agreed that a footnote might usefully confirm that link, and we recommend insertion of a suitably worded footnote.

130. NZIA suggested that rather than referring to central business areas, the appropriate reference would be to the Queenstown and Wanaka waterfront. While that may arguably be an apt description for the central area of Queenstown, we do not think that it fits so well for Wanaka, whose town centre extends well up the hill along Ardmore Street and thus we do not recommend that change.

131. The focus of other submissions was not so much on the wording of this particular objective but rather on the fact that the focus on the Queenstown and Wanaka town centres failed to address the increasingly important role played by commercial and industrial development on the Frankton Flats[154], the role that the Three Parks commercial development is projected to have in Wanaka[155], and the role of the visitor industry in the District's economy, facilities for which are not confined to the Queenstown and Wanaka town centres[156]. In his Section 42A Report, Mr Paetz recognised that the first and third of these points were valid criticisms of the notified PDP and recommended amended objectives to address them.

132. Turning to the RPS to see what direction we get from its objectives, the focus is on a generally expressed promotion of sustainable management of the built environment[157] and of infrastructure[158]. The policies relevant to these objectives are framed in terms of promoting and encouraging specified desirable outcomes[159], minimising adverse effects of urban development and settlement[160], and maintaining and enhancing quality of life[161]. As such, none of these provisions appear to bear upon the objectives in this part of the PDP, other than in a very general way.

133. The Proposed RPS gets closer to the point at issue with Objective 4.5 seeking effective integration of urban growth and development with adjoining urban environments (among other things). The policies supporting that objective do not provide any relevant guidance as to how this might be achieved. Policy 5.5.3, however, directs management of the distribution of commercial activities in larger urban areas "*to maintain the vibrancy of the central business district and support local commercial needs"* among other things by "*avoiding unplanned*

---

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

155 Submission 249: Supported in FS1117

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

157 RPS Objective 9.4.1

158 RPS Objective 9.4.2

159 RPS Policies 9.5.2 and 9.5.3

160 RPS Policy 9.5.4

161 RPS Policy 9.5.5

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

134. We read this policy as supporting the intent underlying this group of objectives, while leaving open how this might be planned.

135. Addressing each objective suggested by Mr Paetz in turn, the version of his recommended Frankton objective presented with his reply evidence reads:

"The key mixed use function of the Frankton commercial area is enhanced, with better transport and urban design integration between Remarkables Park, Queenstown Airport, Five Mile and Frankton Corner".

136. This is an expansion from the version of the same objective recommended with Mr Paetz's Section 42A Report reflecting a view (explained by Mr Paetz in this reply evidence[162]) that the Frankton area should be viewed as one wider commercial locality, comprising a network of several nodes, with varying functions and scales.

137. Dr McDermott gave evidence for the Council, supporting separate identification of the Frankton area on the basis that its commercial facilities had quite a different role to the town centres of Wanaka and Queenstown and operated in a complimentary manner to those centres.

138. We also heard extensive evidence from QAC as to the importance of Queenstown Airport to the District's economy[163].

139. We accept that Frankton plays too important a role in the economy of the District for its commercial areas to be classed in the 'other' category, as was effectively the case in the notified Chapter 3. We consider, however, that it is important to be clear on what that role is, and how it is different to that of the Queenstown and Wanaka town centres. That then determines whether a wider or narrower view of what parts of the Frankton area should be the focus of the objective.

140. The term Dr McDermott used to describe Frankton was "mixed use" and Mr Paetz recommended that that be how the Frankton area is described.

141. The problem we had with that recommendation was that it gives no sense of the extent of the *'mix'* of uses. In particular, "*mixed use*" could easily be taken to overlap with the functions of the Queenstown town centre. Dr McDermott described the latter as being distinguished by the role it (and Wanaka town centre) plays in the visitor sector, both as destinations in their own right and then catering for visitors when they are there[164]. By contrast, he described Frankton as largely catering for local needs although when he appeared at the hearing, he emphasised that local in this sense is relative, because of the role of the Frankton retail and industrial facilities in catering for a wider catchment than just the immediate Frankton area. While Dr McDermott took the view that that wider catchment might extend as far as Wanaka, his opinion in that regard did not appear to us to be based on any hard evidence. However, we accept that Frankton's role is not limited to serving the immediate '*local'* area.

---

162 At paragraph 5.7

163 In particular, the evidence of Mr Mark Edghill

164 Dr P McDermott, EiC at 2.1(c).

142. Mr Chris Ferguson suggested to us that because of the overlapping functions between commercial centres, referring to *"the wider Frankton commercial area"* confused the message[165].

143. Evidence we heard, in particular from the NZIA representatives, took the same point further, suggesting that Frankton's importance to the community was not limited to its commercial and industrial facilities, and that it had an important role in the provision of educational, health and recreation facilities as well. We accept that point too. This evidence suggests a need to refer broadly to the wider Frankton area than just to specific nodes or elements, and to a broader range of community facilities.

144. The extent to which this objective should focus on integration was also a matter in contention. The representatives for QAC opposed reference to integration for reasons that were not entirely clear to us and when he reappeared on the final day of hearing, Mr Kyle giving evidence for QAC, said that he was ambivalent on the point.

145. For our part, we regard integration between the various commercial and industrial nodes of development on the Frankton Flats (including Queenstown Airport), and indeed its residential areas[166], as being important, but consider that this is better dealt with as a policy. We will come back to that.

146. In summary, we recommend that Mr Paetz's suggested objective largely be accepted, but with the addition of specific reference to its focus on visitors, to provide a clearer distinction between the roles of Queenstown and Wanaka town centres and Frankton and Three Parks respectively.

147. Accordingly, we recommend that the wording of Objective 3.2.1.1 (renumbered 3.2.1.2 for reasons we will shortly explain) be amended so read:

"The Queenstown and Wanaka town centres[167] are the hubs of New Zealand's premier alpine visitor resorts and the District's economy."

148. We further recommend that a new objective be added (numbered 3.2.1.3) as follows:

"The Frankton urban area functions as a commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin."

149. The case for recognition of the Three Parks commercial area is less clear, While, when the development is further advanced, it will be a significant element of the economy of the Upper Clutha Basin, that is not the case at present.

150. Mr Dippie appeared before us and made representations on behalf of Orchard Road Holdings Limited[168] and Willowridge Developments Limited[169] advocating recognition of Three Parks in the same way that the Frankton commercial areas were proposed (by Council staff) to be

---

165 C Ferguson, EiC at paragraph 103

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

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

168 Submission 91/Further Submission 1013

169 Submission 249/Further Submission 1012

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

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

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

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

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

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

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

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

156. The only submission seeking amendment to the notified Objective 3.2.1.3, sought that it be reworded as an aspirational outcome to be achieved, rather than as a policy[170]. In his reply evidence, the version of this objective suggested by Mr Paetz (addressing this point) read:

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

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

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

[170] Submission 761

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

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

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

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

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

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

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

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

164. Objective 3.2.1.2 was obviously developed to operate in conjunction with 3.2.1.1. As notified, it referred to the role played by commercial centres and industrial areas outside the Wanaka and Queenstown central business areas.

165. Many of the submissions on this objective were framed around the fact that as written, it would apply to the Frankton Flats commercial and industrial areas, and to the Three Parks commercial area. As such, if our recommendations as above are accepted, those submissions have effectively been overtaken, being addressed by insertion of specific objectives for those areas.

166. In Mr Paetz's reply evidence, the version of this objective he recommended read:

"Enhance and sustain the key local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres and Frankton."

167. Starting with two verbs, this still reads more like a policy than an objective. Mr Paetz's suggested objective also fails to take account of his recommendation (which we accept) that the commercial area of Three Parks be the subject of a specific objective. Lastly, and as for renumbered Objective 3.2.1.2, it needs clarity as to the extent of the *'town centres'*.

168. Addressing these matters, we recommend that this objective (renumbered 3.2.1.5) be amended to read as follows:

"Local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres[171], Frankton, and Three Parks are sustained."

169. Objective 3.2.1.4 as notified read:

"Recognise the potential for rural areas to diversify their land use beyond the strong productive value of farming, provided a sensitive approach is taken to rural amenity, landscape character, healthy ecosystems, and Ngai Tahu values, rights and interests."

170. This objective attracted a large number of submissions querying the reference to farming having a "*strong productive value"*[172]with many of those submissions seeking that the objective refer to "*traditional"* land uses. Some submissions[173] sought that the objective be more overtly *'enabling'*. One submission[174] sought to generalise the objective so that it does not mention the nature of current uses, but rather focuses on enabling *"tourism, employment, recreational, and residential based activities"* and imports a test of *"functional need to be located in rural areas."* Mr Carey Vivian, giving evidence both for this submitter and a further submitter opposing the submission[175], suggested to us that a *'functional need'* test would ensure inappropriate diversification does not occur. Mr Chris Ferguson supported another submission[176] that suggested a functional need test[177], but did not comment on how that test should be interpreted. We are not satisfied that Mr Vivian's confidence is well founded. As we will discuss later in this report in relation to suggestions that activities relying on the use of rural resources should be provided for, these seem to us to be somewhat elastic concepts, potentially applying to a wide range of activities.

171. Many submissions also sought deletion of the reference to a *"sensitive*" approach[178].

---

171 Defined by the extent of the Town Centre Zone in each case

172 See e.g. Submissions 343, 345, 375, 407, 437, 456, 513, 522, 532, 534, 535, 537, 696, 806, 807; Supported in FS1097, FS1192, FS1256, FS1286, FS1322; Opposed in FS1004, FS1068, FS1071, FS1120, FS1282, FS1322.

173 E.g. Submission 621

174 Submission 519; Supported in FS1015 and FS1097; Opposed in FS1356

175 Further Submission 1356

176 Submission 608-Darby Planning LP

177 As part of a revised version of the objective that has similarities to that sought in Submission 519, but also some significant differences discussed further below.

178 See e.g. Submissions 519, 598, 600, 791, 794, 806, 807; Supported in FS1015, FS1097, FS1209; Opposed in FS1034, FS1040, FS1356

172. Suggestions varied as to how potential adverse effects resulting from diversification of land uses might be addressed. One submitter[179] suggested adverse effects on the matters referred to be taken into account, or alternatively that an *'appropriate'* approach be taken to adverse effects. Mr Vivian, giving planning evidence on the point, suggested as a third alternative, an *'effects-based'* approach. Another submitter[180] suggested that potential adverse effects be avoided, remedied or mitigated. Mr Jeff Brown supported the latter revision in his planning evidence[181], on the basis that he preferred the language of the Act. Yet another submission[182], supported by the planning evidence of Mr Chris Ferguson, suggested that reference to adverse effects be omitted (in the context of a reframed objective that would recognise the value of the natural and physical resources of rural areas to enable specified activities and to accommodate a diverse range of activities).

173. By Mr Paetz's reply evidence, he had arrived at the following recommended wording:

"*Diversification of land use in rural areas providing adverse effects on rural amenity, landscape character, healthy ecosystems and Ngai Tahu values, rights and interests are avoided, remedied or mitigated."*

174. Looking to the RPS for direction, we note that Objective 5.4.1 identifies maintenance and enhancement of the primary production capacity of land resources as an element of sustainable management of those resources. Policy 5.5.2 is also relevant, promoting retention of the primary productive capacity of high class soils. We did not hear any evidence as to whether any, and if so, which, soils would meet this test in the District, but Policy 5.5.4 promotes diversification and use of the land resource to achieve sustainable land use and management systems. While generally expressed, the latter would seem to support the outcome the PDP objective identifies, at least in part.

175. The Proposed RPS focuses on the sufficiency of land being managed and protected for economic production[183]. This is supported by policies providing, inter alia, for enabling of primary production and other activities supporting the rural economy and minimising the loss of significant soils[184]. This also supports recognition of the primary sector.

176. We accept that the many submissions taking issue with the reference to the strong productive value of farming have a point, particularly in a District where the visitor industry makes such a large contribution to the economy, both generally and relative to the contribution made by the farming industry[185]. Nor is it obvious why, if the effects-based tests in the objective are met, diversification of non-farming land uses is not a worthwhile outcome.

177. The alternative formulation of the objective suggested by Darby Planning LP, and supported by Mr Ferguson, would side-step many of the other issues submissions have focussed on, but ultimately, we take the view that stating rural resources are valued for various specified purposes does not sufficiently advance achievement of the purpose of the Act. Put simply, it invites the query: so what?

---

179 Submission 519; Supported in FS1015 and FS1097; Opposed in FS1356

180 Submission 806

181 At paragraph 4.7

182 Submission 608; Supported in FS1097, FS1117, FS1155, FS1158; Opposed in FS1034

183 Proposed RPS, Objective 5.3

184 Proposed RPS, Policy 5.3.1

185 We note in particular the evidence of Mr Ben Farrell (on behalf of Real Journeys Ltd in relation to this point).

178. Reverting to Mr Paetz's recommendation, in our view, it is desirable to be clear what the starting point is; diversification from what? Accordingly, we recommend the submissions seeking that reference be to traditional land uses in rural areas be accepted. Clearly farming is one such traditional land use and we see no issue with referring to that as an example. We do not accept that a *'functional need'* test would add value, because of the lack of clarity as to what that might include.

179. We also agree that the reference in a notified objective to a sensitive approach requires amendment because it gives little clarity as to the effect of the sensitive approach on the nature and extent of adverse effects. We do not, however, recommend that reference be made to adverse effects being avoided, remedied or mitigated. For the reasons discussed above, this gives no guidance as to the desired level of adverse effects on the matters listed. The suggestions that the objective refer to adverse effects being taken into account, or that an appropriate approach be taken to them. would push it even further into the realm of meaninglessness[186]. Those options are not recommended either.

180. Some submissions[187] sought to generalise the nature of the adverse effects required to be managed, deleting any reference to any particular category of effect.

181. In our view, part of the answer is to be clearer about the nature of adverse effects sought to be controlled, combined with being clear about the desired end result. We consider that rural amenity is better addressed through objectives related to activities in the rural environment more generally. Reference to healthy ecosystems in this context is, in our view, problematic. The health of the ecosystems does not necessarily equate with their significance. In addition, why are adverse effects on healthy ecosystems more worthy of protection from diversified land uses than unhealthy ecosystems? One would have thought it might be the reverse.

182. The PDP contains an existing definition of "nature conservation values". When counsel for the Council opened the hearing, we queried the wording of this definition which incorporated policy elements and did not actually fit with the way the term had been used in the PDP. Counsel agreed that it needed amendment and in Mr Paetz's reply evidence he suggested the following revised definition of nature conservation values:

"The collective and interconnected intrinsic values of the indigenous flora and fauna, natural ecosystems and landscape."

183. We regard the inclusion of a generalised reference to landscape as expanding nature conservation values beyond their proper scope. Landscape is relevant to nature conservation values to the extent that it provides a habitat for indigenous flora and fauna and natural ecosystems, but not otherwise.

184. Objective 21.2.1 of the PDP refers to ecosystem services as a value deserving of some recognition. The term itself is defined in Chapter 2 as the resources and processes the environment provides. We regard it as helpful to make it clear that when natural ecosystems are referred to in the context of nature conservation values, the collective values of ecosystems include ecosystem services.

---

186 As indeed would the further alternative suggested by Mr Vivian

187 E.g. Submissions 806 and 807

185. Accordingly, we recommend to the Stream 10 Hearing Panel that the definition of nature conservation values be amended to read:

"The collective and interconnected intrinsic values of indigenous flora and fauna, natural ecosystems (including ecosystem services), and their habitats."

186. Given this revised definition, nature conservation values is a concept which, in our view, could be utilised in this objective. However, given the breadth of the values captured by the definition, it would not be appropriate to refer to all nature conservation values. Some qualitative test is required; in this context, we recommend that the focus be on 'significant' nature conservation values.

187. Lastly, consequential on the changes to the Proposed RPS discussed in Report 2, and to the recommendations of that Hearing Panel as to how Objective 3.2.7.1 is framed, the reference to Ngāi Tahu values, **rights** and interests needs to be reviewed.

188. In summary, therefore, we recommend that the objective (renumbered 3.2.1.8) read as follows:

"Diversification of land use in rural areas beyond traditional activities, including farming, provided that the character of rural landscapes, significant nature conservation values and Ngāi Tahu values, interests and customary resources are maintained."

189. While we agree with Mr Paetz's recommendation that reference to the strong productive value of farming (in the context of notified Objective 3.2.1.4) be deleted, deletion of that reference, and amending the objectives to refer to realisation of the benefits from the visitor industry and diversification of current land uses leaves a gap, because it fails to recognise the economic value of those traditional farming activities. We accept that ongoing farming also provides a collateral benefit to the economy through its contribution to maintenance of existing rural landscape character, on which the visitor industry depends[188]. Mr Ben Farrell gave evidence suggesting, by contrast, that farming has had adverse effects on natural landscapes and that those *'degraded'* natural environments had significant potential to be restored[189]. We accept that farming has extensively modified the natural (pre-European settlement) environment. However, the expert landscape evidence we heard (from Dr Read) is that large areas of farmed landscapes are outstanding natural landscapes and section 6(b) requires that those landscapes be preserved. Cessation of farming might result in landscapes becoming more natural, but we consider that any transition away from farming would have to be undertaken with great care.

190. Continuation of the status quo, by contrast, provides greater surety that those landscapes will be preserved. As already noted, recognition of existing primary production activities is also consistent both with the RPS and the Proposed RPS. The notified Objective 3.2.5.5. sought to address the contribution farming makes to landscape values, as follows:

"Recognise that agricultural land use is fundamental to the character of our landscapes."

---

188 The relationship between landscape values and economic benefits was recognised by the Environment Court as long ago as *Crichton v Queenstown Lakes District Council*. W12/99 at page 12. Dr Read gave evidence that this remains the position – see Dr M Read, EiC at 4.2.

189 B Farrell, EiC at [111] and [116]

191. That objective attracted a large number of submissions, principally from tourist interests and parties with an interest in residential living in rural environments, seeking that it recognise the contribution that other activities make to the character of the District's landscapes[190]. This prompted Mr Paetz to recommend that the focus of the objective be shifted to read:

"The character of the District's landscapes is maintained by ongoing agricultural land use and land management."

192. We agree with the thinking underlying Mr Paetz's recommendation, that as many submitters suggest, agricultural land uses are not the only way that landscape character is maintained.

193. However, we have a problem with that reformulation, because not all agricultural land use and land management will maintain landscape character[191].

194. We are also wary of any implication that existing farmers should be locked into farming as the only use of their land, particularly given the evidence we heard from Mr Phillip Bunn as to the practical difficulties farmers have in the Wakatipu Basin continuing to operate viable businesses. The objective needs to encourage rather than require farming of agricultural land.

195. The suggested objective also suffers from implying rather than identifying the desired environmental end point. To the extent the desired end point is continued agricultural land use and management (the implication we draw from the policies seeking to implement the objective), landscape character values are not the only criterion (as the policies also recognise – referring to significant nature conservation values).

196. We therefore recommend that Objective 3.2.5.5 be shifted to accompany the revised Objective 3.2.1.4, as above, and amended to read as follows:

"Agricultural land uses consistent with the maintenance of the character of rural landscapes and significant nature conservation values are enabled."

197. Logically, given that agricultural land uses generally represent the status quo in rural areas, this objective should come before the revised Objective 3.2.1.4 and so we have reordered them, numbering this Objective 3.2.1.7.

198. The final objective in Section 3.2.1, as notified, related to provision of infrastructure, reading:

"Maintain and promote the efficient operation of the District's infrastructure, including designated Airports, key roading and communication technology networks."

199. A number of submissions were lodged by infrastructure providers[192] related to this objective, seeking that its scope be extended in various ways, discussed further below. We also heard a substantial body of evidence and legal argument regarding the adequacy of treatment for

---

190 Submissions 343, 345, 375, 407, 437, 456, 513, 515, 522, 531, 534, 535, 537, 598, 807; Supported in FS1097, FS1056, FS1086, FS1287, FS1292, FS1322; Opposed in FS1068, FS1071, FS1091, FS1120 and FS1282

191 Mr Dan Wells suggested to us the introduction of pivot irrigators for instance as an example of undesirable agricultural evolution from a landscape character perspective).

192 Submissions 251, 433, 635, 719, 805; Supported in FS1077, FS1092, FS1097, FS1115, FS1117, FS1159, FS1340; Opposed in FS1057, FS1117, FS1132

infrastructure in this regard, and elsewhere. We were reminded by Transpower New Zealand Limited[193] that we were obliged to give effect to the NPSET 2008.

200. Other submissions[194] sought deletion of an inclusive list. Submission 807 argued that the *'three waters'* are essential and should be recognised. That submission also sought that the objective emphasise timely provision of infrastructure. Submission 806 sought that the objective recognise the need to minimise adverse effects by referring to the importance of maintaining the quality of the environment.

201. Another approach suggested was to clarify/expand the description of infrastructure[195]

202. Mr Paetz recommended that we address these submissions by inserting a new goal, objective and policy into Chapter 3.

203. We do not agree with that recommendation. It seems to us that while important at least to the economic and social wellbeing of people and communities (to put it in section 5 terms), infrastructure needs (including provisions addressing reverse sensitivity issues) are ultimately an aspect of development in urban and rural environments so as to achieve a prosperous and resilient economy (and therefore squarely within the first goal/high-level objective), rather than representing a discrete topic that should be addressed with its own goal/high-level objective.

204. That does not mean, however, that this is not an appropriate subject for an objective at the next level down. Reverting then to the notified objective, we consider the submissions opposing the listing of some types of infrastructure have a point. Even though the list is expressed to be inclusive, it invites a '*me too*' approach from those infrastructure providers whose facilities have not been listed[196] and raises questions as to why some infrastructure types are specifically referenced, and not others. The definition of 'infrastructure' in the Act is broad, and we do not think it needs extension or clarification.

205. The essential point is that the efficient operation of infrastructure is a desirable outcome in the broader context of seeking a prosperous and resilient District economy. Quite apart from any other considerations, Objective 9.4.2 of the RPS (promoting the sustainable management of Otago's infrastructure[197]) along with Policy 9.5.2 (promoting and encouraging efficiency and use of Otago's infrastructure) would require its recognition. We regard that as an appropriate objective, provided that outcome is not pursued to the exclusion of all other considerations; in particular, without regard to any adverse effects on the natural environment that might result.

206. It follows that we accept in principle the point made in Submission 806, that adverse effects of the operation of infrastructure need to be minimised as part of the objective.

207. As regards the submissions seeking extension of the scope of the objective, we accept that this objective might appropriately be broadened to relate to the provision of infrastructure, as well

193 Submission 805

194 Submissions 806 and 807; Opposed in FS1077

195 Submissions 117 and 238: Supported in FS1117; Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

196 Accepting that submissions of this ilk were not limited to infrastructure providers- NZIA sought that bridges be added to the list.

197 See Objective 4.3 of the Proposed RPS to similar effect

as its operation. Submitters made a number of suggestions as to how a revised objective might be framed to extend it beyond infrastructure *'operation'*. Variations included reference to:

a. Infrastructure *'development'*[198]
b. '*Provision'* of infrastructure[199]
c. *'Maintenance development and upgrading'* of infrastructure[200], wording that we note duplicates Policy 2 of the NPSET 2008.

208. In terms of how infrastructure should be described in the objective, again there were a number of suggestions. Some submissions sought that infrastructure provision be *'effective'*[201], again reflecting wording in the NPSET 2008. Submission 635 also suggested that reference be made to safety. Lastly, and as already noted, submission 807 sought that reference be made to the timing of the infrastructure provision.

209. Mr Paetz recommended the following wording:

"Maintain and promote the efficient and effective operation, maintenance, development and upgrading of the District's existing infrastructure and the provision of new infrastructure to provide for community wellbeing."

210. We do not regard Mr Paetz's formulation as satisfactory. Aside from the absence of an environmental performance criterion and the fact that it is not framed as an outcome, the suggested division between existing and new infrastructure produces anomalies. Existing infrastructure might be operated, maintained and upgraded, but it is hard to see how it can be developed (by definition, if it exists, it has already been developed). Similarly, once provided, why should new infrastructure not be maintained and upgraded? The way in which community wellbeing is referenced also leaves open arguments as to whether it applies to existing infrastructure, or just to new infrastructure.

211. We also think that *'community wellbeing'* does not capture the true role of, or justification for recognising, infrastructure. Submissions 806 and 807 suggested that reference be to infrastructure "*that supports the existing and future community"*, which is closer to the mark, but rather wordy. We think that reference would more appropriately be to meeting community needs.

212. The RPS is too generally expressed to provide direction on these issues, but we take the view that the language of the NPSET 2008 provides a sensible starting point, compared to the alternatives suggested, given the legal obligation to implement the NPSET. Using the NPSET 2008 language and referring to *'effective'* infrastructure also addresses the point in Submission 807 – effective infrastructure development will necessarily be timely. Lastly, while safety is important, we regard that as a prerequisite for all development, not just infrastructure.

213. Taking all of these considerations into account, we recommend that Objective 3.2.1.5 be renumbered 3.2.1.9 and revised to read:

"Infrastructure in the District that is operated, maintained developed and upgraded efficiently and effectively to meet community needs and which maintains the quality of the environment".

198 Submission 251; Supported in FS1092, FS1097, FS1115, FS1117; Opposed in FS1132
199 Submissions 635, 806, 807; Supported in FS 1159, Opposed in FS1077
200 Submission 805
201 Submissions 635, 805; Supported in FS1159

214. Having recommended an objective providing generically for infrastructure, we do not recommend acceptance of the New Zealand Fire Service Commission submission[202] that sought a new objective be inserted into Section 3.2.1 providing for emergency services. While important, this can appropriately be dealt with in the more detailed provisions of the PDP.

215. In summary, having considered all of the objectives in its proposed Section 3.2.1, we consider them individually and collectively to be the most appropriate way in which to achieve the purpose of the Act as it relates to the economy of the District.

2.4. Section 3.2.2 Goal – Urban Growth Management

216. The second specified *'goal'* read:

"The strategic and integrated management of urban growth".

217. A number of submissions supported this goal in its current form. One submission in support[203] sought that it be expanded to cover all growth within the district, not just urban growth.

218. One submission[204] sought its deletion, without any further explanation. Another submission[205] sought in relation to this goal, an acknowledgement that some urban development might occur outside the UGB.

219. A number of other submissions sought relief nominally in respect of the Section 3.2.2 goal that in reality relate to the more detailed objectives and policies in that section. We consider them as such.

220. Mr Paetz did not recommend any amendment to this goal.

221. The focus of the RPS previously discussed (on sustainable management of the built environment) is too generally expressed to provide direction in this context. The Proposed RPS focuses more directly on urban growth under Objective 4.5 (*"Urban growth and development is well-designed, reflects local character and integrates effectively with adjoining urban and rural environments"*). Policy 4.5.1 in particular supports this goal – it refers specifically to managing urban growth in a strategic and coordinated way.

222. Reverting to the submissions on it, we do not regard it as appropriate that this particular goal/high-level objective be expanded to cover all growth within the District. Growth within rural areas raises quite different issues to that in urban areas.

223. Nor do we accept Submission 807. The goal is non-specific as to where urban growth might occur. The submitter's point needs to be considered in the context of the more detailed objectives and policies fleshing out this goal.

224. Accordingly, the only amendment we would recommend is to reframe this goal more clearly as a higher-level objective, as follows:

"Urban growth managed in a strategic and integrated manner."

---

202 Submission 438; Supported in FS1160

203 Submission 471; Supported in FS1092

204 Submission 294

205 Submission 807

225. We consider that a high-level objective in this form is the most appropriate way to achieve the purposes of the Act as it relates to urban growth.

2.5. Section 3.2.2 Objectives – Urban Growth Management

226. Objective 3.2.2.1 is the primary objective related to urban growth under what was goal 3.2.2. As notified it read:

"Ensure urban development occurs in a logical manner:
a. To promote a compact, well designed and integrated urban form;
b. To manage the cost of Council infrastructure; and
c. To protect the District's rural landscapes from sporadic and sprawling development."

227. Submissions on this objective sought variously:
a. Its deletion[206];
b. Recognition of reverse sensitivity effects on significant infrastructure as another aspect of logical urban development[207];
c. Deletion of reference to logical development and to sporadic and sprawling development, substituting reference to "urban" development[208];
d. Removal of the implication that the only relevant infrastructure costs are Council costs[209];
e. Generalising the location of urban development ("*appropriately located*") and emphasising the relevance of efficiency rather than the cost of servicing[210].

228. The version of this objective recommended by Mr Paetz in his reply evidence accepted the point that non-Council infrastructure costs were a relevant issue, but otherwise recommended only minor drafting changes.

229. In our view, consideration of this objective needs to take into account a number of other objectives in Chapter 3:

"3.2.2.2: Manage development in areas affected by natural hazards."[211]
3.2.3.1 Achieve a built environment that ensures our urban areas are desirable and safe places to live, work and play;
3.2.6.1 Provide access to housing that is more affordable;
3.2.6.2 Ensure a mix of housing opportunities.
3.2.6.3 Provide a high quality network of open spaces and community facilities."

230. Submissions on the above objectives sought variously:
a. Deletion of Objective 3.2.2.2[212];

206 Submission 806
207 Submissions 271 and 805; Supported in FS1092, FS1121, FS1211, FS1340; Opposed in FS 1097 and FS1117
208 Submission 608; Opposed in FS1034
209 Submission 635
210 Submissions 806 and 807
211 Although this could be read to apply to non-urban development in isolation, in the context of an urban development goal and a supporting policy focussed on managing higher density urban development, that is obviously not intended.
212 Submission 806

b. Amendment of 3.2.6.1 so that it is more enduring and refers not just to housing, but also to land supply for housing[213];
c. Addition of reference in 3.2.6.1 to design quality[214];
d. Collapsing 3.2.6.1 and 3.2.6.2 together[215];
e. Amendment of 3.2.6.2 to refer to housing densities and typologies rather than opportunities[216];
f. Amendment to 3.2.6.3 to refer to community activities rather than community facilities if the latter term is not defined to include educational facilities[217].

231. Remarkably, for this part of the PDP at least, Objective 3.2.3.1 does not appear to have been the subject of any submissions, other than to the extent that it is caught by UCES's more general relief, seeking that Chapter 3 be deleted.

232. Mr Paetz did not recommend substantive changes to any of these objectives, other than to rephrase them as seeking an environmental outcome.

233. We have already noted some of the provisions of the RPS relevant to these matters. As in other respects, the RPS is generally expressed, so as to leave ample leeway in its implementation, but Policy 9.5.5 is worthy of mention here – it directs maintenance and where practicable enhancement of the quality of life within the build environment, which we regard as supporting Objective 3.2.3.1.

234. The Proposed RPS contains a number of provisions of direct relevance to this group of objectives. We have already noted Objective 4.5, which supports a focus on good design and integration, both within and without existing urban areas. Aspects of Policy 4.5.1 not already mentioned focus on minimising adverse effects on rural activities and significant soils, maintaining and enhancing significant landscape or natural character values, avoiding land with significant risk from natural hazards and ensuring efficient use of land. These provisions provide strong support for the intent underlying many of the notified objectives.

235. In our view, the matters covered by the group of PDP objectives we have quoted are so interrelated that they could and should be combined in one overall objective related to urban growth management.

236. In doing so, we recommend that greater direction be provided as to what outcome is sought in relation to natural hazards. Mr Paetz's recommended objective suggests that development in areas affected by natural hazards "*is appropriately managed*". This formulation provides no guidance to decision makers implementing the PDP. While the RPS might be considered equally opaque in this regard[218], the proposed RPS takes a more directive approach. Policy 4.5.1, as noted, directs avoidance of land with significant natural hazard risk. Objective 4.1 of the Proposed RPS states:

"Risk that natural hazards pose to Otago's communities are minimised."

---

213 Submissions 513, 515, 522, 528, 531, 532, 534, 535, 537: Supported in FS1256, FS1286, FS1292, FS1322; Opposed in FS1071 and FS1120

214 Submission 238: Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1249

215 Submission 806

216 Submission 608: Opposed in FS1034

217 Submission 524

218 Refer Objective 11.4.2 and the policies thereunder

237. Having regard to these provisions (as we are bound to do), we recommend that the focus on natural hazard risk in relation to urban development similarly be on minimising that risk.

238. It is also relevant to note that the Proposed RPS also has an objective[219] seeking that Otago's communities "*are prepared for and are able to adapt to the effects of climate change"* and a policy[220] directing that the effects of climate change be considered when identifying natural hazards. While the RPS restricts its focus on climate change to sea-level rise[221], which is obviously not an issue in this District, this is an area where we consider the Proposed RPS reflects a greater level of scientific understanding of the potential effects of climate change since the RPS was made operative[222].

239. As above, submissions focus on the reference to logical development. It is hard to contemplate that urban development should be illogical (or at least not intentionally so), but we recommend that greater guidance might be provided as to what is meant by a logical manner of urban development. Looking at Chapter 4, and the areas identified for urban development, one obvious common feature is that they build on historical urban settlement patterns (accepting that in some cases it is a relatively brief history), and we recommend that wording to this effect be inserted in this objective.

240. Lastly, consistent with our recommendation above, reference is required in this context to the interrelationship of urban development and infrastructure. Mr Paetz's suggested formulation (manages the cost of infrastructure) does not seem to us to adequately address the issue. First, the concept that costs would be managed provides no indication as to the end result – whether infrastructure costs will be high, low, or something in between. Secondly, while obviously not intended to do so (Mr Paetz suggests a separate objective and policy to deal with it), restricting the focus of the objective to the costs of infrastructure does not address all of the reverse sensitivity issues that both QAC and Transpower New Zealand Limited emphasised to us, the latter with reference to the requirements of the NPSET 2008.

241. The suggestion by Remarkables Park Ltd and Queenstown Park Ltd that the focus be on efficiency of servicing, while an improvement on '*managing'* costs, similarly does not get close to addressing reverse sensitivity issues.

242. We accordingly recommend that reference should be made to integration of urban development with existing and planned future infrastructure. While this is still reasonably general, the recommendations following will seek to put greater direction around what is meant.

243. We regard reference to community housing as being too detailed in this context and do not agree with the suggestion that sprawling and sporadic development is necessarily *'urban'* in character[223]. Mr Chris Ferguson[224], suggested as an alternative to the relief sought, that the objective refer to "*urban sprawl development",* which from one perspective, would restrict the ambit of the protection the objective seeks for rural areas still further. Mr Ferguson relied on

---

219 Objective 4.2.2

220 Policy 4.1.1(d)

221 Policy 8.5.8

222 As well as reflecting the legislative change to add section 7(i) to the Act

223 Depending of course on how 'urban development' is defined. This is addressed in much greater detail below.

224 Giving planning evidence on the submission of Darby Planning LP

the fact that Mr Bird's evidence referred to sprawling development, but not to sporadic development, in his evidence. However, Mr Bird confirmed in answer to our question that he regarded sporadic development in the rural areas as just as concerning as sprawling development. Accordingly, we do not accept Mr Ferguson's suggested refinement of the relief the submission sought.

244. We likewise do not accept the alternative relief sought in Submission 529. We consider that the role of educational facilities is better dealt with in the definition section, as an aspect of community facilities, than by altering the objective to refer to community activities. Such an amendment would be out of step with the focus of the objective on aspects of urban development.

245. Finally, we consider all objectives and policies will be more readily understood (and more easily referred to in the future) if any lists within them are alphanumeric lists rather than bullet points. Such a change is recommended under Clause 16(2) and all our recommended objectives and policies reflect that change.

246. In summary, we recommend that Objective 3.2.2.1 be amended to read:

"Urban development occurs in a logical manner so as to:

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

247. We consider that an objective in this form is the most appropriate way to expand on the high-level objective and to achieve the purpose of the Act as it relates to urban development.

2.6. Section 3.2.3 – Goal – Urban Character

248. As notified, the third goal read:

"A quality built environment taking into account the character of individual communities."

249. A number of submissions supported this goal. One submission[225] sought its deletion.

250. Mr Paetz did not recommend any change to this goal.

251. Recognition of the character of the built environment implements the generally expressed provisions of the RPS related to the built environment (Objective 9.4 and the related policies) already noted. A focus on local character is also consistent with objective 4.5 of the Proposed RPS.

[225] Submission 807

252. While Mr Haworth's criticism of it in his evidence for UCES (as being "*a bit waffly"* and *"obvious")* is not wholly unjustified, we consider that there is a role for recognition of urban character as a high-level objective that is expanded on by more detailed objectives. The goal as notified is already expressed in the form of an objective. Accordingly, we recommend its retention with no amendment as being the most appropriate way to achieve the purpose of the Act.

2.7. Section 3.2.3 – Objectives – Urban Character

253. We have already addressed Objective 3.2.3.1 as notified and recommended that it be shifted into Section 3.2.2.

254. Objective 3.2.3.2 as notified, read:

"Protect the District's cultural heritage values and ensure development is sympathetic to them."

255. The submissions on this objective either seek its deletion[226], or that protection of cultural heritage values be "*from inappropriate activities"*[227]*.*

256. Mr Paetz's reply evidence recommended that the objective be framed as:

"Development is sympathetic to the District's cultural heritage values."

257. Reference to cultural heritage includes both Maori and non-Maori cultural heritage. The former is, however, already dealt with in Section 3.2.7 and we had no evidence that non-Maori cultural heritage expands beyond historic heritage, so we recommend the objective be amended to focus on the latter.

258. Historic heritage is not solely an urban development issue, and so this should remain a discrete objective of its own, if retained, rather than being amalgamated into Objective 3.2.3.1.

259. Consideration of this issue comes against a background where Policy 9.5.6 of the RPS directs recognition and protection of Otago's regionally significant heritage sites through their identification in consultation with communities and development of means to ensure they are protected from inappropriate subdivision, use and development. Both the language and the intent of this policy clearly reflects section 6(f) of the Act, requiring that the protection of historic heritage from inappropriate subdivision, use and development be recognised and provided for, without taking the provisions of the Act much further.

260. The Proposed RPS provides rather more direction with a policy[228] that the values and places and areas of historic heritage be protected and enhanced, among other things by avoiding adverse effects on those values that contribute to the area or place being of regional or national significance, and avoiding significant adverse effects on other values of areas and places of historic heritage.

261. Taking the provisions of the RPS and the Proposed RPS on board, deletion of this objective, at least as it relates to historic heritage, clearly cannot be recommended. The guidance from *King Salmon* as to the ordinary natural meaning of "*inappropriate"* in the context of a provision

226 Submission 806

227 Submissions 607, 615, 621 and 716: Supported in FS1105, FS1137 and FS1345

228 Policy 5.2.3

providing for protection of something inappropriate from subdivision use and development means that the objective, with or without reference to inappropriate development, would go further (be more restrictive) than implementation of the RPS or consistency with the Proposed RPS would require. However, we do not think that Mr Paetz's suggested wording referring to sympathetic development (on its own) is clear enough to endorse.

262. In summary, we recommend that the objective be reworded as follows:

"The District's important historic heritage values are protected by ensuring development is sympathetic to those values."

263. Taking account of the objectives recommended to be included in Section 3.2.2, we consider that this objective is the most appropriate way to achieve the purpose of the Act as it relates to urban character.

2.8. Section 3.2.4 – Goal – Natural Environment

264. As notified, this goal read:

"The protection of our natural environment and ecosystems".

265. A number of submissions supported this goal. Two submissions opposed it[229]. Of those, Submission 806 sought its deletion (along with the associated objectives and policies).

266. Mr Paetz did not recommend any amendment to this goal.

267. Even as a high-level aspirational objective, the protection of all aspects of the natural environment and ecosystems is unrealistic and inconsistent with Objective 3.2.1. Nor does the RPS require such an ambitious overall objective - Objective 10.4.2 for instance seeks protection of natural ecosystems (and primary production) "*from significant biological and natural threats".* Objective 10.4.3 seeks the maintenance and enhancement of the natural character of areas "*with significant indigenous vegetation and significant habitats of indigenous fauna".*

268. The Proposed RPS addresses the same issue in a different way, focussing on the "values" of natural resources (and seeking they be maintained and enhanced[230]).

269. We consider it would therefore be of more assistance if some qualitative test were inserted so as to better reflect the direction provided at regional level (and Part 2 of the Act). Elsewhere in the PDP, reference is made to *'distinctive'* landscapes and this is an adjective we regard as being useful in this context. The more detailed objectives provide clarity as to what might be considered '*distinctive'* and the extent of the protection envisaged.

270. Accordingly, we recommend that this goal/high-level objective be reframed as follows:

"The distinctive natural environments and ecosystems of the District are protected."

271. We consider this is the most appropriate way to achieve the purpose of the Act in the context of a high-level objective related to the natural environment and ecosystems.

---

229 Submissions 806 and 807

230 Proposed RPS, Objective 3.1

2.9. Section 3.2.4 – Objectives – Natural Environment

272. Objective 3.2.4.1 as notified, read as follows:

"Promote development and activities that sustain or enhance the life supporting capacity of air, water, soils and ecosystems."

273. The RPS has a number of objectives seeking maintenance and enhancement, or alternatively safeguarding of life supporting capacity of land, water and biodiversity[231], reflecting the focus on safeguarding life supporting capacity in section 5 of the Act. In relation to fresh water and aquatic ecosystems, the NPSFM 2014 similarly has that emphasis. The Proposed RPS, by contrast, does not have the same focus on life supporting capacity, or at least not directly so. The combination of higher order provisions, however, clearly supports the form of this objective.

274. The only submissions on the objective either support the objective as notified[232], or seek that it be expanded to refer to maintenance of indigenous biodiversity[233].

275. Mr Paetz recommended that the latter submission be accepted and reframing the objective to pitch it as environmental outcome, his version as attached to his reply evidence reads as follows:

"Ensure development and activities maintain indigenous biodiversity, and sustain or enhance the life supporting capacity of air, water, soil and ecosystems."

276. So framed, the objective still starts with a verb and therefore, arguably, states a course of action (policy) rather than an environmental outcome.

277. It might also be considered that shifting the '*policy'* from promoting an outcome to ensuring it occurs is a significant substantive shift that is beyond the scope of the submissions as above.

278. We accordingly recommend that this objective be reframed as follows:

"Development and land uses that sustain or enhance the life-supporting capacity of air, water, soil and ecosystems, and maintain indigenous biodiversity."

279. Objective 3.2.4.2 as notified read:

"Protect areas with significant Nature Conservation Values".

280. Submissions on this objective included requests for:
    a. Expansion to apply to significant waterways[234];
    a. Substitution of reference to the values of Significant Natural Areas[235];
    b. Amendment to protect, maintain and enhance such areas[236];

---

231 RPS, Objectives 5.4.1, 6.4.3, 10.4.1..

232 Submissions 600, 755: Supported in FS1209; Opposed in FS1034 – noting the discussion above regarding the efficacy of further submissions opposing submissions that support the notified provisions of the PDP

233 Submissions 339, 706: Opposed in FS1097, FS1162 and FS1254

234 Submission 117

235 Submission 378: Opposed in FS1049 and FS1095

236 Submission 598: Supported in FS1287; Opposed in FS1040

c. Addition of reference to appropriate management as an alternative to protection[237].

281. The version of this objective recommended by Mr Paetz in his reply evidence is altered only to express it as an environmental outcome.

282. Objective 10.4.3 of the RPS, previously noted, might be considered relevant to (and implemented by) this objective[238].

283. As above, we recommend that the definition of '*Nature Conservation Values'* be clarified to remove policy elements and our consideration of this objective reflects that revised definition. We do not consider it is necessary to specifically state that areas with significant nature conservation values might be waterways. We likewise do not recommend reference to *'appropriate management'*, since that provides no direction to decision-makers implementing the PDP.

284. However, we have previously recommended that maintenance of significant Nature Conservation Values be part of the objective relating both to agricultural land uses in rural areas and to diversification of existing activities. As such, we regard this objective as duplicating that earlier provision and unnecessary. For that reason[239], we recommend that it be deleted.

285. Objective 3.2.4.3 as notified (and as recommended by Mr Paetz) read:

"Maintain or enhance the survival chances for rare, endangered or vulnerable species of indigenous plant or animal communities".

286. Submissions specifically on this point included:
a. Seeking that reference to be made to significant indigenous vegetation and significant habitats of indigenous fauna rather than as presently framed[240];
b. Support for the objective in its current form[241];
c. Amendment to make the objective subject to preservation of the viability of farming in rural zones[242].

287. The reasons provided in Submission 378 are that the terminology used should be consistent with section 6 of the RMA.

288. While, as above, we do not regard the terminology of the Act[243] as a panacea, on this occasion, the submitter may have a point. While significant areas of indigenous vegetation and significant habitats of indigenous fauna are matters the implementation of the PDP can affect (either positively or negatively), the survival chances of indigenous plant or animal communities will likely depend on a range of factors, some able to be affected by the PDP, and some not. Moreover, any area supporting rare, endangered, or vulnerable species will, in our view, necessarily have significant nature conservation values, as defined. Accordingly, for the same reasons as in relation to the previous objective, this objective duplicates provisions we

237 Submission 600: Supported in FS1097 and FS1209; Opposed in FS1034, FS1040 and FS1080
238 See also the Proposed RPS, Policy 3.1.9, which has a 'maintain or enhance' focus.
239 Consistent with the Real Journeys submission noted above
240 Submission 378: Supported in FS1097; Opposed in FS1049 and FS1095
241 Submissions 339, 373, 600 and 706: Opposed in FS1034, FS1162, FS1209, FS1287 and FS1347
242 Submission 701: Supported in FS1162
243 Or indeed of the RPS, which uses the same language at Objective 10.4.3

have recommended above. It might also be considered to duplicate Objective 3.2.4.1, as we have recommended it be revised, given that maintenance of indigenous biodiversity will necessarily include rare, endangered, or vulnerable species of indigenous plant or animal communities.

289. For these reasons, we recommend that this objective be deleted.

290. Objective 3.2.4.4 as notified, read:

"Avoid exotic vegetation with the potential to spread and naturalise."

291. Submissions on it varied from:
   a. Support for the wording notified[244];
   b. Amendment to refer to avoiding or managing the effects of such vegetation[245];
   c. Amendment to "*reduce wilding tree spread"*[246].

292. Submission 238[247] approached it in a different way, seeking an objective focussing on promotion of native planting.

293. The thrust of the submissions in the last two categories listed above was on softening the otherwise absolutist position in the notified objective and Mr Paetz similarly recommended amendments to make the provisions less absolute.

294. The version of the objective he recommended with his reply evidence read:

"Avoid the spread of wilding exotic vegetation to protect nature conservation values, landscape values and the productive potential of land."

295. We have already noted the provisions of the RPS and the Proposed RPS which, in our view, support the intent underlying this objective. Policy 10.5.3 of the RPS (seeking to reduce and where practicable eliminate the adverse effects of plant pests) might also be noted[248].

296. The section 32 report supporting Chapter 3[249] records that the spread of wilding exotic vegetation, particularly wilding trees, is a significant problem in this District. In that context, an objective focusing on reduction of wilding tree spread or *'managing'* its effects appears an inadequate objective to aspire to.

297. We agree that the objective should focus on the outcome sought to be addressed, namely the spread of wilding exotic vegetation, rather than what should occur instead. However, we see no reason to complicate the objective by explaining the rationale for an avoidance position. Certainly, other objectives are not written in this manner.

298. Lastly, we recommend rephrasing the objective in line with the revised style recommended throughout. The end result (renumbered 3.2.4.2) would be:

---

244 Submissions 289, 373: Opposed in FS1091 and FS1347

245 Submission 590 and 600: Supported in FS1132 and FS 1209; Opposed in FS1034 and FS1040

246 Submission 608; Opposed in FS1034

247 Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

248 Refer also Proposed RPS, Policy 5.4.5 providing for reduction in the spread of plant pests.

249 Section 32 Evaluation Report- Strategic Direction at page 9

"The spread of wilding exotic vegetation is avoided."

299. Objective 3.2.4.5 as notified read:

"Preserve or enhance the natural character of the beds and margins of the District's lakes, rivers and wetlands."

300. A number of submissions sought that the effect of the objective be softened by substituting "*maintain"* for "*preserve"*[250]*.*

301. Some submissions sought that reference to biodiversity values be inserted[251].

302. Some submissions sought deletion of reference to enhancement and inclusion of protection from inappropriate subdivision, use and development[252].

303. Mr Paetz did not recommend any change to the notified objective.

304. The origins of this objective are in section 6(a) of the Act which we are required to recognise and provide for and which refers to the '*preservation'* of these areas of the environment, and the protection of them from inappropriate subdivision, use and development.

305. Objective 6.4.8 of the RPS is relevant on this aspect – it has as its object: "*to protect areas of natural character…and the associated values of Otago's wetlands, lakes, rivers and their margins".*

306. By contrast, Policy 3.1.2 of the proposed RPS refers to managing the beds of rivers and lakes, wetlands, and their margins to maintain or enhance natural character.

307. The combination of the RPS and proposed RPS supports the existing wording rather than the alternatives suggested by submitters. While section 6(a) of the Act would on the face of it support insertion of reference to inappropriate subdivision, use and development, given the guidance we have from the Supreme Court in the *King Salmon* litigation as to the meaning of that phrase, we do not consider that either regional document is inconsistent with or fails to recognise and provide for the matters specified in section 6(a) on that account. We also do not consider that reference to biodiversity values is necessary given that this is already addressed in recommended Objective 3.2.4.1.

308. The RPS (and section 6(a) of the Act) would also support (if not require) expansion of this objective to include the water above lake and riverbeds[253], but we regard this as being addressed by Objective 3.2.4.6 (to the extent it is within the Council's functions to address).

309. Accordingly, the only recommended amendment is to rephrase this as an objective (renumbered 3.2.4.3), in line with the style adopted above, as follows:

"The natural character of the beds and margins of the District's lakes, rivers and wetlands is preserved or enhanced."

---

250 See e.g. Submissions 607, 615, 621, 716: Supported in FS 1097, FS1105, FS 1137 and FS1345

251 Submissions 339, 706: Opposed in FS 1015, FS1162, FS1254 and FS 1287

252 Submissions 519, 598: Supported in FS 1015 and FS1287: Opposed in FS1356

253 See also the Water Conservation (Kawarau) Order 1997, to the extent that it identifies certain rivers in the District as being outstanding by reason of their naturalness.

310. Objective 3.2.4.6 as notified read:

"Maintain or enhance the water quality and function of our lakes, rivers and wetlands."

311. A number of submissions supported the objective as notified. The only submission seeking a substantive amendment, sought to delete reference to water quality[254].

312. A focus on maintaining or enhancing water quality is consistent with Objective A2 of the NPSFM 2014, which the Council is required to give effect to. While that particular objective refers to overall quality, the decision of the Environment Court in *Ngati Kahungunu Iwi Authority v Hawkes Bay Regional Council*[255] does not suggest that any great significance can be read into the use of the word 'overall'.

313. Similarly, while the policies of the NPSFM 2014 are directed at actions to be taken by Regional Councils, where land uses (and activities on the surface of waterways) within the jurisdiction of the PDP, impinge on water quality, we think that the objectives of the NPSFM 2014 must be given effect by the District Council as well.

314. One might also note Objective 6.4.2 of the RPS, that the Council is also required to give effect to, and which similarly focuses on maintaining and enhancing the quality of water resources.

315. Accordingly, we do not recommend deletion of reference to water quality in this context. The only amendment that is recommended is stylistic in nature, to turn it into an objective (renumbered 3.2.4.4) as follows:

"*The water quality and functions of the District's lakes, rivers and wetlands is maintained or enhanced."*

316. Objective 3.2.4.7 as notified read:

"Facilitate public access to the natural environment."

317. Submissions on this objective included:
   a. Support for the objective as is[256];
   b. Seeking that "*maintain and enhance"* be substituted for "*facilitate"* and emphasising public access *'along'* rivers and lakes[257];
   c. Inserting a link to restrictions on public access created by a subdivision or development[258];
   d. Substituting "*recognise and provide for"* for "*facilitate"*[259].

318. Mr Paetz in his reply evidence recommended no change to this particular objective.

319. To the extent that there is a difference between facilitating something and maintaining or enhancing it (any distinction might be seen to be rather fine), the submissions seeking that

254 Submission 600: Supported in FS1209; Opposed in FS1034 and FS1040.
255 [2015] NZEnvC50
256 Submissions 378, 625, 640: Opposed in FS1049, FS1095 and FS1347
257 Submissions 339, 706: Supported in FS1097, Opposed in FS1254 and FS1287
258 Submission 600: Supported in FS1209, Opposed in FS1034
259 Submission 806

change were on strong ground given that Objective 6.4.7 of the RPS (and section 6(d) of the Act) refers to maintenance and enhancement of public access to and along lakes and rivers. We do not think, however, that specific reference is required to lakes and rivers, since they are necessarily part of the natural environment.

320. We reject the suggestion that the objective should "*recognise and provide for"* public access, essentially for the reasons set out above[260].

321. In addition, while in practice, applications for subdivision and development are likely to provide the opportunity to enhance public access to the natural environment, we do not think that the objective should be restricted to situations where subdivision or development will impede existing public access. Any consent applicant can rely on the legal requirement that consent conditions fairly and reasonably relate to the consented activity[261] to ensure that public access is not sought in circumstances where access has no relationship to the subject-matter of the application.

322. Lastly, the objective requires amendment in order that it identifies an environmental outcome sought.

323. In summary, we recommend that this objective (renumbered 3.2.4.5) be amended to read:

"Public access to the natural environment is maintained or enhanced."

324. Objective 3.2.4.8 as notified read:

"Respond positively to Climate Change".

325. Submissions on it included:
a. General support[262];
b. Seeking its deletion[263];
c. Seeking amendment to focus more on the effects of climate change[264].

326. Mr Paetz recommended in his reply evidence that the objective remain as notified.

327. As already noted, the RPS contains a relatively limited focus on climate change, and might in that regard be considered deficient given the terms of section 7(i) of the Act (added to the Act after the RPS was made operative). The Proposed RPS contains a much more comprehensive suite of provisions on climate change and might, we believe, be regarded as providing rather more reliable guidance. The focus of the Proposed RPS, consistently with section 7(i), is clearly on responding to the effects of climate change. As the explanation to Objective 4.2 records, *"the effects of climate change will result in social, environmental and economic costs, and in some circumstances benefits".* The Regional Council's view, as expressed in the Proposed RPS, is that that change needs to be planned for.

---

260 Paragraph 58ff above

261 Refer *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 and the many cases following it in New Zealand

262 Submissions 117, 339, 708: Opposed in FS 1162

263 Submission 807

264 Submissions 598, 806 and 807 (in the alternative): Supported in FS1287; Opposed in FS1034

328. Against that background, we had difficulty understanding exactly what the outcome is that this objective is seeking to achieve. The sole suggested policy relates to the interrelationship of urban development policies with greenhouse gas emission levels, and their contribution to global climate change. As such, this objective appears to be about responding positively to the causes of global climate change, rather than responding to its potential effects.

329. At least since the enactment of the Resource Management (Energy and Climate Change) Amendment Act 2004, the focus of planning under the Act has been on the effects of climate change rather than on its causes.

330. It also appeared to us that to the extent that the PDP could influence factors contributing to global climate change, other objectives (and policies) already address the issue.

331. Accordingly, as suggested by some of the submissions noted above, and consistently with both the Proposed RPS and section 7(i) of the Act, the focus of District Plan provisions related to climate change issues should properly be on the effects of climate change. The most obvious area[265] where the effects of climate change are relevant to the final form of the District Plan is in relation to management of natural hazards. We have already discussed how that might be incorporated into the high level objectives of Chapter 3. While there are other ways in which the community might respond to the effects of climate change, these arise in the context of notified Policy 3.2.1.3.2. We consider Objective 3.2.4.8 is unclear and adds no value. While it could be amended as some submitters suggest, to focus on the effects of climate change, we consider that this would duplicate other provisions addressing the issues more directly. In our view, the better course is to delete it.

332. In summary, we consider that the objectives recommended for inclusion in Section 3.2.4 are individually and collectively the most appropriate way to achieve the purpose of the Act as it relates to the natural environment and ecosystems.

2.10. Section 3.2.5 Goal – Landscape Protection

333. As notified, this goal read:

"Our distinctive landscapes are protected from inappropriate development."

334. A number of submissions supported this goal.

335. Submissions seeking amendment to it sought variously:
   a. Amendment to recognise the operational and locational constraints of infrastructure[266].
   a. Substitution of reference to the values of distinctive landscapes[267].
   b. Substitution of reference to the values of '*outstanding'* landscapes and insertion of reference to the adverse effects of inappropriate development on such values[268].

336. A number of submissions also sought deletion of the whole of Section 3.2.5.

337. Mr Paetz did not recommend any amendment to this goal.

---

265 See Submission 117 in this regard

266 Submissions 251, 433: Supported in FS1029, FS1061 and FS1085

267 Submission 807

268 Submission 806

338. The RPS focuses on outstanding landscapes[269], reflecting in turn the focus of section 6(b) of the Act. The Proposed RPS, however, has policies related to both outstanding and highly valued landscapes, with differing policy responses depending on the classification, within the umbrella of Objective 3.2 seeking that significant and highly-valued natural resources be identified, and protected or enhanced.

339. Like the Proposed RPS, the subject matter of Section 3.2.5 is broader than just the outstanding natural landscapes of the District. Accordingly, it would be inconsistent to limit the higher-level objective to those landscapes.

340. For the same reason, a higher-level objective seeking the protection of both outstanding natural landscapes and lesser quality, but still distinctive, landscapes goes too far, even with the qualification of reference to inappropriate development. As discussed earlier in this report, given the guidance of the Supreme Court in *King Salmon* as to the correct interpretation of qualifications based on reference to inappropriate subdivision use and development, it is questionable whether reference to inappropriate development in this context adds much. To that extent, we accept the point made in legal submissions for Trojan Helmet Ltd that section 6 and 7 matters should not be conflated by seeking to protect all landscapes.

341. The suggestion in Submissions 806 and 807 that reference might be made to the values of the landscapes in question is one way in which the effect of the goal/higher-level objective could be watered down. But again, this would be inconsistent with objectives related to outstanding natural landscapes, which form part of Section 3.2.5.

342. We recommend that these various considerations might appropriately be addressed if the goal/higher order objective were amended to read:

"The retention of the District's distinctive landscapes."

343. We consider that this is the most appropriate way to achieve the purpose of the Act in the context of a high-level objective related to landscapes.

2.11. Section 3.2.5 Objectives - Landscapes

344. Objective 3.2.5.1 as notified read:

"Protect the natural character of Outstanding Natural Landscapes and Outstanding Natural Features from subdivision, use and development."

345. This objective and Objective 3.2.5.2 following it (related to non-outstanding rural landscapes) attracted a large number of submissions, and evidence and submissions on them occupied a substantial proportion of the Stream 1B hearing. The common theme from a large number of those submitters and their expert witnesses was that Objective 3.2.5.1 was too protective of ONLs in particular, too restrictive of developments in and affecting ONLs, and would frustrate appropriate development proposals that are important to the District's growth[270].

346. Some suggested that the objective as notified would require that all subdivision use and development in ONLs and ONFs be avoided.[271] If correct, that would have obvious costs to the

269 RPS, Objectives 5.4.3, 6.4.8

270 See e.g. Mr Jeff Brown's evidence at paragraph 2.3.

271 E.g. Ms Louise Taylor, giving evidence for Matukituki Trust

District's economy and to future employment opportunities that would need to be carefully considered.

347. As already noted, a number of submissions sought the deletion of the entire Section 3.2.5[272]. As regards Objective 3.2.5.1, many submitters sought reference be inserted to "*inappropriate"* subdivision, use and development[273].

348. One submitter combined that position with seeking that adverse effects on natural character of ONLs and ONFs be avoided, remedied or mitigated, as opposed to their being protected[274].

349. Another suggestion was that the objective be broadened to refer to landscape values and provide for adverse effects on those values to be avoided, remedied or mitigated[275].

350. The Council's corporate submission sought specific reference to indigenous flora and fauna be inserted into this objective[276].

351. Submission 810[277] sought a parallel objective (and policy) providing for protection and mapping of wāhi tupuna.

352. The more general submissions[278] seeking provision for infrastructure also need to be kept in mind in this context.

353. In his Section 42A Report, Mr Paetz sought to identify the theme underlying the submissions on this objective by recommending that it be amended to read:

"Protect the quality of the Outstanding Natural Landscapes and Outstanding Natural Features from subdivision, use and development."

354. His reasoning was that a focus solely on the natural character of ONLs and ONFs was unduly narrow and not consistent with "*RMA terminology".* He did not, however, recommend acceptance of the many submissions seeking insertion of the word '*inappropriate'* essentially because it was unnecessary – "*in saying 'Protect the quality of the outstanding natural landscapes and outstanding natural features from subdivision, use and development', the 'inappropriate' test is implicit i.e. Development that does not protect the quality will be inappropriate."*[279]

355. By his reply evidence, Mr Paetz had come round to the view that the submitters on the point (and indeed many of the planning witnesses who had given evidence) were correct and that the word '*inappropriate'* ought to be added. He explained his shift of view on the basis that

---

272 E.g. Submissions 632, 636, 643, 669, 688, 693, 702: Supported in FS1097; Opposed in FS1219, FS1252, FS1275, FS1283 and FS1316

273 E.g. Submissions 355, 375, 378, 502, 519, 581, 598, 607, 615, 621, 624, 716, 805: Supported in FS1012, FS1015, FS1097, FS1117, FS1137, FS1282 and FS1287; Opposed in FS1049, FS1095 FS1282, FS1320 and FS1356

274 Submission 519: Supported in FS1015, FS1097 and FS1117; Opposed in FS1282 and 1356

275 Submissions 806 and 807

276 Submission 809: Opposed in FS1097

277 Supported in FS1098; Opposed in FS1132

278 Submissions 251 and 433: Supported in FS1029, FS1061 and FS1085

279 Section 42A Report at 12,103

that amendment would enable applicants "*to make their case on the merits in terms of whether adverse impacts on ONFs or ONLs, including component parts of them, is justified"*[280].

356. Mr Paetz's Section 42A Report reflects the decision of the Supreme Court in the *King Salmon* litigation previously noted. His revised stance in his reply evidence implies that the scope of appropriate subdivision, use and development in the context of an objective seeking protection of ONLs and ONFs from inappropriate subdivision, use and development is broader than that indicated by the Supreme Court.

357. The legal basis for Mr Paetz's shift in position is discussed in the reply submissions of counsel for the Council. Counsel's reply submissions[281] emphasize the finding of the Supreme Court that section 6 does not give primacy to preservation or protection and draws on the legal submissions of counsel for the Matukituki Trust to argue that a protection against '*inappropriate*' development is not necessarily a protection against any development, but that including reference to it allows a case to be made that development is appropriate.

358. This in turn was argued to be appropriate in the light of the extent to which the district has been identified as located within an ONL or ONF (96.97% based on the notified PDP maps).

359. Although not explicitly saying so, we read counsel for the Council's reply submissions as supporting counsel for a number of submitters who urged us to take a '*pragmatic*' approach to activities within or affecting ONLs or ONFs[282].

360. Counsel for Peninsula Bay Joint Venture[283] argued also [284] that Objective 3.2.5.1 failed to implement the RPS because the relevant objective in that document[285] refers to protection of ONLs and ONFs "*from inappropriate subdivision, use and development".*

361. We agree that the objectives and policies governing ONFs and ONLs are of critical importance to the implementation of the PDP. While as at the date of the Stream 1B hearing, submissions on the demarcation of the ONLs and ONFs had yet to be heard, it was clear to us that a very substantial area of the district would likely qualify as either an ONL or an ONF. Dr Marion Read told us that this District was almost unique because the focus was on identifying what landscapes are not outstanding, rather than the reverse. As above, Council staff quantified the extent of ONLs and ONFs mapped in the notified PDP as 96.97%[286].

362. Given our recommendation that there should be a strategic chapter giving guidance to the implementation of the PDP as a whole, the objective in the strategic chapter related to activities affecting ONLs and ONFs is arguably the most important single provision in the PDP.

363. For precisely this reason, we consider that this objective needs to be robust, in light of the case law and the evidence we heard, and clear as to what outcome is being sought to be achieved.

---

280 M Paetz, Reply Evidence at 5.23.

281 At 6.6

282 Mr Goldsmith for instance (appearing for Ayrburn Farms Ltd, Bridesdale Farms Ltd, Mt Cardrona Station) observed that elements of the existing planning regime for ONL's exhibited a desirable level of pragmatism.

283 Submission 378

284 Written submissions at paragraph 32

285 Objective 5.4.3

286 See QLDC Memorandum Responding to Request for Further Information Streams 1A & 1B, Schedule 3

364. The starting point is that, as already noted, the Supreme Court in *King Salmon* found that:

> *"We consider that where the term 'inappropriate' is used in the context of protecting areas from inappropriate subdivision, use or development, the natural meaning is that "inappropriateness" should be assessed by reference to what it is that is sought to be protected*.[287]"

365. When we discussed the matter with Mr Gardner-Hopkins, at that point acting as counsel for Kawarau Jet Services, he agreed that we were duty bound to apply that interpretation, but having said that, in his submission, the point at which effects tip into being inappropriate takes colour from the wider policy framework and factual analysis.

366. That response aligns with the Environment Court's decision in *Calveley v Kaipara DC*[288] that Ms Hill[289] referred us to. That case concerned both a resource consent appeal and an appeal on a plan variation. In the context of the resource consent appeal, the Environment Court emphasised that when interpreting the meaning of "*inappropriate subdivision, use and development"* in a particular plan objective, it was necessary to consider the objective in context (in particular in the context of the associated policy seeking to implement it). In that case, the policy supported an interpretation of the objective that was consistent with the natural and ordinary meaning identified by the Supreme Court in *King Salmon,* as above. However, as the Environment Court noted, neither the objective nor the policy suggested that subdivision development inevitably must be inappropriate. The Court found[290] that both the objective and policy recognised the potential for sensitively designed and managed developments to effectively protect ONL values and characteristics.

367. In that regard, it is worth noting that the Supreme Court in *King Salmon* likewise noted that a protection against '*inappropriate'* development is not necessarily protection against *'any'* development, but rather it allows for the possibility that there may be some forms of *'appropriate'* development[291]. That comment was made in the context of the Supreme Court's earlier finding as to what inappropriate subdivision, use and development was, as above.

368. Ultimately, though, we think that the *Calveley* decision is of peripheral assistance because the issue we have to confront is whether this particular objective should refer to protection of ONLs and ONFs from inappropriate subdivision, use and development. The wording of the policy seeking to implement the objective is necessarily consequential on that initial recommendation. Accordingly, while we of course accept the Environment Court's guidance that a supporting policy might assist in the interpretation of the objective, the end result is somewhat circular given that we also have to recommend what form the supporting policy(ies) should take.

369. We should note that Ms Hill also referred us to the Board of Inquiry decision on the Basin Bridge Notice of Requirement, but we think that the Board of Inquiry's decision does not particularly assist in our inquiry other than to the extent that the Board recorded its view that

---

287 [2016] NZSC38 at [101]

288 [2014] NZEnvC 182

289 Counsel for Ayrburn Farm Estate Limited, Bridesdale Farm Developments Limited, Shotover Country Limited, Mt Cardrona Station Limited

290 At [132]

291 *King Salmon* at [98]

it was obliged by the Supreme Court's decision to approach and apply Part 2 of the Act having regard to the natural meaning of "*inappropriate"* as above[292].

370. Objective 5.4.3 of the RPS that the PDP is required to implement (absent invalidity, incompleteness or ambiguity) seeks:

"To protect Otago's outstanding natural features and landscapes from inappropriate subdivision, use and development."

371. Objective 5.4.3 is expressed in almost exactly the same terms as section 6(b) of the Act. There is accordingly no question (in our view) that the RPS is completely consistent with Part 2 of the Act in this regard. It also means that cases commenting on the interpretation of section 6(b), and indeed the other subsections using the same phraseology, are of assistance in interpreting the RPS. In that regard, while, as the Environment Court in *Calveley* has noted, the term "*inappropriate"* might take its meaning in plans from other provisions that provide the broader context, in the context of both RPS Objective 5.4.3 and section 6, 'inappropriate' should clearly be interpreted in the manner that the Supreme Court has identified[293].

372. As counsel for the Council noted in their reply submissions, the Supreme Court stated that section 6 does not give primacy to preservation or protection. We think however, that Counsel's submissions understate the position, because what the Supreme Court actually said was:

"Section 6 does not, we agree, give primacy to preservation or protection; it simply means that provision must be made for preservation and protection as part of the concept of sustainable management."[294]

373. The Supreme Court went on from that statement to say that a Plan could give primacy for preservation or protection and in the Court's view, that was what the NZCPS policies at issue had done.

374. The point that has troubled us is how in practice one could make provision for the protection, in this case of ONLs and ONFs, whether as part of the concept of sustainable management (or as implementing Objective 5.4.3), without actually having an objective seeking that ONLs and ONFs be protected. We discussed this point with Mr Gardner-Hopkins[295] who submitted that while there has to be an element of protection and preservation of ONLs in the PDP, we had some discretion as to where to set the level of protection. Mr Gardner-Hopkins noted that the Supreme Court had implied that there were environmental bottom lines in Part 2, but that they were somewhat "*saggy"* in application.

375. We think that counsel may have been referring in this regard to the discussion at paragraph [145] of the Supreme Court's decision in which the Court found that even in the context of directive policies requiring avoidance of adverse effects, it was improbable that it would be necessary to prohibit an activity that has a minor or transitory adverse effect, even where the natural character sought to be preserved was outstanding.

---

292 *Final report and decision of the Board of Inquiry into the Basin Bridge Proposal* at paragraph [188](c)

293 As the Basin Bridge Board of Inquiry found

294 *King Salmon* at [149]

295 At this point appearing for the Matukituki Trust

376. We think, therefore, that we would be on strong ground to provide in Objective 3.2.5.1, that ONLs and ONFs should be protected from adverse effects that are more than minor and/or not temporary in duration[296]. This approach would also meet the concern of a number of parties that the objective should not indicate or imply that all development in ONLs and ONFs is precluded[297].

377. Based on our reading of the Supreme Court's decision in *King Salmon* however, if the adverse effects on ONLs and ONFs are more than minor and/or not temporary, it is difficult to say that the ONL or ONF, as the case may be, is being protected. Similarly, if the relevant ONL or ONF is not being protected, it is also difficult to see how any subdivision, use or development could be said to be '*appropriate'.*

378. Even if we are wrong, and *King Salmon* is not determinative on the ambit of '*inappropriate subdivision use and development',* we also bear in mind the general point we made above, based on the guidance of the Environment Court in its ODP decision C74/2000 at paragraph [10] that it was not appropriate to leave these policy matters for Council to decide on a case by case basis.

379. We do not accept the argument summarised above that was made for Peninsula Bay Joint Venture that because the RPS objective refers to inappropriate subdivision, use and development, so too must Objective 3.2.5.1. The legal obligation on us is to give effect to the RPS[298]. The Supreme Court decision in *King* Salmon confirms that that instruction means what it says. The Supreme Court has also told us, however, that saying that ONL's must be protected from inappropriate subdivision, use and development does not create an open-ended discretion to determine whether subdivision, use and development is 'appropriate' on a case-by-case basis. By contrast, it has held that any discretion is tightly controlled and must be referenced back to protection of the ONL or ONF concerned. Accordingly, omitting reference to inappropriate subdivision, use and development does not in our view fail to give effect to the RPS, because it makes no substantive difference to the outcome sought.

380. The Proposed RPS approaches ONLs and ONFs in a slightly different way. Policy 3.2.4 states that outstanding natural features and landscapes should be protected by, among other things, avoiding adverse effects on those values that contribute to the significance of the natural feature or landscape.

381. The Proposed RPS would certainly not support an open-ended reference to inappropriate subdivision, use and development. It does, however, support Mr Paetz's recommendation that the focus not be solely on the natural character of ONLs and ONFs. While we had some concerns as to the ambiguity that might result if Mr Paetz's initial recommendation (in his Section 42A Report) were accepted, and reference be made to the quality of ONLs and ONFs, we think he was on strong ground identifying that natural character is not the only quality of ONLs and ONFs. We note that the planning witness for Allenby Farms Limited and Crosshill Farms Limited, Mr Duncan White, supported the reference in the notified objective to natural character as being "*the significant feature of ONLs and ONFs"*[299].

---

296 Mr White, planning witness for Allenby Farms Ltd and Crosshill Farms Ltd, supported that approach.

297 This was a rationale on which Mr Dan Wells, for instance, supported addition of the word 'inappropriate' to the notified objective.

298 Section 75(3)(c) of the Act

299 D White, EiC at 3.2

382. Mr White, however, accepted that the so-called *Pigeon Bay* criteria for landscapes encompassed a wide variety of matters, not just natural character.

383. Mr Carey Vivian suggested to us that the objective might refer to "*the qualities"* of ONLs and ONFs, rather than "*the quality"* as Mr Paetz had recommended. It seems to us, however, that broadening the objective in that manner would push it too far in the opposite direction.

384. In our view, some aspects of ONLs and ONFs are more important than others, as the Proposed RPS recognises. Desirably, one would focus on the important attributes of the particular ONL and ONF in question[300]. The PDP does not, however, identify the particular attributes of each ONL or ONF. The ODP, however, focuses on the landscape values, visual amenity values and natural character of ONLs in the Wakatipu Basin, and we recommend that this be the focus of the PDP objective addressing ONLs and ONFs more generally – accepting in part a submission of UCES that, at least in this regard, there is value in rolling over the ODP approach.

385. Identifying the particular values of ONLs and ONFs of most importance also responds to submissions made by counsel for Skyline Enterprises Ltd and others that the restrictive provisions in the notified plan had not been justified with reference to the factors being protected.

386. An objective seeking no more than minor effects on ONLs and ONFs would effectively roll over the ODP in another respect. That is the policy approach in the ODP for ONLs in the Wakatipu Basin and for ONFs.

387. The structure of the ODP in relation to ONLs and ONFs is to have a very general objective governing landscape and visual amenity values, supported by separate policies for ONLs in the Wakatipu Basin, ONLs outside the Wakatipu Basin and ONFs. Many of the policies for the Wakatipu Basin ONLs and ONFs are identical. At least in appearance, the policies of the ODP are more protective of ONLs in the Wakatipu Basin than outside that area. The key policies governing subdivision and development outside the Wakatipu Basin focus on the capacity of the ONLs to absorb change, avoiding subdivision and development in those parts of the ONLs with little or no capacity to absorb change and allowing limited subdivision and development in those areas with a higher potential to absorb change. We note though that capacity to absorb change will be closely related to the degree of adverse effects when landscape and visual amenity values are an issue and so the difference between the two may be more apparent than real.

388. Submitters picked up on the different approach of the PDP from the ODP in this regard. UCES supported having a common objective and set of policies for ONLs across the district, utilising the objectives, and policies (and assessment matters and rules) in the ODP that apply to the ONLs of the Wakatipu Basin. When he appeared before us in Wanaka, counsel for Allenby Farms Limited, Crosshill Farms Limited and Mt Cardrona Station Limited, Mr Goldsmith, argued that when the Environment Court identified in its Decision C180/99 the desirability of a separate and more restricted policy regime for the Wakatipu Basin ONLs, it had good reason for doing so (based on the greater development pressures in the Wakatipu Basin, the extent of existing development activity and the visibility of the ONLs from the Basin floor). Mr Goldsmith submitted that there is no evidence that those factors do not still apply, and that accordingly the different policy approaches for Wakatipu Basin ONLs, compared to the ONL's in the balance of the District should be retained.

---

300 Refer the recommendations of Report 16

389. This relief was not sought by Mr Goldsmith's clients in their submissions and so we have regarded it as an example of a submitter (or in this case three submitters) seeking to rely on the collective scope provided by other unspecified submissions (i.e. the point discussed earlier in this report). In this particular case, the argument Mr Goldsmith pursued arguably falls within the jurisdiction created by the submissions already noted seeking deletion of the whole of Section 3.2.5 and we have accordingly considered it on its merits.

390. Discussing the point with us, Mr Goldsmith agreed that the Environment Court's key findings were based on evidence indicating a need for stringent controls on the Wakatipu Basin and a lack of evidence beyond that. While he agreed that the lack of evidence before the Environment Court in 1999 should not determine the result in 2016 (when we heard his submissions), Mr Goldsmith submitted that there was no evidence before us that the position has changed materially. We note, however, that Mr Haworth suggested to us that the contrary was the case, and that development pressure had increased significantly throughout the District since the ODI was written[301]. Mr Haworth provided a number of examples of residential development having been consented in the ONLs of the Upper Clutha and also drew our attention to the tenure review process having resulted in significant areas of freehold land becoming available for subdivision and development within ONLs.

391. In addition, the Environment Court's decision in 1999 reflected the then understanding of the role of section 6(b) of the Act in the context of Part 2 as a whole[302]. That position has now been overtaken by the Supreme Court's decision in *King Salmon,* that we have discussed extensively already. The Supreme Court's decision means that we must find a means to protect ONLs and ONFs as part of the implementation of the RPS and, in consequence, the sustainable management of the District's natural and physical resources. In that context, we think that a different policy regime between ONLs in different parts of the district might be justified if they varied in quality (if all of them are outstanding, but some are more outstanding than others). But no party sought to advance an argument (or more relevantly, called expert evidence) along these lines.

392. We accordingly do not accept Mr Goldsmith's argument. We find that it is appropriate to have one objective for the ONLs and ONFs of the District and that that objective should be based upon protecting the landscape and visual amenity values and the natural character of landscapes and features from more than minor adverse effects that are not temporary in nature.

393. We do not consider that reference is required to wāhi tupuna given that this is addressed in section 3.2.7.

394. We record that we have considered the submission of Remarkables Park Limited[303] and Queenstown Park Limited[304] that, in effect, a similar approach to that in the ODP should be taken, with a very general objective supported by more specific policies. The structure of the PDP is, at this strategic level, one objective for ONLs and ONFs, and another objective for other rural landscapes. We regard that general approach as appropriate. Once one gets to the point of determining that there should be an objective that is specific to ONLs and ONFs, it is not

301 J Haworth, Submissions and Evidence at page 16
302 Refer C180/99 at paragraph [69]
303 Submission 806
304 Submission 807

appropriate, for the reasons already canvassed, that the outcome aspired to is one which provides for avoiding, remedying or mitigating adverse effects[305].

395. The last point that we need to examine before concluding our recommendation is whether an objective that does not provide for protection of ONLs and ONFs from inappropriate subdivision, use and development fails to provide for critical infrastructure and/or fails to give effect to the NPSET 2008.

396. QAC expressed concern that an overly protective planning regime for ONLs and ONFs would constrain its ability to locate and maintain critical meteorological monitoring equipment that must necessarily be located at elevated locations around Queenstown Airport which are currently classified as ONLs or ONFs. QAC also noted that Airways Corporation operates navigational aids on similar locations which are critical to the Airport's operations[306]. QAC did not provide evidence though that suggested that the kind of equipment they were talking about would have anything other than a minor effect on the ONLs or ONFs concerned.

397. Transpower New Zealand also expressed concern about the potential effect of an overly protective regime for ONLs on the National Grid. The evidence for Transpower was that, there is an existing National Grid line into Frankton through the Kawarau Gorge and while the projected population increases would suggest a need to upgrade that line within the planning period of the PDP, the nature of the changes that would be required would be barely visible from the ground. The Transpower representatives who appeared before us accepted that that would be in the category of "*minor"* adverse effects. They nevertheless emphasised the need to provide for currently unanticipated line requirements that would necessarily have to be placed in ONLs given that the Wakatipu Basin is ringed with ONLs (assuming the notified plan provisions in this regard remain substantially unchanged). Counsel for Transpower, Ms Garvan, and Ms Craw, the planning witness for Transpower, drew our attention to Policy 2 of the NPSET 2008, which reads:

"In achieving the purpose of the Act, decision-makers must recognise and provide for the effective operation, maintenance, upgrading and development of the electricity transmission network.[307]"

398. They also emphasised the relevance of Policy 8 of the NPSET 2008, which reads as follows:

"*In rural environments, planning and development of the transmission system should seek to avoid adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity and existing sensitive activities."*

399. Ms Craw also referred us to the provisions of the Proposed RPS suggesting that the PDP is inconsistent with the Proposed RPS. We note in this regard that Policy 4.3.3 of the Proposed RPS reads:

---

305 We note the planning evidence of Mr Tim Williams in this regard: Mr Williams was of the opinion (stated at his paragraph 14) that high-level direction for protection and maintenance of the District's nationally and internationally revered landscapes was appropriate.

306 Consideration of such equipment now needs to factor in the provisions in the Proposed RPS indicating that it is infrastructure, whose national and regional significance should be recognised (Policy 4.3.2(e)).

307 The NPSET 2008 defines the electricity transmission network to be the National Grid.

*"*Minimise *adverse effects from infrastructure that has national or regional significance, by all of the following:*

…

*(b) Where it is not possible to avoid locating in the areas listed in (a) above [*which includes outstanding natural features and landscapes*], avoiding significant adverse effects on those values that contribute to the significant or outstanding nature of those areas;…"*

400. We tested the ambit of the relief Transpower was contending might be required to give effect to the NPSET 2008, by suggesting an unlikely hypothetical example of a potential new national grid route[308] and inviting comment from Transpower's representatives as to whether the NPSET 2008 required that provision be made for it. Counsel for Transpower accepted that the PDP was not required to enable the National Grid in every potential location, but rejected any suggestion that the PDP need only provide for Transpower's existing assets and any known future development plans[309].

401. We enquired of counsel whether, if the NPSET 2008 requires the PDP to enable the National Grid in circumstances where that would have significant adverse effects on ONLs or ONFs, the NPSET 2008 might itself be considered to be contrary to Part 2 and therefore within one of the exceptions that the Supreme Court noted in *King Salmon* to the general principle that a Council is not able to circumvent its obligation to give effect to a relevant National Policy Statement by a reference to an overall broad judgement under section 5.

402. We invited Counsel for Transpower New Zealand Limited to file further submissions on this point.

403. Unfortunately, the submissions provided by Counsel for Transpower did not address the fundamental point, which is that the Supreme Court expressly stated that:

"…. If there was an allegation going to the lawfulness of the NZCPS, that would have to be resolved before it could be determined whether a decision-maker who gave effect to the NZCPS as it stood was necessarily acting in accordance with pt 2."[310]

404. To the extent that counsel for Transpower relied on a recent High Court decision addressing the relevance of the NPSFM 2011 to a Board of Inquiry decision[311], we note that the consistency or otherwise of the NPSFM 2011 with Part 2 of the Act was not an issue in that appeal. Rather, the point of issue was whether the Board of Inquiry had correctly given effect to the NPSFM 2011.

405. More recently, the High Court in *Transpower New Zealand Ltd v Auckland Council*[312] has held that national policy statements promulgated under section 45 of the Act (like the NPSET) are not an exclusive list of relevant matters and do not necessarily encompass the statutory purpose. The High Court found specifically[313] that the NPSET is not as all-embracing of the Act's purpose set out in section 5 as is the New Zealand Coastal Policy Statement and that a decision-maker can properly consider the Act's statutory purpose, and other Part 2 matters,

---

308 From Frankton to Hollyford, via the Routeburn Valley

309 Addendum to legal submissions on behalf of Transpower New Zealand Limited dated 21 March 2016 at paragraph 2.

310 *King Salmon* at [88]

311 *Hawke's Bay and Eastern Fish and Game Council v Hawke's Bay RC* [2015] 2 NZLR 688

312 [2017] NZHC 281

313 Ibid at [84]

as well as the NPSET, when exercising functions and powers under the Act. As the Court observed, that does not mean we can ignore the NPSET; we can and should consider it and give it such weight as we think necessary.

406. Ultimately, we do not think we need to reach a conclusion as to whether the NPSET 2008 is consistent with Part 2 of the Act for the purposes of this report, because the NPSET 2008 does not expressly say that Transpower's development and expansion of the national grid may have significant adverse effects on ONLs or ONFs. Policy 8 says that Transpower must seek to avoid adverse effects, but gives no guidance as to how rigorously that policy must be pursued. Similarly, Policy 2 gives no indication as to the extent to which development of the National Grid must be provided for. It might also be considered that a contention that Transpower should be able to undertake developments with significant adverse effects on ONLs would be contrary to the Proposed RPS policy Ms Craw relied on (given that a significant adverse effect on ONLs will almost certainly be a significant adverse effect on the values that make the landscape outstanding).

407. In circumstances where Transpower did not present evidence suggesting any compelling need to provide for significant adverse effects of the National Grid on ONLs and ONFs, we do not think that the primary objective of the PDP should be qualified to make such provision.

408. We accept Mr Renton, giving evidence for Transpower, did suggest that there might be cause to route a National Grid line up the Cardrona Valley and over the Crown Range Saddle. However, he did not present this as anything more than a hypothetical possibility.

409. We note that the Environment Court came to a similar conclusion when considering the relevance of the NPSET 2008 to objectives and policies governing protection of indigenous biodiversity in the Manawatu-Wanganui Region, commenting[314]:

"As with the NPSREG, we do not find that the NPSET gives electricity transmission activities so special a place in the order of things that it should override the regime that applies to indigenous biodiversity. In any case, we were not persuaded that this regime would present insurmountable obstacles to continuing to operate and expand the electricity transmission network to meet the needs of present and future generations."

410. In summary, while we think that there does need to be additional provision for infrastructure, including, but not limited to, the National Grid, in the more specific policies in Chapter 6 implementing this objective, we recommend that Objective 3.2.5.1 be amended to read as follows:

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

411. Turning to non-outstanding landscapes, Objective 3.2.5.2 as notified read:

"Minimise the adverse landscape effects of subdivision, use or development in specified Rural Landscapes."

412. A large number of submissions sought to amend this objective so as to create a greater range of acceptable adverse effects. Suggestions included:

---

314 *Day et al v Manawatu-Wanganui* RC [2012] NZEnvC 182 at 3-127

a. Substituting recognition of rural landscape values in conjunction with making provision for management of adverse effects[315];
b. Providing for recognition of those values with no reference to adverse effects[316];
c. Providing for management, or alternatively avoiding, remedying or mitigating of adverse effects[317];
d. Inserting reference to inappropriate subdivision use and development[318];
e. Shifting the focus from adverse landscape effects to adverse effects on natural landscapes[319];
f. Incorporating reference to the potential to absorb change, among other things by incorporating current Objective 3.2.5.3 as a policy under this objective[320].

413. In his Section 42A Report, Mr Paetz expressed the view that while the word '*minimise'* was utilised in this objective to provide greater direction, that level of direction might not be appropriate in rural areas not recognised as possessing outstanding landscape attributes. He recommended alternative wording that sought to maintain and enhance the landscape character of the Rural Landscape Classification, while acknowledging the potential "*for managed and low impact change"*. When Mr Paetz appeared to give evidence, we discussed with him whether the two elements of his suggested amended objective (*'maintain and enhance'* v *'managed and low impact change'*) were internally contradictory[321].

414. In his reply evidence, Mr Paetz returned to the point[322]. He acknowledged that there is at least probably, some tension or ambiguity introduced by the combination of terms and revised his recommendation so that if accepted, the objective would read:

"The quality and visual amenity values of the Rural Landscapes [the amended term for the balance of rural areas that Mr Paetz recommended] *are maintained and enhanced."*

415. The common feature of the relief sought by a large number of the submissions summarised above is that, if accepted, they would have the result that the objective for non-outstanding rural landscapes would not identify any particular outcome against which one could test the success or otherwise of the policies seeking to achieve the objective.

416. We have discussed earlier the need for the PDP objectives to be meaningful and to identify a desired environmental outcome. Many of the submissions on this objective, if accepted, would not do that.

417. Accordingly, we do not recommend that those submissions be accepted, other than that they might be considered to be 'accepted in part' by our recommendation below.

418. The starting point for determining the appropriate objective for non-outstanding rural landscapes is to identify the provisions in the superior documents governing this issue. As

315 Submissions 437, 456, 513, 522, 532, 534, 537, 608; Supported in FS1071, FS1097, FS1256, FS1286, FS1292, FS1322 and FS1349; Opposed in FS1034 and FS1120
316 Submission 515, 531
317 Submissions 502, 519, 598, 607, 615, 621, 624, 696, 716, 805: Supported in FS1012, FS1015, FS10976, FS1105 and FS1137; Opposed in FS 1282 and FS1356
318 Submissions 502, 519, 696: Supported in FS1012, FS1015 and FS1097; Opposed in FS1282 and FS1356
319 Submissions 502, 519: Supported in FS1012, FS1015 and FS1097; Opposed in FS1282 and FS1356
320 Submission 806
321 As Ms Taylor, giving planning evidence for Matukituki Trust, suggested to us was the case.
322 M Paetz, Reply Evidence at 5.25

already discussed, the RPS focuses principally on protection of ONLs and ONFs. The only objectives applying to the balance of landscapes and features are expressed much more generally, with non-outstanding landscapes considered as natural resources (degradation of which is sought to be avoided, remedied or mitigated[323]) or land resources (the sustainable management of which is sought to be promoted[324]). In terms of the spectrum between more directive and less directive higher other provisions identified by the Supreme Court in *King Salmon*[325], these objectives provide little clear direction, and consequently considerable flexibility in their implementation.

419. The national policy statements likewise do not determine the general objective for non-outstanding landscapes, although both the NPSET 2008 and the NPSREG 2011, in particular need to be borne in mind.

420. The Proposed RPS is of rather more assistance. As previously noted, the Proposed RPS has policies both for ONLs and ONFs, and for highly valued (but not outstanding) natural features and landscapes, under the umbrella of an objective[326] seeking that significant and highly-valued natural resources be "*identified, and protected or enhanced".*

421. Policy 3.2.5 clarifies that "*highly-valued"* natural features and landscapes are valued for their contribution to the amenity or quality of the environment.

422. Policy 3.2.6 states that highly-valued features and landscapes are protected or enhanced by "*avoiding significant adverse effects on those values which contribute to the high value of the natural feature* [or] *landscape"* and avoiding, remedying or mitigating other adverse effects.*"*.

423. The approach of the Proposed RPS to identification of "*highly-valued"* natural features and landscapes appears consistent with the relevant provisions in Part 2 of the Act. The first of these is section 7(c) pursuant to which we are required to have particular regard to "*the maintenance and enhancement of amenity values".*

424. The second is section 7(f) of the Act, pursuant to which, we are required to have particular regard to "*maintenance and enhancement of the quality of the environment"*.

425. These provisions were the basis on which the Environment Court determined the need to identify "*visual amenity landscapes",* which were separate from and managed differently to "*other rural landscapes"* in 1999. The Environment Court did not, however, identify which landscapes were in which category. In fact, it found that it had no jurisdiction to make a binding determination (for example, which might be captured on the planning maps[327]). In an earlier decision[328], however, the Court observed that an area had to be of sufficient size to qualify as a '*landscape'* before it could be classed as an ORL. It pointed to the Hawea Flats area as the obvious area most likely to qualify as an other rural landscape (ORL) and indicated that the area now known as the Hawthorn Triangle in the Wakatipu Basin might do so[329].

---

323 RPS Objective 5.4.2

324 RPS Objective 5.4.1

325 *King Salmon* at [127]

326 Proposed RPS, Objective 3.2

327 *Wakatipu Environmental Society Incorporated and Ors v Queenstown Lakes District Council* C92/2001

328 *Lakes District Rural Landowners Society Incorporated and Ors v Queenstown Lakes District Council* C75/2001

329 Refer paragraph [27]

426. We should address here an argument put to us by counsel for GW Stalker Family Trust and others that section 7(b) operates, in effect, as a counterweight to section 7(c).

427. Section 7(b) requires that we have particular regard, among other things, to "*the efficient use and development of natural and physical resources*". Mr Goldsmith characterised section 7(b) as encouraging an enabling regime allowing landowners to develop their land in order to generate social and economic benefits, and section 7(c) as acting as a brake on such development.

428. We do not accept that to be a correct interpretation either of section 7(b), or of its inter-relationship with section 7(c), or indeed with the other subsections of section 7.

429. Our understanding of efficiency and of efficient use and development of natural and physical resources is that it involves weighing of costs and benefits of a particular proposal within an analytical framework. The Environment Court has stated that consideration of efficiency needs to take account of all relevant resources and desirably quantify the costs and benefits of their use, development and protection[330]. Quantification of effects on non-monetary resources like landscape values may not be possible[331] and the High Court has held that it is not necessary to quantify all benefits and costs to determine a resource consent application[332]. We do not understand, however, the Court to have suggested that non-monetary costs are thereby irrelevant to the assessment of the most efficient outcome.

430. In a Proposed Plan context, we have the added direction provided by section 32 that quantification of costs and benefits is required if practicable. Irrespective of whether the relevant costs and benefits are quantified, though, we think it is overly simplistic to think that it is always more efficient to enable development of land to proceed. One of the purposes of the inquiry we are engaged upon is to test whether or not this is so.

431. It follows that the weighting given to maintenance and enhancement of amenity values in section 7(c) forms part of the weighing of costs and benefits, not a subsequent step to be considered once one has an initial answer based on a selective weighing of costs and benefits, so as potentially to produce a different conclusion.

432. In its earlier decision[333], the Court emphasised the need to identify what landscapes fall within particular categories, as an essential first step to stating objectives and policies (and methods) for them[334]. We adopt that approach. While we acknowledge that the submissions on mapping issues are being resolved by a differently constituted Panel, we take the approach of the notified PDP as the appropriate starting point. In the Upper Clutha Basin, rural areas south of Lakes Hawea and Wanaka were generally (the Cardrona Valley is an exception) identified as RLC. Within the Wakatipu Basin (including the Crown Terrace), there are ONF's identified, but the bulk of the rural areas of the Basin are identified as Rural Land Classification (or RLC) on the PDP maps as notified.

433. The evidence of Dr Marion Read was that farming is the dominant land management mechanism in the rural areas of the District, but that there is an observable difference between the Wakatipu Basin and the Upper Clutha Basin; the latter is much more extensive farming

330 *Lower Waitaki River Management Society Inc v Canterbury RC* C80/2009

331 Or not with any certainty

332 *Meridian Energy Ltd v Central Otago DC* CIV 2009-412-000980

333 C180/99

334 See in particular paragraphs [57] and [97]

than intensive. Dr Read was careful to emphasise that her description of the Wakatipu Basin as being "*farmed"* did not imply that landholdings were being operated as economically viable farming enterprises. Rather, it was a question of whether the land use involved cropping, stocking, or other farming activities.

434. For this reason, she did not believe that her evidence was materially different from that of Mr Baxter, who was the only other landscape expert that we heard from. Mr Baxter's concern was to emphasise the extent to which rural living now forms part of the character of the Wakatipu Basin, but when we asked whether the Basin was still rural in character, he confirmed that his opinion was that it retained its pastoral character notwithstanding the extent of rural living developments. He also agreed that the balance of open space in the Basin was essential, drawing our attention in particular to the need to protect the uninterrupted depth of view from roads.

435. The evidence we heard from Dr Read and Mr Baxter also needs to be read in the light of the findings of the Environment Court in the chain of cases leading to finalisation of the ODP.

436. Even in 1999, the Environment Court clearly regarded rural living developments as having gone too far in some areas of the Wakatipu Basin. It referred to "*inappropriate urban sprawl"* on Centennial Road in the vicinity of Arrow Junction and along parts of Malaghan Road on its south side[335]. It concluded in relation to the non-outstanding landscapes of the Basin:

"In the visual amenity landscape (inside the outstanding natural landscape) structures can be built, with appropriate remedial work or mitigation down to some kind of density limit <u>that avoids inappropriate domestication</u>" [emphasis added]

437. We should note that a footnote linked to remedial work in the passage quoted states as an example of appropriate remedial work, removal of inappropriate houses in the adjoining natural landscape.

438. Elsewhere[336] the Court described '*urban sprawl*' as a term referring to undesirable domestication of a landscape. The Court referred to domestication as being evidenced, among other things, by the chattels or fixtures (e.g. clothes lines/trampolines) that accumulate around dwelling houses.

439. The Court returned to this point in a subsequent decision[337], agreeing with one of the expert witnesses who had given evidence before it that a stretch of the south side of Malaghan Road some 900 metres long containing 11 residential units within a rectangular area containing 22 hectares constituted "*inappropriate over-domestication"*. The Court stated that future development on this and other rural scenic roads, that form a ring around the Basin needed to be "*tightly controlled"*.

440. Dr Read gave evidence that since then, a substantial number of building platforms have been consented in the Wakatipu Basin, and to a lesser extent in the Upper Clutha Basin, suggesting to us an even greater need for clear direction as to the environmental outcomes being sought by the PDP[338].

---

335 See 180/99 at [136]

336 C180/99 at Paragraph [155]

337 C186/2000 at [38]

338 We note also the information to similar effect supplied under cover of counsel for the Council's memorandum dated 18 March 2016

441. Picking up on the Court's identification of over-domestication as the outcome that is not desired in rural areas, we think that the emphasis of the objective needs to be on rural character and amenity values, rather than as Mr Paetz suggested, the quality and visual amenity values so that it is directed at the aspects of environmental quality that are highly valued (employing the Proposed RPS test) and which are potentially threatened by further development.

442. Turning to the desired outcome, we have some concern that Policy 3.2.5 is both internally contradictory (combining a *'protect and enhance*' focus with avoidance only of significant adverse effects) and inconsistent with sections 7(e) and 7(f) of the Act that support retention of a maintenance and enhancement outcome, notwithstanding the evidence we heard suggesting that this would pose too high a test.[339]

443. Put more simply, we think that the objective needs to be that rural areas remain rural in character. We note that rural character is mainly an issue of appearance, but not solely so[340].

444. Policy 5.3.1 of the Proposed RPS supports that approach with its focus on enabling farming, minimising the loss of productive soils and minimising subdivision of productive rural land into smaller lots.

445. The need to provide greater direction suggests to us that there is merit in Queenstown Park Ltd's submission that Objective 3.2.5.3 might be incorporated as a component of Objective 3.2.5.2. The precise relief sought is that it be a policy but for reasons that will be apparent, we think that it might provide more value as an element of the Objective itself. As notified, Objective 3.2.5.3 read:

"Direct new subdivision, use or development to occur in those areas which have potential to absorb change without detracting from landscape and visual amenity values."

446. Most of the submissions on this objective were focussed on the word '*direct*', seeking that it be softened to '*encourage'*[341]. Mr Chris Ferguson suggested in his planning evidence that should be "*encourage and enable",* but we could not identify any submission that would support that extension to the relief sought in submissions[342] and so we have not considered that possibility further.

447. One submitter[343] sought that the ambit of this objective be limited to urban use or development.

---

339 E.g. from Mr Jeff Brown who supported a "recognise and manage" approach that in our view, would not clearly signal the desired outcome.

340 Mr Tim Williams suggested to us that spaciousness, peace and quiet and smell were examples of landscape values going beyond the visual, albeit that he was of the view that the visual values were the key consideration.

341 Submissions 513, 515, 519, 522, 528, 531, 532, 534, 535, 537, 608: Supported in FS1015, FS1097, FS1256, FS1286, FS1292 and FS1322; Opposed in FS1034, FS1068, FS1071, FS1120, FS1282 and FS1356

342 Mr Ferguson did not himself identify any submission he was relying on.

343 Submission 600: Supported in FS1209, Opposed in FS1034

448. Another submitter[344] sought that the extent to which adverse effects were controlled be qualified by inserting reference to *'significant'* detraction from landscape and visual amenity values.

449. Some submissions[345] suggested deleting reference to detraction from the identified values, substituting the words *"while recognising the importance of".*

450. Another suggestion[346] was to explicitly exempt development of location-specific resources.

451. Mr Paetz recommended acceptance of the submission that would limit the focus of the objective to urban activities. In his Section 42A Report Mr Paetz expressed the view that rural subdivision and development could be contemplated on more of a case by case, effects-based perspective, whereas it was more appropriate for urban development to be directed to particular locations "*with a firmer policy approach taken on spatial grounds'*.

452. For the reasons already expressed, we do not agree that subdivision, use and development should be the subject of a case by case merits assessment with little direction from the PDP. As Dr Read noted in her evidence before us, there is a problem with cumulative effects from rural living developments, particularly in the Wakatipu Basin. We consider that it is past time for the PDP to pick up on the Environment Court's finding in 1999 that there were areas of the Wakatipu Basin that required careful management, because they were already at or very close to the limit at which over domestication would occur.

453. Dr Read's report dated June 2014[347] referenced in the section 32 analysis supporting Chapter 6 identifies the rural areas within the Wakatipu Basin where, in her view, further development should be avoided, as well as where increased development might be enabled, on a controlled basis.

454. The Hearing Panel considering submissions on the Rural Chapters (21-23) requested that the Council consider undertaking a structure planning exercise to consider how these issues might be addressed in greater detail. The Council agreed with that suggestion and the end result is a package of provisions forming part of the Stage 2 Variations providing greater direction on subdivision, use and development in the non-outstanding rural areas of the Wakatipu Basin. As at the date of our finalising this report, submissions had only just been lodged on those provisions and so it is inappropriate that we venture any comment on the substance of those provisions. However, we note that hearing and determination of those submissions will provide a mechanism for management of the adverse cumulative effects we have noted, even if the shape the provisions take is not currently resolved.

455. One side-effect of the rezoning of rural Wakatipu Basin land is that there now appears to be no non-outstanding Rural Zoned land in the Basin. Although some provisions of Chapter 6 (as notified) have been deleted or amended, our reading of key policies that remain (as discussed in Part D of this report) is that the landscape categories still only apply in the Rural Zone. We have not identified any submission clearly seeking that this position be changed so that the categorisations would apply more broadly.

---

344 Submission 643

345 Submissions 513, 515, 522, 528, 531, 532, 534, 535, 537: Supported in FS1097, FS1256, FS1286, FS1292 and FS1322; Opposed in FS1068, FS1071, FS1120

346 Submissions 519, 598: Supported in FS1015, FS1287; Opposed in FS1091, FS1282 and FS1356

347 Read Landscapes Ltd, *'Wakatipu Basin Residential Subdivision and Development Landscape Assessment'*

456. It follows that this particular objective, together with other strategic objectives and policies referring to (as we recommend below they be described) Rural Character Landscapes, does not apply in practice in the Wakatipu Basin. If this is not what the Council intends, we recommend it be addressed in a further variation to the PDP.

457. Lastly, we agree with Submission 643 (and the planning evidence of Mr Wells) that some qualification is required to ensure that this is not a '*no development*' objective. That would not be appropriate in a non-outstanding rural environment.

458. Providing a complete exemption for location-specific resources would, however, go too far in the opposite direction. A provision of this kind could perhaps be justified with respect to use and development of renewable energy resources, relying on the NPSREG 2011, but we heard no evidence of any demand for such development in the non-outstanding rural areas of the District. In any event, the submission that such provision be made was advanced on behalf of mining interests who were clearly pursuing a different agenda.

459. Because the focus of this objective is on rural character and the landscapes in question are only a relatively small subset of the rural landscapes of the district, we recommend that the term utilised on the planning maps and in the PDP generally for these landscapes is '*Rural Character Landscapes'.*

460. In summary, for all of these reasons, we recommend that Objectives 3.2.5.2 and 3.2.5.3 be combined in an amended Objective 3.2.5.2 reading as follows:

"The rural character and visual amenity values in identified Rural Character Landscapes are maintained or enhanced by directing new subdivision, use or development to occur in those areas that have the potential to absorb change without materially detracting from those values."

461. Objective 3.2.5.4 as notified read as follows:

"Recognise there is a finite capacity for residential activity in rural areas if the qualities of our landscapes are to be maintained."

462. Most of the focus of submissions on this objective was on the word "*finite*". The issue, as it was put by Mr Tim Williams[348] to us, is that without an identification of what that finite capacity is, and where current development is in relation to that capacity, the objective serves little purpose. Mr Williams supported greater direction as to which areas have capacity to absorb further development, and which areas do not[349]. Many of the submissions also sought that the objective provide for an appropriate future capacity for residential activity.

463. In his reply evidence, Mr Paetz recommended that this objective be revised to read:

---

348 Giving planning evidence for Skyline Enterprises Ltd, Totally Tourism Ltd, Barnhill Corporate Trustee Ltd & DE, ME Bunn & LA Green, AK and RB Robins & Robins Farms Ltd

349 As did Ms Robb, counsel for the parties Mr Williams was giving evidence for, and Mr Goldsmith, counsel for GW Stalker Family Trust and Others

"The finite capacity of rural areas to absorb residential development is considered so as to protect the qualities of our landscapes."

464. As restated, we do not consider the objective adds any value that is not already captured by our recommended revised Objective 3.2.5.2/3.

465. We recommend that it be deleted.

466. In summary, we consider that the objectives recommended are individually and collectively the most appropriate way to achieve the purpose of the Act as it relates to landscapes in the District.

2.12. Section 3.2.6 – Community Health and Safety

467. As notified, this goal read:

"Enable a safe and healthy community that is strong, diverse and inclusive for all people."

468. A number of submissions supported this goal.

469. Submission 197 opposed it on the basis that large employers in the District should be responsible for providing affordable accommodation for their employees.

470. Submission 806 sought removal of unnecessary repetition. The reasons provided for the submission suggest that the area of repetition referred to is in relation to urban development.

471. Submission 807 sought that the whole of Section 3.2.6 should be deleted, or in the alternative the number of objectives and policies should be significantly reduced.

472. Mr Paetz did not recommend any change to this goal.

473. The focus of the RPS (Objective 9.4.1) is on sustainable management of built environment as a means, among other things, to meet people's needs. This is both extremely general and more narrowly directed than the PDP goal. Policy 9.5.5 gets closer, with a focus on maintaining, and where practicable enhancing, quality of life, albeit that the means identified for doing so are generally expressed.

474. The Proposed RPS has a chapter entitled "*Communities in Otago are resilient, safe and healthy*"[350]. The focus of objectives in the chapter is on natural hazards, climate change, provision of infrastructure and the supply of energy, management of urban growth and development, and of hazardous substances. The following chapter is entitled "*People are able to use and enjoy Otago's natural and built environment"*, with objectives focussing on public access to the environment, historic heritage resources, use of land for economic production and management of adverse effects.

475. Policy 1.1.3 of the Proposed RPS focuses more directly on provision for social and cultural wellbeing and health and safety, albeit in terms providing flexibility as to how this is achieved, except in relation to human health (significant adverse effects on which must be avoided).

476. We regard the higher level focus of these chapters as supporting the intent of this goal, and Policy 1.1.3 as providing guidance as to how it might be framed.

---

350 Proposed RPS, Chapter 4

477. At present, this goal is framed as a policy, commencing with a verb.

478. Looking at what outcome is being sought here and the capacity of the District Plan to achieve that outcome, we take the view that this particular higher-level objective is better framed in section 5 terms; emphasis is therefore required on people in communities providing for their social, cultural and economic well being and their health and safety. As above, this is also the direction Policy 1.1.3 of the Proposed RPS suggests.

479. So stated, there is an area of overlap with Goal/Objective 3.2.2 (as Submission 806 observes), but we nevertheless regard this as a valuable high-level objective, particularly for the non-urban areas of the District.

480. Accordingly, we recommend that this goal/high-level objective be reframed to read:

"The District's residents and communities are able to provide for their social, cultural and economic wellbeing and their health and safety."

481. We regard this, in conjunction with the other high-level objectives it has recommended, to be the most appropriate way to achieve the purpose of the Act.

2.13. Section 3.2.6 – Additional Objectives

482. We have already addressed Objectives 3.2.5.5, 3.2.6.1, 3.2.6.2 and 3.2.6.3, recommending that they be amalgamated into what was 3.2.2.1.

483. Objective 3.2.6.4 as notified read:

"Ensure planning and development maximises opportunities to create safe and healthy communities through subdivision and building design."

484. While the submissions on all of these objectives were almost universally in support, we view these matters, to the extent that they are within the ability of the PDP to implement[351], as being more appropriately addressed in the context of Chapter 4. We therefore accept the point made in Submission 807 summarised above, that the objectives in this section might be significantly pared back.

485. Although this leaves the higher-level objective without any more focused objectives unique to it, we do not regard this as an unsatisfactory end result. To the extent the goal/high-level objective relates to non-urban environments, these matters can be addressed in the more detailed plan provisions in other chapters. In summary, therefore, we are satisfied both the amendments and the relocation of the objectives in Section 3.2.6 we have recommended are the most appropriate way to achieve the purpose of the Act.

2.14. Section 3.2.7 – Goal and Objectives

486. Lastly in relation to Chapter 3 objectives, we note that the goal in Section 3.2.7 and the two objectives under that goal (3.2.7.1 and 3.2.7.2) are addressed in the Stream 1A Hearing Report (Report 2).

---

[351] Provision of community facilities is more a Local Government Act issue than a matter for the PDP.

487. The revised version of these provisions in the amended Chapter 3 attached to this Report as Appendix 1 shows the recommendations of that Hearing Panel for convenience.

2.15. Potential Additional Goals and Objectives

Before leaving the strategic objectives of the PDP, we should note submissions seeking entirely new goals and/or objectives. We have already addressed some of those submissions above.

488. A number of submitters[352] sought insertion of a 'goal' specifically related to tourism, generally in conjunction with a new strategic objective and policy. We have already addressed the submissions related to objectives and policies for tourism. While important to the District, ultimately we consider tourism is an aspect of economic development and therefore covered by (now) higher order objective 3.2.1. We therefore recommend rejection of these submissions.

489. The Upper Clutha Tracks Trust[353] sought insertion of a new goal worded as follows:

"*A world class network of trails that connects communities."*

490. The submitter also sought a new objective to sit under that goal as well as a series of new policies.

491. The submitter did not appear so as to provide us with any evidential foundation for such change. In the absence of evidence, we do not regard the relief sought by the submitter as so obviously justified as a high-level objective of the PDP that it would recommend such amendments.

492. NZIA[354] likewise sought insertion of a new goal, worded as follows:

"Demand good design in all development."

493. Mr Paetz did not recommend acceptance of this submission. While we acknowledge that good design is a worthwhile aspiration, we see it as an aspect of development that might more appropriately be addressed in more detailed provisions that can identify what good design entails. We will return to the point in the context of Chapter 4 rather than as a discrete high-level objective of its own. Accordingly, we do not recommend acceptance of this submission.

494. Slopehill Properties Limited[355] sought a new objective (or policy) to enable residential units to be constructed outside and in addition to approved residential building platforms with a primary use of the increased density is to accommodate family. Mr Farrell gave planning evidence on this submission, supported by members of the Columb family who own property between Queenstown and Arthurs Point. Clearly, a case can be made to address situations like that of the Columb family where different generations of the same family seek to live in close proximity. The difficulty we see with an objective in the District Plan (or indeed a policy) providing for this situation is that there appears to be no safeguard against it being used on a large scale to defeat the objective seeking to retain the rural character of land outside existing

352 Submissions 607, 615, 621, 677: Supported in FS1097, FS1105, FS1117, FS1137, FS1152, FS1153, FS1330 and FS1345; Opposed in FS1035, FS1074, FS1312 and FS1364

353 Submission 625: Supported in FS1097; Opposed in FS1347

354 Submission 238: Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1242, FS1248 and FS1249

355 Submission 854: Supported in FS1286; Opposed in FS1349

urban areas. Certainly, Mr Farrell was not able to suggest anything to us. Nor was Mr Farrell able to quantify the potential implications of such an objective for the District more broadly.

495. In summary, while we accept that the Columbs' personal situation is meritorious, we cannot recommend acceptance of their submission against that background.

496. In summary, having reviewed the objectives we have recommended, we consider that individually and collectively, they are the most appropriate way to achieve the purpose of the Act within the context of strategic objectives, for the reasons set out in this report.

3. POLICIES

497. Turning to the policies of Chapter 3, given the direction provided by section 32, the key reference point of our consideration of submissions and further submissions is whether they are the most appropriate means to achieve the objectives we have recommended.

3.1. Policy 3.2.1.1.3 – Visitor Industry

498. Consistent with our recommendation that the objectives should be reordered with the initial focus on the benefits provided by the visitor industry, we recommend that what was Policy 3.2.1.1.3 be the first policy.

499. As notified, that policy read:

"Promote growth in the visitor industry and encourage investment in lifting the scope and quality of attractions, facilities and services within the Queenstown and Wanaka central business areas."

500. The submissions on this policy all sought to expand its scope beyond the Queenstown and Wanaka central areas. Many submissions have sought that the focus be district-wide. One submission[356] sought to link the promotion of visitor industry growth to maintenance of the quality of the environment.

501. When Real Journeys Limited appeared at the hearing, its representatives emphasised the need for provision for visitor accommodation facilities, not all of which could practically be located within the two town centres. They also took strong exception to the implication of Policy 3.2.1.1.3 that the quality of existing attractions, facilities and services for visitors (as distinct from their scope) needed improvement.

502. Mr Paetz recommended that the submissions be addressed by a minor amendment to the existing policy (to refer to Queenstown and Wanaka town centres rather than to their central business areas) consistent with his recommended objective, and a new policy framed as follows:

"Enable the use and development of natural and physical resources for tourism activity where adverse effects are avoided, remedied or mitigated".

503. We accept the thrust of the submissions and evidence we heard on this aspect of the PDP, that attractions, facilities and services for visitors are not and should not be limited to the Queenstown and Wanaka town centres. We also accept the logic of Mr Paetz's suggested

356 Submission 806

approach of providing for the visitor industry more broadly, but are concerned with the open-ended nature of the suggested broader policy.

504. In his Section 42A Report, Mr Paetz acknowledged that his recommending a policy focus on adverse effects being avoided, remedied or mitigated was not consistent with the general approach of the PDP seeking to minimise the use of that phrasing. He considered it appropriate in this context because the policy is not specific to the environmental effects it is concerned with. In Mr Paetz's view, a higher bar would be set in more sensitive landscapes or environments by other objectives and policies.

505. While this may be so, we consider that greater direction is required that this is the intention.

506. It seems to us that part of the issue is that visitor industry developments within the '*urban*' areas of the district outside the Queenstown and Wanaka town centres raise a different range of issues to visitor industry developments in rural areas. In the former, the objectives and policies for the zones concerned provide more detailed guidance. In the latter, the strategic objectives and policies focused on landscape quality and rural character provide guidance. Policy 5.3.1(e) of the Proposed RPS might also be noted in this context – it supports provision for tourism activities in rural areas "*of a nature and scale compatible with rural activities".* It is apparent to us that while some specific provision is required for visitor industry developments in rural areas, this is better located alongside other strategic policies related to the rural environment. We return to the point in that context.

507. We also identify some tension between a policy that seeks to '*promote growth'* in the visitor industry with recommended issues and objectives seeking to promote diversification in the District's economy. Consequently, we recommend that this wording be softened somewhat.

508. In summary, we recommend that Policy 3.2.1.1.3 be renumbered 3.3.1 as follows and amended to read as follows:

"Make provision for the visitor industry to maintain and enhance attractions, facilities and services within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone."

509. We consider that this policy, operating in conjunction with the other policies it will recommend, is the most appropriate way to achieve Objectives 3.2.1.1 and 3.2.1.2 as recommended above.

3.2. Policies 3.2.1.1.1 and 3.2.1.1.2 – Queenstown and Wanaka Town Centres

510. As notified these two policies read:

"3.2.1.1.1 Provide a planning framework for the Queenstown and Wanaka central business areas that enables quality development and enhancement of the centres as the key commercial hubs of the District, building on their existing functions and strengths.

3.2.1.1.2 Avoid commercial rezoning that could fundamentally undermine the role of the Queenstown and Wanaka central business areas as the primary focus of the District's economic activity."

511. Submissions on these policies reflected the submissions on Objective 3.2.1.1 discussed above, seeking to expand its scope to recognise the role of Frankton's commercial areas in relation to

Queenstown, and Three Parks in relation to Wanaka. Willowridge Developments Ltd[357] sought to confine both policies to a focus on the business and commercial areas of Queenstown and Wanaka. Queenstown Park Limited[358] also sought to soften Policy 3.2.1.1.2 so that it was less directive. NZIA[359] sought recognition that the Queenstown and Wanaka town centres play a broader role than just as commercial hubs.

512. In his reply evidence, Mr Paetz recommended:
   a. Consequential changes in the wording based on his recommended objective, to refer to Queenstown and Wanaka town centres;
   b. Amending Policy 3.2.1.1.1 to refer to the civic and cultural roles of the two town centres;
   c. Deletion of the word '*fundamentally*' from Policy 3.2.1.1.2;
   d. Addition of four new policies recognising the role of Frankton commercial areas and the importance of Queenstown Airport, and a further policy focused on Three Parks.

513. Addressing first the suggested amendments to Policies 3.2.1.1.1 and 3.2.1.1.2, we agree with Mr Paetz's recommendations with only a minor drafting change. NZIA make a good point regarding the broader role of the town centres. Similarly, the word '*fundamentally*' is unnecessary. Testing whether additional zoning could '*undermine*' the role of the existing town centres already conveys a requirement for a substantial adverse effect.

514. We also agree that, provided the separate roles of the Frankton and Three Parks are addressed, a strong policy direction is appropriate.

515. As a result, we recommend that Policies 3.2.1.1.1. and 3.2.1.1.2 be renumbered and amended to read as follows:

> *"3.3.2 Provide a planning framework for the Queenstown and Wanaka town centres that enables quality development and enhancement of the centres as the key commercial, civic and cultural hubs of the District, building on their existing functions and strengths.*
>
> *3.3.3 Avoid commercial rezoning that could undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity."*

516. We note that the provisions of the RPS related to management of the built environment[360] are too high level and generally expressed to provide direction on these matters. Policy 5.3.3 of the Proposed RPS, however, supports provisions which avoid "*unplanned extension of commercial activities that has significant adverse effects on the central business district and town centres, including on the efficient use of infrastructure, employment and services."*

517. As regards the new policies suggested by Mr Paetz for Frankton and Three Parks, we agree with the recommendations of Mr Paetz with five exceptions.

518. We recommend that reference to Frankton not be limited to the commercial areas of that centre because existing industrial areas play an important local servicing role (as recognised by the revised recommended objective above) and Queenstown Airport has a much broader role than solely "*commercial"*. We also consider that reference to "mixed-use' development

357 Submission 249: Opposed in FS1097

358 Submission 806: Supported in FS1012

359 Submission 238: Supported in FS1097 and FS1117; Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1249

360 RPS, Section 9.4

nodes is unnecessary. Having broadened the policy beyond commercial areas, the uses are obviously "mixed".

519. Secondly, Mr Paetz recommended that recognition of Queenstown Airport refer to its "*essential"* contribution to the prosperity and "*economic"* resilience of the District.

520. While Queenstown Airport plays an extremely important role, we take the view that categorising it as "*essential"* would imply that it prevailed over all other considerations. Given the competing matters that higher order documents require be recognised and provided for (reflecting in turn Part 2 of the Act), we do not regard that as appropriate.

521. We have also taken the view that the nature of the contribution Queenstown Airport makes is not limited to its economic contribution. The evidence for QAC emphasised to us that Queenstown Airport is a lifeline utility under the Civil Defence Emergency Management Act 2002 with a key role in planning and preparing for emergencies, and for response and recovery in the event of an emergency. We accordingly recommend that the word "*economic"* be deleted from Mr Paetz's suggested policy.

522. In addition, we have determined that greater direction is required (consistent with the objective we have recommended) regarding the function of the Frankton commercial area in the context of Mr Paetz's suggested policy that additional commercial rezoning that would undermine that function be avoided.

523. It follows that we do not accept the suggestion of Mr Chris Ferguson in his evidence that the new Frankton policy should only constrain additional zoning within Frankton. Mr Paetz confirmed in response to our question that his intention was that the policy should extend to apply to areas outside Frankton – most obviously Queenstown itself – and we agree that this is appropriate.

524. Lastly, we do not think it necessary to refer to "*future"* additional commercial rezoning given that any additional rezoning will necessarily be in the future.

525. In summary, we recommend four new policies numbered 3.3.4-3.3.7 and worded as follows:

"Provide a planning framework for the Frankton urban area that facilitates the integration of the various development nodes.

Recognise that Queenstown Airport makes an important contribution to the prosperity and resilience of the District.

Avoid additional commercial rezoning that will undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will undermine increasing integration between those areas and the industrial and residential areas of Frankton.

Provide a planning framework for the commercial core of Three Parks that enables large format retail development."

526. We are satisfied that collectively these policies are the most appropriate way, in the context of high-level policies, to achieve Objectives 3.2.1.2-4 that we have recommended.

3.3. Policies 3.2.1.2.1 – 3 – Commercial and Industrial Services

527. Policy 3.2.1.2.3 as notified read:

"Avoid non-industrial activities occurring within areas zoned for industrial activities."

528. Submissions on this policy sought to soften its effect in various ways. Mr Paetz recommended that Submission 361 be accepted with the effect that non-industrial activities related to or supporting industrial activities might occur within industrial zones, but otherwise that the policy not be amended.

529. Policy 5.3.4 of the Proposed RPS is relevant on this point. It provides for restriction of activities in industrial areas that, among other things, may result in inefficient use of industrial land.

530. We accept in principle that, given the guidance provided by the Proposed RPS, the lack of land available for industrial development, and the general unsuitability of land zoned for other purposes for industrial use, non-industrial activities in industrial zones should be tightly controlled.

531. The more detailed provisions governing industrial zones are not part of the PDP, being scheduled for consideration as part of a subsequent stage of the District Plan review. At a strategic level, we recommend acceptance of Mr Paetz's suggested amendment with the effect that this policy (renumbered 3.3.8) would read:

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

532. We consider that this policy is the most appropriate way, in the context of high-level policies, to achieve the aspects of Objectives 3.2.1.3 and 3.2.1.5 related to industrial activities.

533. Policies 3.2.1.2.1 and 3.2.1.2.2 need to be read together. As notified, they were worded as follows:

"Avoid commercial rezoning that would fundamentally undermine the key local service and employment function role that the larger urban centres outside of the Queenstown and Wanaka Central Business Areas fulfil.

Reinforce and support the role that township commercial precincts and local shopping centres fulfil in serving local needs."

534. Submissions on Policy 3.2.1.2.1 sought either its deletion[361] or significant amendment to focus it on when additional commercial rezoning might be enabled[362]. Submissions on Policy 3.2.1.2.2 sought recognition of the role of industrial precincts in townships and broadening the focus beyond townships to commercial, mixed use and industrial zones generally, and to their role in meeting visitor needs[363].

535. Mr Paetz recommended relatively minor amendments to these policies, largely consequential on his recommendation that the role of Frankton be recognised with a separate policy regime.

---

361 Submission 608: Opposed in FS1034

362 Submission 806

363 Submissions 726 and 806

536. Policy 5.3.3. of the Proposed RPS, already referred to in the previous section of our report, needs to be noted in this context also.

537. Logically, these policies should be considered in reverse order, addressing the positive role of township commercial precincts and local shopping centres first. We do not consider that it is necessary to both "*reinforce and support"* that role. These terms are virtually synonyms. We take the view, however, that greater direction is required in how such precincts and centres might be supported. We recommend reference to enabling commercial development that is appropriately sized for the role of those precincts and centres.

538. That is not to say that those areas do not have other roles, such as in meeting resident and visitor needs, and providing industrial services, but in our view, those are points of detail that can be addressed in the more detailed provisions of the PDP.

539. Mr Paetz suggested revision to Policy 3.2.1.2.1, to remove reference to the Queenstown and Wanaka town centres, would mean that there is an undesirable policy gap for centres within the Queenstown and Wanaka urban areas, but outside the respective town centres (apart from Frankton and Three Parks).

540. In summary, we recommend that these policies be renumbered 3.3.9 and 3.3.10, and amended to read:

"Support the role township commercial precincts and local shopping centres fulfil in serving local needs by enabling commercial development that is appropriately sized for that purpose.

Avoid commercial rezoning that would undermine the key local service and employment function role that the centres outside of the Queenstown and Wanaka town centres, Frankton and Three Parks fulfil."

541. We consider that these policies are the most appropriate way, in the context of high-level policies, to achieve objective 3.2.1.5.

3.4. Policies 3.2.1.3.1-2 – Commercial Capacity and Climate Change

542. As notified, these policies read:

"3.2.1.3.1 Provide for a wide variety of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification;

3.2.1.3.2 Encourage economic activity to adapt to and recognise opportunities and risks associated with climate change and energy and fuel pressures."

543. Submissions on Policy 3.2.1.3.1 either supported the policy as is[364] or sought that it be more overtly enabling[365]. One submission[366] sought amendment to remove reference to capacity and to insert reference to avoiding, remedying or mitigating adverse effects.

---

364 Submissions 608: Opposed in FS1034

365 Submissions 615, 621, 716 and 807: Supported in FS1097, FS1105, FS1117, FS1137, FS1145

366 Submission 806

544. Submissions on 3.2.1.3.2 either supported the policy as is[367] or sought to delete reference to opportunities, and to energy and fuel pressures[368].

545. Mr Paetz recommended that the policies remain as notified.

546. We regard the current form of Policy 3.2.1.3.1 as appropriate. If it were amended to be more enabling, then reference would have to be made to management of adverse effects. Simply providing for avoiding, remedying or mitigating adverse effects on the environment, as suggested by Queenstown Park Limited, would provide insufficient direction for the reasons discussed already. The existing wording provides room for the nature of the provision referred to be fleshed out in more detailed provisions. We therefore recommend that Policy 3.2.1.3.1 be retained as notified other than to renumber it 3.3.11.

547. Turning to notified Policy 3.2.1.3.2, we have already discussed the provisions of both the RPS and the Proposed RPS related to climate change. While the former provides no relevant guidance, the Proposed RPS clearly supports the first part of the policy. While Policy 4.2.2(c) talks of encouraging activities that reduce or mitigate the effects of climate change, the reasons and explanation for the objective and group of policies addressing climate change as an issue note that it also provides opportunities. We therefore recommend rejection of the submission seeking deletion of reference to opportunities in this context.

548. We heard no evidence, however, of energy and fuel pressures such as would suggest that they need to be viewed in the same light as the effects of climate change.

549. Accordingly, we recommend renumbering Policy 3.2.1.3.2 as 3.3.12 and amending it to read:

"Encourage economic activity to adapt to and recognise opportunities and risks associated with climate change."

550. We consider that recommended Policies 3.3.11 and 3.3.12 are the most appropriate way, in the context of a package of high level policies, to achieve objectives 3.2.1.1, 3.2.1.2, 3.2.1.5, 3.2.1.6 and 3.2.1.9.

3.5. Policies 3.2.2.1.1 – 7 – Urban Growth

551. As notified, these policies provided for fixing of Urban Growth Boundaries (UGBs) around identified urban areas and detailed provisions as to the implications of UGBs both within those boundaries and outside them. In his Section 42A Report, Mr Paetz recommended that all of these policies be deleted from Chapter 3 because of the duplication they created with the more detailed provisions of Chapter 4. By his reply evidence, Mr Paetz had reconsidered that position and recommended that the former Policy 3.2.2.1.1 be reinserted, reading as follows:

"Apply Urban Growth Boundaries (UGBs) around the urban areas in the Wakatipu Basin (including Jacks Point), Arrowtown and Wanaka".

552. This policy also needs to be read with Mr Paetz's recommended amended Policy 3.2.5.3.1 reading:

"Urban development will be enabled within Urban Growth Boundaries and discouraged outside them."

---

367 Submission 806

368 Submission 598: Supported in FS1287

553. The effect of the suggested Policy 3.2.5.3.1 is to materially amend the notified Policy 3.2.2.1.2 which sought avoidance of urban development outside of the UGBs.

554. We agree with Mr Paetz's underlying recommendation that most of the policies formerly in Section 3.2.2 should be shifted and amalgamated with the more detailed provisions in Chapter 4, both to avoid duplication and to better focus Chapter 3 on genuinely '*strategic*' matters.

555. We also agree with Mr Paetz's recommendation that the decision as to whether there should be UGBs and the significance of fixing UGBs for urban development outside the boundaries that are identified, are strategic matters that should be the subject of policies in Chapter 3.

556. Submissions on Policies 3.2.2.1.1 and 3.2.2.1.2 covered the range from support[369] to seeking their deletion[370].

557. One outlier is the submission from Hawea Community Association[371] seeking specific reference to a UGB for Lake Hawea Township. Putting aside Lake Hawea Township for the moment, within the extremes of retention or deletion, submissions sought softening of the effect of UGBs[372] or seeking to manage urban growth more generally, without boundaries on the maps[373].

558. The starting point, but by no means the finishing point, is that the ODP already contains a policy provision enabling the fixing of UGBs and the UGB has been fixed for Arrowtown after a comprehensive analysis of the site-specific issues by the Environment Court[374]. It is also relevant that Policy 4.5.1 of the Proposed RPS provides for consideration of the need for UGBs to control urban expansion, but does not require them.

559. The evidence for Council supported application of UGBs on urban design grounds (from Mr Bird) and in terms of protection of landscape and rural character values (Dr Read). The Council also rested its case on UGBs on infrastructure grounds and Mr Glasner's evidence set out the reasons why infrastructure constraints and the efficient delivery of infrastructure might require UGBs. However, his answers to the written questions that we posed did not suggest that infrastructure constraints (or costs) were actually an issue either in the Wakatipu Basin or the Upper Clutha Basin, where the principal demand for urban expansion exists. Specifically, Mr Glasner's evidence was that the only areas where existing or already planned upgrades to water supply and sewerage systems would not provide sufficient capacity for projected urban growth would be in Gibbston Valley and at Makarora. To that extent, Mr Glasner's responses tended to support the submissions we heard from Mr Goldsmith[375]. Mr Glasner did say, however, that the UGBs would be a key tool for long term planning, in terms of providing certainty around location, timing, and cost of infrastructure investments. We heard no expert evidence that caused us to doubt Mr Glasner's evidence in this regard.

---

369 Submission 719

370 Submission 806

371 Submission 771, see also Submission 289 to the same effect

372 Submission 807 seeking in the alternative provision for "limited and carefully managed opportunities for urban development outside the Urban Growth Boundary": Opposed in FS1346

373 Submission 608 – although at the hearing, counsel for Darby Planning LP advised it had withdrawn its opposition to UGBs: Opposed in FS1034

374 See *Monk v Queenstown-Lakes District Council* [2013] NZEnvC12

375 On this occasion, when appearing for Ayrburn Farm Estate Ltd, Bridesdale Farm Developments Ltd, Shotover Country Ltd and Mt Cardrona Station Ltd.

560. Mr Paetz also sought to reassure us that the areas within the currently defined UGBs are more than sufficient to provide for projected population increases[376]. Ultimately, however, that evidence goes more to the location of any UGBs (and to satisfying us that the NPSUDC 2016 is appropriately implemented) rather than the principle of whether there should be any at all (and is therefore a matter for the mapping hearings).

561. The evidence from submitters we heard largely either supported or accepted the principle of UGBs. Mr Dan Wells[377] was a clear exception. He emphasised that unlike the historic situation in Auckland where the metropolitan limits have previously been "*locked in"* by being in the Regional Policy Statement, UGBs in a District Plan do not have the same significance, because they can be altered by future plan changes (including privately initiated plan changes). Mr Wells also expressed the view that a resource consent process was just as rigorous as a plan change and there was no reason why the PDP should preclude urban expansion by resource consent. Mr Wells noted, however, that both processes had to be addressing development at a similar scale for this to be the case. In other words, a resource consent application for a one or two section development would involve must less rigorous analysis than a Plan Change facilitating development of one hundred sections.

562. To us, the most pressing reason for applying UGBs is that without them, the existing urban areas within the District can be incrementally expanded by a series of resource consent applications at a small scale, each of which can be said to have minimal identifiable effects relative to the existing environment.

563. This is of course the classic problem of cumulative environmental effects and while a line on a map may be somewhat arbitrary, sometimes lines have to be drawn to prevent cumulative effects even when they cannot be justified on an "effects basis" at the margin[378].

564. The other thing about a line on a map is that it is clear. While, in theory, a policy regime might have the same objective, it is difficult to achieve the necessary direction when trying to describe the scope of acceptable urban expansion beyond land which is already utilised for that purpose. It is much clearer and more certain if the policy is that there be no further development, which is why we regard it as appropriate in relation to urban creep in the smaller townships and settlements of the District, as discussed further below.

565. In summary, we conclude that UGBs do serve a useful purpose (in section 32 terms they are the most appropriate way in the context of a package of high-level policies to implement the relevant objective, (3.2.2.1), as we have recommended it be framed.

566. Accordingly, we recommend that with one substantive exception, and one drafting change discussed shortly, Policy 3.2.2.1.1 be retained.

567. The substantive exception arises from our belief that it is appropriate to prescribe a UGB around Lake Hawea Township. The Hawea Community Association[379] sought that outcome and the representatives of the Association described the extent of consultation and community consensus to us on both imposition of a UGB and its location when they appeared

---

376 M Paetz, Reply Evidence at section 7

377 Giving evidence for Millbrook Country Club, Bridesdale Farm Developments and Winton Partners Fund

378 Compare *Contact Energy Limited v Waikato Regional Council* CIV2006-404-007655 (High Court – Woodhouse J) at [69]-[83] in the context of setting rules around water quality limits

379 Submission 771

before us. They also emphasised that their suggested UGB provided for anticipated urban growth.

568. No submitter lodged a further submission opposing that submission and we recommend that it be accepted.

569. The more minor drafting change is that Policy 3.2.2.1.1 as recommended by Mr Paetz refers both to the urban areas in the Wakatipu Basin and to Arrowtown. Clearly Arrowtown is within the Wakatipu Basin. It is not in the same category as Jacks Point that is specifically mentioned for the avoidance of doubt. We recommend that specific reference to Arrowtown be deleted.

570. Accordingly, we recommend that this policy be renumbered (as 3.3.13) and amended to read:

"Apply Urban Growth Boundaries (UGBs) around the urban areas in the Wakatipu Basin (including Jacks Point), Wanaka, and Lake Hawea Township."

571. The second key question is how the PDP treats urban development outside the defined UGBs. There are two sides to this point. The first relates to the smaller townships and settlements of the District, where no UGB is proposed to be fixed. Putting aside Lake Hawea Township which we have recommended be brought within the urban areas defined by UGBs, these are Glenorchy, Kingston, Cardrona, Makarora and Luggate.

572. Policy 3.2.2.1.7 as notified related to these communities and provided:

"That further urban development of the District's small rural settlements be located within and immediately adjoining those settlements."

573. NZIA[380] sought that urban development be confined to within the UGBs. Queenstown Park Limited[381] sought amendment of the policy to ensure its consistency with other policies related to UGBs.

574. Mr Paetz recommended that the policy provision in this regard sit inside Chapter 4 and be worded:

"Urban development is contained within existing settlements."

575. As notified, Policy 4.2.1.5 was almost identical to Policy 3.2.1.7. In that context, NZIA was the only submitter seeking amendment to the Policy; that it simply state:

"Urban development is contained."[382]

576. Clearly Mr Paetz is correct and the duplication between these two policies needs to be addressed[383]. We consider, however, that the correct location for this policy is in Chapter 3 because it needs to sit alongside the primary policy on UGBs. Secondly, it needs to be clear that this is a complementary policy. As recommended by Mr Paetz, the policy is in fact

380 Submission 238: Opposed in FS1097, FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

381 Submission 806

382 Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

383 Refer the Real Journeys Submission noted on the more general point of duplication

inconsistent with 3.2.2.1 because in the urban areas with UGBs, provision is made to varying degrees for further urban development outside the existing settled areas.

577. In summary, we recommend that the policy be renumbered (as 3.3.15) and read:

"Locate urban development of the settlements where no UGB is provided within the land zoned for that purpose."

578. We accept that there is an element of circularity in referring to the existing zone provisions in this regard, but we regard this as the most appropriate way to achieve Objectives 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2 (as those objectives bear upon the point) given that the Township Zone provisions are a matter assigned to a subsequent stage of the District Plan review.

579. The last substantive issue that needs to be addressed under this heading is the extent to which urban development is provided for outside UGBs (and outside the other existing settlements).

580. The starting point is to be clear what it is the PDP is referring to when policies focus on "*urban development".*

581. The definition of urban development in the PDP as notified reads:

"Means any development/activity within any zone other than the rural zones, including any development/activity which in terms of its characteristics (such as density) and its effects (apart from bulk and location) could be established as of right in any zone; or any activity within an urban boundary as shown on the District Planning maps."

582. At first blush, this definition would suggest that any development within any of the many special zones of the PDP constitute "*urban development"* since they are not rural zones and the qualifying words in the second part of the definition do not purport to apply to all urban development. Similarly, no development of any kind within the rural zones is defined to be urban development. Given that one of the principal purposes of defining urban growth boundaries is to constrain urban development in the rural zones, the definition would gut these policies of any meaning.

583. This definition is largely in the same terms as that introduced to the Operative Plan by Plan Change 50. The Environment Court has described it, and the related definition of "*Urban Growth Boundary"* in the following terms[384]:

"A more ambivalent and circular set of definitions would be hard to find."

584. The Court found that urban development as defined means:

"… any development/activity which:
- *a. Is of an urban type, that is any activity of a type listed as permitted or controlled in a residential, commercial, industrial or other non-rural zone; or*
- *b. Takes place within an "Urban Growth Boundary"* as shown on the District's Planning Maps."

384 *Monk v Queenstown-Lakes District Council* [2013] NZEnvC12 at [20]

585. The Court also commented that a definition is not satisfactory if it relies on an exercise of statutory interpretation[385].

586. We entirely agree.

587. When counsel for the Council opened the Stream 1A and 1B hearing, we asked Mr Winchester to clarify for us what the definition really meant. He accepted that it was unsatisfactory and undertook to revert on the subject. As part of the Council's reply, both counsel and Mr Paetz addressed the issue. Mr Paetz suggested, supported by counsel, that a revised definition adapted from the definition used in the Proposed Auckland Unitary Plan (as notified) should be used, reading as follows:

"Means development that by its scale, intensity, visual character, trip generation and/or design and appearance of structures, is of an urban character typically associated with urban areas. Development in particular special zones (namely Millbrook and Waterfall Park) is excluded from the definition."

588. This recommendation is against a background of a submission from Millbrook Country Club[386] seeking that the definition be revised to:

"Means develop and/or activities which:
a. Creates or takes place on a site of 1500m² or smaller; and
b. Is connected to reticulated Council or community water and wastewater infrastructure; and
c. Forms part of ten or more contiguous sites which achieve both (a) and (b) above; but
d. Does not includes resort style development such as that within the Millbrook Zone."

589. We also note MacTodd's submission[387] seeking that the definition be amended in accordance with the Environment Court's interpretation of the existing definition, as above.

590. Although counsel for Millbrook referred to the Proposed Auckland Unitary Plan definition of urban activities (as notified[388]) as part of his submissions[389], it appears that Millbrook's formal submission had been drafted with an eye to the definition in the then Operative Auckland Regional Policy Statement that reads:

"Urban development – means development which is not of a rural nature. Urban development is differentiated from rural development by its scale, density, visual character, and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services (such as water supply and drainage), by its generation of traffic and includes activities (such as manufacturing), which are usually provided for in urban areas."

591. We also had the benefit of an extensive discussion with counsel for Millbrook, Mr Gordon, assisted by Mr Wells who provided planning evidence in support of the Millbrook submission, but not on this specific point.

---

385 See paragraph [24]

386 Submission 696

387 Submission 192

388 Noting that the Independent Hearing Panel recommended deletion of that definition, apparently on the basis that it did no more than express the ordinary and natural meaning of the term, and Auckland Council accepted that recommendation in its decisions on the Proposed Plan

389 As did counsel for Ayrburn Farm Estate Ltd and Others

592. A large part of that discussion was taken up in trying to identify whether the Millbrook development is in fact urban development, and if not, why not. Mr Gordon argued that Millbrook was something of a special case because it provides for activities that are neither strictly urban nor rural. He distinguished Jacks Point, which is contained within an existing UGB because it has provision in its structure planning for facilities like childcare, kindergartens, schools, convenience stores and churches, as well as being of a much larger scale than Millbrook.

593. We also had input from counsel for Darby Planning LP, Ms Baker-Galloway, on the point. She submitted that the definition should not be a quantitative approach, e.g. based on density, but should rather be qualitative in nature. Beyond that, however, she could not assist further.

594. We agree that quantitative tests such as those suggested by Millbrook are not desirable. Among other things, they invite developments that are designed around the quantitative tests (in this case, multiple 9 section developments or developments on sites marginally over 1500m²). We also note the example discussed in the hearing of houses on 2000-3000m² sites in Albert Town that are assuredly urban in every other respect.

595. We also have some difficulties with the definition suggested by Mr Paetz because some types of development are typically associated with urban areas, but also commonly occur in rural areas, such as golf courses and some industries. We think that there is value in the suggestion from Millbrook (paralleled in the referenced Operative Auckland Regional Policy Statement definition in this regard) that reference might be made to connections to water and wastewater infrastructure, but we do not think they should be limited to Council or community services. It is the reticulation that matters, rather than the identity of its provider. Jacks Point, for instance, has its own water and wastewater services, whereas Millbrook is connected to Council water supply and wastewater services.

596. Insofar as Millbrook sought an exclusion for "*resort style development",* that rather begs the question; what is a resort?

597. Having regard to the submissions we heard from Millbrook, we think that the key characteristics of a resort are that it provides temporary accommodation (while admitting of some permanent residents) with a lower average density of residential development than is typical of urban environments, in a context of an overall development focused on on-site visitor activities. Millbrook fits that categorisation, but Jacks Point does not, given a much higher number of permanent residents, the geographical separation of the golf course from the balance of the development and the fact that the overall development is not focussed on on-site visitor activities. It is in every sense a small (and growing) township with a high-quality golf course.

598. The last point we have to form a view on is whether, as Mr Paetz recommends, the Waterfall Park Zone should similarly be excluded from the definition of urban development. Mr Paetz's reply evidence accepted that the density of a permitted development within the Waterfall Park Zone would be closer to urban development and made it clear that the entire Waterfall Park Zone is an anomaly; in his words:

"The sort of sporadic and ad hoc urban intensity zoning in the middle of the countryside that Council is looking to discourage through the PDP"[390]*.*

[390] M Paetz, Reply Evidence at 6.16

599. The Waterfall Park Zone has not been implemented. We have no evidence as to the likelihood that it will be implemented and form part of the 'existing' environment in future. Certainly, given Mr Paetz's evidence, we see no reason why a clearly anomalous position should drive the wording of the PDP policies on urban development going forward.

600. For these reasons, we do not consider special recognition of Waterfall Park is required.

601. A separate Hearing Panel (Stream 10) will consider Chapter 2 (Definitions)of the PDP. That Hearing Panel will need to form a view on the matters set out above and form a final view in the light of the submissions and evidence heard in that stream, what the recommendation to Council should be.

602. For our part, however, we recommend to the Stream 10 Hearing Panel that the definition of urban development be retained to provide clarity on the appropriate interpretation of the PDP[391] and amended to read:

"Means development that is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development".

We further recommend that a new definition be inserted as a consequence of our recommendation as above:

"Resort" – means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing visitor accommodation and forming part of an overall development focussed on on-site visitor activities."

603. We have proceeded on the basis that when the objectives and policies we have to consider use the term 'urban development', it should be understood as above.

604. Turning then to the more substantive issue, whether urban development, as defined, should be avoided or merely discouraged outside the UGBs and other existing settlements, Mr Paetz's recommendation that Policy 3.2.5.3.1 be amended to provide the latter appears inconsistent with his support for Policy 4.2.2.1 which reads:

"Urban Growth Boundaries define the limits of urban growth, ensuring that urban development is contained within those identified boundaries, and urban development is avoided outside of those identified boundaries."

605. Mr Paetz did not explain the apparent inconsistency, or indeed, why he had recommended that Policy 3.2.5.3.1 should be amended in this way.

---

391 The need for clarity as to the classification of Millbrook and other similar resorts that might be established in future causes us to take a different view on the need for a definition than that which the Auckland Independent Hearings Panel came to.

606. Ultimately, we view this as quite a simple and straightforward question. Mr Clinton Bird, giving urban design evidence for the Council, aptly captured our view when he told us that you have either got an urban boundary or not. If you weaken the boundary, you just perpetuate urban sprawl.

607. This is the same approach that is taken in the Proposed RPS, which provides[392] that where UGBs are identified in a District Plan, urban development should be avoided beyond the UGB.

608. It follows that we favour a policy of avoidance of urban development outside of the UGB's, as provided for in the notified Policy 3.2.2.1.2. Our view is that any urban development in rural areas should be the subject of the rigorous consideration that would occur during a Plan Change process involving extension of existing, or creation of new, UGBs.

609. The revised definition we have recommended to the Stream 10 Panel provides for resort-style developments as being something that is neither urban nor rural and therefore sitting outside the intent of this policy.

610. In summary, and having regard to the amendments recommended to relevant definitions, we recommend retention of Policy 3.2.2.1.2 as notified (but renumbered 3.3.14) as being the most appropriate way, in the context of a package of high-level policies, in which to achieve Objectives 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2.

3.6. Section 3.2.2.2. Policies – Natural Hazards

611. As notified, policy 3.2.2.2.1 read:

"Ensure a balanced approach between enabling higher density development within the District's scarce urban land resource and addressing the risks posed by natural hazards to life and property."

612. The sole submission specifically on it[393] sought its deletion or in the alternative, amendment "*for consistency with the RMA"*. The word "*addressing"* was the subject of specific comment – the submitter sought that it be replaced by "*mitigated"*.

613. Although Mr Paetz recommended that this Policy be retained in Chapter 3 as notified, for the same reasons we have identified that the relevant objective should be amalgamated with other objectives relating to urban development, we think that this policy should be deleted from Chapter 3, and the substance of the issue addressed as an aspect of urban development in Chapter 4. We think this is the most appropriate way in the context of a package of high-level policies to achieve the objectives of the plan related to urban development.

3.7. Section 3.2.3.1 Policies – Urban Development

614. The policies all relate to a quality and safe urban development. As such, while Mr Paetz recommends that they remain in Chapter 3, for the same reasons as the more detailed urban development policies have been deleted and their subject matter addressed as part of Chapter 4, we recommend that the three policies in Section 3.2.3.1 all be deleted, and their subject matter be addressed as part of Chapter 4, that being the most appropriate way to achieve the objectives of the plan related to urban development.

3.8. Section 3.2.3.2 Policy – Heritage Items

---

392 Proposed RPS, Policy 4.5.2

393 Submission 806

615. Policy 3.2.3.2.1 as notified read:

"Identify heritage items and ensure they are protected from inappropriate development."

616. Three submitters on this policy[394] sought that the policy should be amended to state that protection of identified heritage items should occur in consultation with landowners and tenants.

617. Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou, Te Rūnanga o Moeraki, Hokonui Rūnanga [395] sought that the policy be expanded to refer to wāhi Tūpuna as well as heritage items.

618. Mr Paetz did not recommend any amendment to this policy.

619. The RPS has an objective identifying recognition and protection of heritage values as part of the sustainable management of the built environment[396]. The policy supporting this objective, however, focuses on identification and protection of "*regionally significant heritage sites"* from inappropriate subdivision, use and development. The RPS predates addition of section 6(f) of the Act[397]. The upgrading of historic heritage as an issue under Part 2 means, we believe, that the RPS cannot be regarded as authoritative on this point.

620. The Proposed RPS has a suite of policies supporting Objective 5.2, which seeks an outcome whereby historic heritage resources are recognised and contribute to the region's character and sense of identity. Policy 5.2.3, in particular, seeks that places and areas of historic heritage be protected and enhanced by a comprehensive and sequential set of actions. Those provisions include recognition of archaeological sites, wāhi tapu and wāhi taoka (taonga), avoidance of adverse effects, remedying other adverse effects when they cannot be avoided, and mitigating as a further fallback.

621. Unlike the previous policies, heritage items are not solely found in urban environments and therefore it is not appropriate to shift this policy into Chapter 4.

622. We do not recommend any amendments to it (other than to renumber it 3.3.16) for the following reasons:
   a. While consultation with landowners is desirable, this is a matter of detail that should be addressed in the specific chapter governing heritage;
   b. Addition to refer to wāhi tupuna is not necessary as identification and protection of wāhi tupuna is already governed by Section 3.2.7 (generally) and the more specific provisions in Chapter 5.
   c. While the reference to inappropriate development provides limited guidance, the submissions on this policy do not provide a basis for greater direction as to the criteria that should be applied to determine appropriateness, for instance to bring it into line with the Proposed RPS approach.

623. In summary, given the limited scope for amendment provided by the submissions on this policy, we consider its current form is the most appropriate way to achieve Objectives 3.2.2.1 and 3.2.3.1 in the context of a package of high-level policies.

---

394 Submissions 607, 615 and 621: Supported in FS1105, FS1137 and FS1345

395 Submission 810: Supported in FS1098

396 RPS Objective 9.4.1(c)

397 And corresponding deletion of reference to historic heritage from section 7.

3.9. Section 3.2.4.2 Policies – Significant Nature Conservation Values

624. As notified, the two policies under this heading read:

> *"3.2.4.2.1 Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna, referred to as Significant Natural Areas on the District Plan maps and ensure their protection.*
>
> *3.2.4.2.2 Where adverse effects on nature conservation values cannot be avoided, remedied or mitigated, consider environmental compensation."*

625. Submissions on 3.2.4.2.1 either sought acknowledgement that significant natural areas might be identified in the course of resource consent application processes[398] or sought to qualify the extent of their protection[399].

626. Submissions on Policy 3.2.4.2.2 sought variously:
   a. A clear commitment to avoidance of significant adverse effects and an hierarchical approach ensuring offsets are the last alternative considered[400];
   b. Amendment to make it clear that offsets are only considered as a last alternative to achieve no net loss of indigenous biodiversity and preferably a net gain[401];
   c. To draw a distinction between on-site measures to avoid, remedy or mitigate adverse effects and environmental compensation "*as a mechanism for managing residual effects"*[402];

627. Mr Paetz recommended no change to Policy 3.2.4.2.1, but that Policy 3.2.4.2.2. be deleted. His reasoning for the latter recommendation was partly because he accepted the points for submitters that Policy 3.2.4.2.2 was inconsistent with the more detailed Policy 33.2.1.8, but also because, in his view, the policy was too detailed for the Strategic Chapter[403].

628. Mr Paetz cited a similar concern (that the relief sought is too detailed) as the basis to reject the suggestion that identification of significant natural areas might occur through resource consent processes.

629. The Department of Conservation tabled evidence noting agreement with Mr Paetz's recommendations.

630. Ms Maturin appeared to make representations on behalf of Royal Forest and Bird Protection Society. She maintained the Society's submission on Policy 3.2.4.2.1, arguing that the Policy was in fact inconsistent with more detailed policy provisions indicating that such areas would be identified through resource consent applications, and that the failure to note that would promote confusion, if not mislead readers of the PDP. She supported, however, Mr Paetz's recommendation that the following policy be deleted.

---

398 Submissions 339, 373, 706: Supported in FS1040; Opposed in FS1097, FS1162, FS1254, FS1287, FS1313, FS1342 and FS1347

399 Submissions 600 and 805: Supported in FS1209; Opposed in FS1034 and FS1040

400 Submission 339, 706: Supported in FS1313; Opposed in FS1015, FS1097, FS1162, FS1254 and FS1287

401 Submission 373: Supported in FS1040; Opposed in FS1015, FS1097, FS1254, FS1287, FS1342 and FS1347

402 Submission 598: Supported in FS1287; Opposed in FS1040

403 Section 42A Report at 12.89-12.90

631. In response to a question from us, Ms Maturin advised that the Society viewed any reference to environmental compensation or offsets as problematic and expressed the view that an applicant should provide a nationally significant benefit before offsets should even be considered.

632. Consideration of the submissions and evidence is against a background of the RPS having three objectives bearing on biodiversity issues:

a. Objective 10.4.1:

"*To maintain and enhance the life-supporting capacity of Otago's biota."*

b. Objective 10.4.2:

"To protect Otago's natural ecosystems and primary production from significant biological and natural threats."

c. Objective 10.4.3:
"To maintain and enhance areas with significant habitats of indigenous fauna."

633. Policy 10.5.2 should also be noted, providing for maintenance and where practicable enhancement of the diversity of Otago's significant indigenous vegetation and significant habitats of indigenous fauna meeting one of a number of tests (effectively criteria for determining what is significant).

634. Policy 3.2.2 of the Proposed RPS takes a more nuanced approach than does the RPS, following the same sequential approach as for landscapes (in Policy 3.2.4, discussed above). Policy 5.4.6, providing for consideration of offsetting of indigenous biological diversity meeting a number of specified criteria, also needs to be noted.

635. We agree with Mr Paetz's recommendation on Policy 3.2.4.2.1. The reality is if the Strategic Chapters have to set out every nuance of the more detailed provisions, there is no point having the more detailed provisions. We do not regard the fact that the more detailed provisions identify that significant natural areas may be identified through resource consent processes as inconsistent with Policy 3.2.4.2.1. Similarly, given the terms of the RPS and the Proposed RPS (and section 6(c) of the Act, sitting in behind them) we consider the policy is correctly framed, looking first and primarily to protection.

636. We are concerned, however, that the effect of Mr Paetz's recommendation that Policy 3.2.4.2.2 be deleted is that it leaves the protection of Significant Natural Areas as a bald statement that the more detailed provisions in Chapter 33 might be considered to conflict with.

637. In addition, none of the submissions on this specific point sought deletion of Policy 3.2.4.2.2. While the much more general UCES submission referred to already. provides scope to delete any provision of Chapter 3 (since it seeks deletion of the entire chapter) we prefer that the policies state more clearly the extent of the protection provided, and the circumstances when something less than complete protection might be acceptable, in line with the approach of the Proposed RPS.

638. Having said that, we take on board Ms Maturin's caution that this particular area is a veritable minefield for the unwary and that any policy has to be framed quite carefully.

639. The first point to make is that given the terms of the higher order documents, we think the submitters seeking a policy direction that significant adverse effects on Significant Natural Areas are not acceptable are on strong ground.

640. Secondly, submitters are likewise on strong ground seeking that it be clear that the first preference for non-significant adverse effects is that they be avoided or remedied. We are not so sure about referring to mitigation in the same light[404].

641. While the High Court has provided guidance as to the distinction between mitigation and environmental offsets/environmental compensation[405], we recommend that the policy sidestep any potential debate on the distinction to be drawn between the two.

642. Thirdly, the submission seeking a requirement for no net loss in indigenous biodiversity and preferably a net gain is consistent with the Proposed RPS (Policy 5.4.6(b)) and this also needs to be borne in mind.

643. Lastly, we recommend that the division between the two policies be shifted so that Policy 3.2.4.2.1 relates to the identification of Significant Natural Areas and Policy 3.2.4.2.2 outlines how those areas will be managed.

644. In summary, we recommend that the policies as notified be renumbered 3.3.17 and 3.3.18 and amended to read:

"Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna as Significant Natural Areas on the District Plan maps (SNAs);

Protect SNAs from significant adverse effects and ensure enhanced indigenous biodiversity outcomes to the extent that other adverse effects on SNAs cannot be avoided or remedied."

3.10. Section 3.2.4.3 – Rare Endangered and Vulnerable Species

645. Policy 3.2.4.3.1 suggests a general requirement that development not adversely affect survival chances of rare, endangered or vulnerable species. Submissions sought variously:
   a. Expansion of the policy to cover development *"and use"*[406];
   b. Qualifying the policy to limit *"significant"* adverse effects[407];
   c. Qualifying the policy to make it subject to the viability of farming activities not being impacted[408]; and
   d. Retaining the policy as notified.

646. Given that we see these policies as the means to achieve recommended Objective 3.2.4.1, we do not consider it necessary or appropriate to insert an additional policy on maintenance of biodiversity as sought in submission 339 and 706[409].

---

404 Although accepting that the Proposed RPS does so at Policy 5.4.6(a)

405 Refer *Royal Forest & Bird Protection Society of New Zealand Inc v Buller District Council* [2013] NZHC 1346

406 Submissions 339 and 706: Opposed in FS1162

407 Submission 600: Supported in FS1209; Opposed in FS1034 and FS1040

408 Submission 701: Supported in FS1162

409 Opposed in FS1132, FS1162, FS1254 and FS1287

647. We have recommended the objective that this policy seeks to implement be deleted on the basis that it duplicates protection of areas with significant nature conservation values and the emphasis given elsewhere to maintenance of indigenous biodiversity.

648. Similar reasoning suggests that this policy is unnecessary. Any area which is relevant in any material way to the survival chances of rare, endangered or vulnerable species will necessarily be a significant natural area, as that term is defined. Consistently with that position, in the RPS policy discussed above (10.5.2), the fact that a habitat supports rare, vulnerable or endangered species is one of the specified criteria of significance. If any area falling within that description is not mapped as a SNA, then it should be so mapped so as to provide greater certainty both that the relevant objective will be achieved and for landowners, as to their ability to use land that is not mapped as a SNA. Accordingly, on the same basis as for the objective, we recommend that this policy be deleted, as being the most appropriate way, in combination with Policies 3.3.17 and 3.3.18, to achieve Objectives 3.2.1.7, 3.2.18, 3.2.4.1 and 3.2.4.3-4 inclusive as those objectives relate to indigenous biodiversity.

3.11. Section 3.2.4.4 Policies – Wilding Vegetation

649. As notified, policy 3.2.4.4.1 read:

"That the planting of exotic vegetation with the potential to spread and naturalise is banned."

650. A number of submissions sought retention or minor drafting changes to this policy. Federated Farmers[410] however sought that the effect of the policy be softened to refer to appropriate management and reduction of risks.

651. In his Section 42A Report, Mr Paetz recognised that the policy might be considered too absolute. He recommended that it be revised to read:

"Prohibit the planting of identified exotic vegetation with the potential to spread and naturalise."

652. As discussed in relation to Objective 3.2.4.4, wilding vegetation is a significant issue in the District. It is also quite a discrete point, lending itself to strategic direction[411]. We recommended that the objective aspired to is avoidance of wilding exotic vegetation spread. Management and reduction of risk would not achieve that objective, without a clear statement as to the outcome of management and/or the extent of risk reduction.

653. On the other hand, a prohibition of planting of exotic vegetation described only by the characteristic that it has potential to spread and naturalise would go too far. The public are unlikely to be able to identify all the relevant species within this very general description. Mr Paetz suggested limiting the prohibition to identified species[412], but we think there also needs to be greater guidance as to what the extent of the '*potential'* for spread needs to be to prompt identification, to ensure that the costs of a prohibition are not excessive, relative to the benefits and to make the suggested prohibition practicable, in terms of RPS Policy 10.5.3. We note in this regard the submissions on behalf of Federated Farmers by Mr Cooper that some wilding species are important to farming in the District at higher altitudes. For the same

410 Submission 600: Supported in FS1091 and FS1209; Opposed in FS1034 and FS1040

411 A combination of circumstances which leads us to reject the suggestion of Mr Farrell that this issue does not justify having a high-level policy addressing it.

412 Identified in this case meaning identified in the District Plan

reason, we consider there is room for a limited qualification of the policy prohibition, but only if wilding species can be acceptably managed for the life of the planting.

654. Accordingly, we recommend that Policy 3.2.4.4.1 be renumbered 3.3.27 and worded:

"Prohibit the planting of identified exotic vegetation with the potential to spread and naturalise unless spread can be acceptably managed for the life of the planting."

655. We consider that this policy wording is the most appropriate way to achieve Objective 3.2.4.2 in the context of a high-level policy,

3.12. Section 3.2.4.5 Policies – Natural Character of Waterways

656. Policy 3.2.4.5.1 as notified read:

"That subdivision and/or development which may have adverse effects on the natural character and nature conservation values of the District's lakes, rivers, wetlands and their beds and margins be carefully managed so that life-supporting capacity and natural character is maintained or enhanced."

657. The only amendments sought to this policy sought that reference be added to indigenous biodiversity[413].

658. Mr Paetz did not recommend any change to the policy as notified.

659. Objectives 6.4.3 and 6.4.8 of the RPS require consideration in this context. Objective 6.4.3 seeks to safeguard life supporting capacity through protecting water quality and quantity. Objective 6.4.8 seeks to protect areas of natural character and the associated values of wetlands, lakes, rivers and their margins. While these objectives are strongly protective of natural character and life-supporting capacity values, the accompanying policies are rather more qualified. Policy 6.5.5 promotes a reduction in the adverse effects of contaminant discharges through, in effect, a *'maintain and enhance'*, approach but with the rider "*while considering financial and technical constraints".* Policy 6.5.6 takes a similarly qualified approach to wetlands with an effective acceptance of adverse effects that are not significant or where environmental 'compensation' (what we would now call off-setting) is provided. Lastly Policy 6.5.6 takes an avoid, remedy or mitigate approach to use and development of beds and banks of waterways, but poses maintenance (and where practicable enhancement) of life-supporting capacity as a further test.

660. As previously noted, the RPS predates the NPSFM 2014 and therefore, its provisions related to freshwater bodies must therefore be treated with some care. While the NPSFM 2014 is principally directed at the exercise of powers by regional councils[414], its general water quality objectives[415], seeking among other things, safeguarding of life supporting capacity and maintenance or improvement of overall water quality need to be noted. Objective C1 is also relevant, seeking improved integrated management of fresh water and use and development of land. From that perspective, we do not regard there being any fundamental inconsistency between the RPS and the subsequent NPSFM 2014, such as would require implementation of a different approach to that stated in the RPS.

---

413 Submissions 339 and 706: Opposed in FS1015, FS1162, FS1254 and FS1287

414 The policies are almost all framed in terms of actions regional councils are required to take

415 Seeking among other things, safeguarding of the life supporting capacity and maintenance or improvement of overall water quality

661. The Kawarau WCO has a different focus to either RPS (operative or proposed) or the NPSFM 2014. It identifies the varying characteristics that make different parts of the catchment outstanding and for some parts of the catchment, directs their preservation as far as possible in their natural state, and for the balance of the catchment[416], directs protection of the characteristics identified as being present. The Kawerau WCO is principally targeted at the exercise of the regional council's powers. To the extent it is relevant to finalisation of the PDP, its division of the catchment, with different provisions applying to different areas, does not lend itself to being captured in a general policy applying across the District.

662. Lastly Policies 3.1.1 and 3.1.2 of the Proposed RPS take a *'maintain and enhance"* position for the different characteristics of water and the beds of waterways, respectively, in the context of an objective [417] seeking that the values of natural resources are *"recognised, maintained or enhanced"*.

663. Against this background, we regard the adoption of the *'maintain or enhance'* test in the PDP policy as being both consistent with and giving effect to the relevant higher order documents.

664. An amendment to refer to indigenous biodiversity in this context would not reflect the form of the objective recommended, and so we do not support that change.

665. We do, however, recommend minor drafting amendments so that the policy be put more positively. We also do not consider that the word "*carefully"* adds anything to the policy since one would hope that all of the policies in the PDP will be implemented carefully.

666. Accordingly, we recommend that Policy 3.2.4.5.1 be renumbered 3.3.19 and amended to read:

"Manage subdivision and/or development that may have adverse effects on the natural character and nature conservation values of the District's lakes, rivers, wetlands and their beds and margins so that their life-supporting capacity and natural character is maintained or enhanced."

667. We consider that this policy is the most appropriate way in the context of a high-level policy to achieve the objectives of this chapter related to natural character and life supporting capacity of waterways and their margins (3.2.1.7, 3.2.4.1-4 inclusive, 3.2.5.1 and 3.2.5.2).

3.13. Section 3.2.4.6 Policies – Water Quality

668. As notified, policy 3.2.4.6.1 read:

"That subdivision and/or development be designed so as to avoid adverse effects on the water quality of lakes, rivers and wetlands in the District."

669. Submissions on the policy sought variously:
   a. Provision for remediation or mitigation of adverse effects on water quality[418];
   a. Restriction to urban development[419];

---

416 Excluding the lower Dart River, the lower Rees River, and the lower Shotover River that have provisions permitting road works and flood protection works.

417 Proposed RPS, Objective 3.1

418 Submission 598: Supported in FS1287; Opposed in FS1040

419 Submission 600: Supported in FS1209; Opposed in FS1034

b. Avoidance of significant adverse effects[420];
c. Provision for remediation or mitigation where avoidance is not possible[421];
d. Avoidance of significant adverse effects on water quality where practicable and avoidance, remediation or mitigation of other adverse effects[422];
e. Insert reference to adoption of best practice in combination with designing subdivision development and/or to avoid, remedy or mitigate adverse effects[423].

670. Mr Paetz did not recommend any amendment to the policy as notified.

671. The same provisions of the RPS, the NPSFM 2014 and the Proposed RPS as were noted in relation to the previous policy are relevant in this context. We note in particular the qualifications inserted on the management of contaminant discharges in Policy 6.5.5 of the RPS.

672. The RPS also states[424] a policy of minimising the adverse effects of land use activities on the quality and quantity of water resources.

673. We accept the general theme of the submissions seeking some qualification of the otherwise absolute obligation to avoid all adverse effects on water quality, irrespective of scale or duration, given that the practical mechanisms to manage such effects (riparian management and setbacks, esplanade reserves, stormwater management systems and the like) are unlikely to meet such a high hurdle, even if that could be justified on an application of section 32 of the Act.

674. We think there is value in the minimisation requirement the RPS directs in combination with a best land use management approach (accepting the thrust of Submission 807 in this regard) so as to still provide clear direction. We do not accept, however, that the policy should be limited to urban development given that the adverse effects of development of land on water quality are not limited to urban environments.

675. While a minimisation policy incorporates avoidance, if avoidance is practically possible, we consider there is value in emphasising that avoidance is the preferred position.

676. In summary therefore, we recommend that Policy 3.2.4.6 be renumbered 3.3.26 and amended to read:

"That subdivision and/or development be designed in accordance with best practice land use management so as to avoid or minimise adverse effects on the water quality of lakes, rivers and wetlands in the District."

677. We consider that this policy is the most appropriate way in the context of a high-level policy to achieve the objectives of this chapter related to water quality (3.2.1.8, 3.2.4.1 and 3.2.4.4).

3.14. Section 3.2.4.7 Policies – Public Access

678. Policy 3.2.4.7.1 as notified read:

420 Submission 768
421 Submission 805
422 Submission 635: Supported in FS1301
423 Submission 807
424 RPS, Policy 5.5.5

"Opportunities to provide public access to the natural environment are sought at the time of plan change, subdivision or development."

679. One submission seeking amendment to this policy[425] sought to emphasise that any public access needs to be *'safe'* and would substitute the word "*considered"* for "*sought"*.

680. Another submission[426] sought that specific reference be made to recreation opportunities.

681. Mr Paetz does not recommend any amendment to this policy.

682. Policy 6.5.10 of the RPS targets maintenance and enhancement of public access to and along the margins of water bodies. This is achieved through "*encouraging"* retention and setting aside of esplanade strips and reserves and access strips and identifying and providing for other opportunities to improve access. There are a number of exceptions specified in the latter case[427], but the thrust of the policy is that exceptional reasons are required to justify restriction of public access.

683. Objective 5.1 of the Proposed RPS seeks maintenance and enhancement of public access of all areas of value to the community. Policy 5.1.1, supporting that objective, takes a similar approach to the RPS, directing maintenance and enhancement of public access to the natural environment unless one of a number of specified criteria apply.

684. Neither of the higher order documents require that all opportunities for enhancing public access be seized.

685. While reference to public safety would be consistent with both the RPS and the Proposed RPS, we do not consider that the amendments sought in Submission 519[428]are necessary. The policy as it stands does not require public access, it suggests that public access be sought. Whether this occurs will be a matter for decision on a case by case basis, having regard as appropriate, to the regional policy statement operative at the time. The provisions of both the RPS and the Proposed RPS would bring a range of matters into play at that time, not just health and safety.

686. Similarly, we do not consider specific reference to recreational opportunities is required. Public access to the natural environment necessarily includes the opportunity to recreate, once in that environment (or that part of the natural environment that is publicly owned at least). If the motive underlying the submission is to enable commercial recreation activities then in our view, it needs to be addressed more directly, as an adjunct to provision for visitor industry activities, as was sought by Kawarau Jet Services Ltd[429] in the form of a new policy worded:

"Provide for a range of appropriate Recreational and Commercial Recreational activities in the rural areas and on the lakes and rivers of the District."

687. The suggested policy does not identify what might be an appropriate range of activities, or how issues of conflict between commercial operators over access to the waterways of the

425 Submission 519: Supported in FS1015; Opposed in FS1356
426 Submission 836: Supported in FS1097, FS1341 and FS1342
427 Including health and safety
428 Supported by the evidence of Mr Vivian
429 Submission 307: Supported in FS1097, FS1235, FS1341

District (previously an issue in a number of Environment Court cases) might be addressed. For all that, the suggested policy has merit. We will discuss shortly the appropriate policy response to commercial recreation activities in rural areas generally. We think the more specific issue of commercial recreation activities on the District's waterways is more appropriately addressed in Chapter 6 and we will return to it there.

688. We therefore recommend only a minor drafting change to put the policy (renumbered 3.3.28) more positively as follows:

"Seek opportunities to provide public access to the natural environment at the time of plan change, subdivision or development."

689. We consider that this wording in the context of a high-level policy is the most appropriate way to achieve objective 3.2.4.5.

3.15. Section 3.2.4.8 – Policies – Climate Change

690. The sole policy under this heading read as notified:

"Concentrate development within existing urban areas, promoting higher density development that is more energy efficient and supports public transport, to limit increases in greenhouse gas emissions in the District".

691. Submissions seeking changes to this policy sought variously:
   a. To be less directive, seeking encouragement where possible and deletion of reference to greenhouse gas emissions[430];
   b. Retaining the existing wording, but deleting the connection to greenhouse gas emissions[431];
   c. Opposed it generally on the basis that suggested policy does not implement the objective[432].

692. Mr Paetz did not recommend any amendment to the policy.

693. We see a number of problems with this policy. As Submission 519 identified, not all development is going to be within existing urban areas. Quite apart from the fact that the UGBs provide for controlled growth of the existing urban areas, non-urban development will clearly take place (and is intended to take place) outside the UGBs.

694. If the policy were amended to be restricted to urban development, as we suspect is the intention, it would merely duplicate the UGB policies and be unnecessary.

695. In summary, we recommend that the most appropriate way to achieve the objectives of this chapter is if Policy 3.2.4.8.1 is deleted.

696. That is not to say that the PDP has no role to play in relation to climate change. We have already discussed where and how it might be taken into account in the context of Objective 3.2.4.8.

---

430 Submission 519: Supported in FS1015; Opposed in FS1356

431 Submissions 519 and 598: Supported in FS1015 and FS1287; Opposed in FS1356

432 Submission 798

697. Submission 117 sought a new policy to be applied to key infrastructure and new developments, relating to adaption to the effects of climate change. The submission specifically identified hazard management as the relevant adaptation.

698. We have already recommended specific reference to the need to take climate change into account when addressing natural hazard issues in the context of Objective 3.2.2.1.

699. We view further policy provision for adaption to any increase in natural hazard risk associated with climate change better dealt with as an aspect of management of development in both urban and rural environments rather than more generally. Accordingly, we will return to it in the context of our Chapter 4 and 6 reports.

700. We note that notified Policy 3.2.1.3.2 related to adaptation to climate change in other respects. We discuss that policy below.

3.16. Section 3.2.5 Policies - Landscape

701. As notified, Policy 3.2.5.1.1 related both to identification of ONLs and ONFs on the District Plan maps and to their protection.

702. In his Section 42A Report, Mr Paetz recommended that the policy be deleted on the basis that it duplicated matters that were better addressed in Chapter 6.

703. By his reply evidence, Mr Paetz had reconsidered that view and recommended that the first part of the policy, providing for identification of ONLs and ONFs on the plan maps, be reinstated.

704. Submissions on the policy as notified sought variously:
   a. Either deletion of the ONL and ONF lines from the planning maps or alteration of their status so that they were indicative only[433];
   b. Qualifying the extent of protection to refer to inappropriate subdivision, use and development[434];
   c. Qualifying the reference to protection, substituting reference to avoiding, remedying or mitigating adverse effects, or alternatively management of adverse effects[435].

705. The argument that ONLs and ONFs should not be identified on the planning maps rested on the contention (by Mr Haworth for UCES) that the lines as fixed are not credible. The exact location of any ONL and ONF lines on the planning maps is a matter for another hearing. However, we should address at a policy level the contention that there is an inadequate basis for fixing such lines and that establishing them will be fraught and expensive.

706. Dr Marion Read gave evidence on the work she and her peer reviewers undertook to fix the ONL and ONF lines. While Dr Read properly drew our attention to the fact that the exercise she had undertaken was not a landscape assessment from first principles, she clarified that qualification when she appeared before us. In Dr Read's view, the impact of not having worked from first principles was very minor in terms of the robustness of the outcome.

---

433 Submission 145: Supported in FS1097; Opposed in FS1162 and FS1254

434 Submissions 355, 519, 598, 600, 805: Supported in FS1015, FS1117, FS1209 and FS1287; Opposed in FS1034, FS1097, FS1282, FS1320 and FS1356

435 Submissions 519, 607, 615, 621, 624, 716: Supported in FS1015, FS1097, FS1105 and FS1137; Opposed by FS1282 and FS1356

707. That may well be considered something of an understatement given that Dr Read explained that she had gone back to first principles for all of the new ONL and ONF lines she had fixed. The areas where there might be considered a technical deficiency for failure to go back to first principles were where she had relied on previous determinations of the Environment Court.

708. We think it was both pragmatic and sensible on Dr Read's part that where the Environment Court had determined the location of an ONL or ONF line she took that as a given rather than reinventing that particular wheel. We asked a number of the parties who appeared before us if it was appropriate to rely on Environment Court decisions in this regard, and there was general agreement that it was[436].

709. In summary, we do not accept the submission that the ONL and ONF lines are not credible. That is not to say that we accept that they are correct in every case and at every location. As above, that is a matter for differently constituted hearing panels to consider, but we are satisfied that the process that has been undertaken for fixing them is robust and can be relied upon unless and until credible expert evidence calls the location of those lines into question.

710. So far as the question of costs and benefits is concerned, Dr Read accepted in evidence before us that the process for confirming the lines set out in the planning maps will likely be fraught and expensive but as she observed, the current process where the status of every landscape (as an ONL, ONF, VAL or ORL) has to be determined as part of the landscape assessment for the purposes of a resource consent application is fraught and expensive. She did not know how one would go about trying to quantify and compare the relative costs of the two and neither do we.

711. What we do know is that the Environment Court found in 1999 that one could not properly state objectives and policies for areas of outstanding natural landscape unless they had been identified[437]. In that same decision, it is apparent that the Court approached the appeals on what ultimately became the ODP with considerable frustration that with certain notable exceptions, the parties appearing before it (including the Council) had not identified what they contended to be the boundaries of ONLs or ONFs. It appears[438] that the only reason that the Court did not fix lines at that point was the amount of effort and time that it would take to undertake a comprehensive assessment of the District. We are not in that position. The assessment has been undertaken by Dr Read and her peer reviewers to arrive at the lines currently on the maps. All the parties who have made submissions on the point will have the opportunity to call expert evidence to put forward a competing viewpoint in the later hearings on mapping issues.

712. Most importantly, at the end of the process, the Council will have recommendations as to where those lines should be based on the best available evidence.

713. We accept that even after they are fixed, it will still be open to parties to contend that a landscape or feature not currently classified in the plan as an ONL or ONF is nevertheless outstanding and should be treated as such for the purposes of determination of a future

---

436 Mr Goldsmith for instance expressed that view (for Allenby Farms Ltd, Crosshill Farms Ltd and Mt Cardrona Station Ltd). We note however that some parties sought to draw a distinction between lines that had been drawn by the Court after a contested hearing of landscape experts and those that were the result of consent orders and/or where the issue was not contested.

437 C180/99 at [97]

438 From paragraph [99]

resource consent process[439]. Nevertheless, we think there is value in the PDP providing direction in this regard.

714. We also note that Policy 3.2.3 of the Proposed RPS directs that areas and values, among other things, of ONLs and ONFs be identified. We are required to have regard to that policy and that is exactly what the PDP does. It defines areas of ONLs and ONFs. We note the submission of Otago Regional Council in this regard[440], supporting the identification of ONLs and ONFs, reflecting in turn the policies of the Proposed RPS directing identification of outstanding and highly-valued features and landscapes we have previously discussed[441].

715. In summary, we do not accept the UCES submission that the ONL/ONF lines should be deleted, or alternatively tagged as being indicative only.

716. The secondary question is whether if, as we would recommend, Policy 3.2.5.1.1 is retained, it, or a subsequent strategic policy in this part of Chapter 3, should specify what course of action is taken consequential on that identification or whether, as Mr Paetz recommends, those matters should be dealt with in Chapter 6.

717. In summary, we recommend that a separate policy be inserted following what was Policy 3.2.5.1.1 stating in broad terms that the policy is for management of activities affecting ONLs and ONFs. Quite simply, we see this as part of the strategic direction of the Plan. While Chapter 6 contains more detailed provisions, Chapter 3 should state the overall policy.

718. We have already discussed at some length the appropriate objective for ONLs and ONFs, considering as part of that analysis, the relevant higher order provisions, and concluding that the desired outcome should be that the landscape and visual amenity values and natural character of ONLs and ONFs are protected against the adverse effects of subdivision use and development that are more than minor and/or not temporary in duration.

719. To achieve that objective, we think it is necessary to have a high-level policy addressing the need to avoid more than minor adverse effects on those values and on the natural character of ONLs and ONFs that are not temporary in duration.

720. We have had regard to the many submissions we received at the hearing emphasising the meaning given to the term "*avoid"* by the Supreme Court in *King Salmon* (not allow or prevent the occurrence of[442]).

721. It was argued for a number of parties that an avoidance policy in relation to ONLs and ONFs would create a '*dead hand*' on all productive economic activities in a huge area of the District.

722. A similar '*in terrorem'* argument was put to the Supreme Court in *King Salmon* which rejected the contention that the interpretation they had given to the relevant policies of the NZCPS would be unworkable in practice[443]. The Court also drew attention to the fact that use and development might have beneficial effects rather than adverse effects.

---

439 Refer Unison Networks Limited v Hastings District Council CIV2007-485-896

440 Submission 798

441 Proposed RPS, Policies 3.2.3 and 3.2.5

442 [2014] NZSC38 at [93]

443 See [2014] NZSC38 at [144]-[145]

723. The evidence we heard was that many of the outstanding landscapes in the District are working landscapes. Dr Read's evidence is that the landscape character reflects the uses currently being made of it and in some cases, the character of the landscapes is dependent on it. Clearly continuation of those uses is not inconsistent with the values that lead to the landscape (or feature) in question being categorised as outstanding.

724. Our recommendation makes it clear that minor and temporary effects are not caught by this policy. That will permit changes to current uses that are largely consistent with those same values. If a proposal would have significant adverse effects on an ONL or an ONF, in our view and having regard to the obligation on us to recognise and provide for the preservation of ONLs and ONFs, that proposal probably should not gain consent.

725. In summary therefore, we recommend that there be two policies in relation to ONLs and ONFs in Chapter 3 (numbered 3.3.29 and 3.3.30) reading as follows:

"Identify the District's Outstanding Natural Landscapes and Outstanding Natural Features on the District Plan maps."

"Avoid adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor in extent and or not temporary in duration."

726. We consider that these policies are the most appropriate way to achieve Objective 3.2.5.1, in the context of the package of high-level policies recommended in this report.

727. Turning to non-outstanding landscapes, Policy 3.2.5.2.1 as notified read:

"Identify the district's Rural Landscape Classification on the District Plan maps, and minimise the effects of subdivision, use and development on these landscapes."

728. With the exception of UCES[444], who submitted (consistently with its submission on Policy 3.2.5.1.1) that there should be no determinative landscape classifications on planning maps, most submitters accepted the first half of the policy (identifying the Rural Landscape Classification on the maps) and focussed on the consequences of that identification. Many submitters sought that adverse effects on these landscapes be avoided, remedied or mitigated either by amending the policy or by adding a stand-alone policy to that effect[445]. Some of those submitters also sought reference to inappropriate subdivision, use and development.

729. Another option suggested was to substitute '*manage'* for '*minimise'*[446].

730. Mr Paetz recommended that the policy be deleted on the basis that both aspects of the policy were better addressed in Chapter 6.

731. We do not concur. Consequential on the recommendation as above, that the policies for ONLs and ONFs should state both the intention to identify those landscapes and features on the planning maps and separately and in broad terms, the course of action proposed, we consider

444 Submission 145: Supported in FS1097; Opposed in FS1162

445 Submissions 437, 456, 513, 515, 522, 531, 532, 534, 535, 537, 608, 643, 696, 805: Supported in FS1097, FS1256, FS1286, FS1292, and FS1322; Opposed in FS1034, FS1068, FS1071 and FS1120

446 Submission 519, 598: Supported in FS1015, FS1117 and FS1292; Opposed in FS1282 and FS1356

that it follows that Chapter 3 should also follow the same format for non-outstanding landscapes.

732. It is also consequential on the recommendations related to the ONL and ONF policies that that we do not recommend that the UCES submission be accepted. Having identified ONLs and ONFs on the planning maps, there seems to be little point in not identifying the balance of the rural landscape.

733. Accordingly, the only suggested changes are minor drafting issues and a change of terminology, consequential on the recommendation as above that these balance rural landscapes be termed Rural Character Landscapes so that the renumbered Policy 3.3.31 would read:

"Identify the District's Rural Character Landscapes on the District Plan Maps."

734. Turning to the consequences of identification, a number of the submitters on this policy noted the need for it to reflect the terminology and purpose of the Act. This is an example of the general point made at an earlier part of this report, where utilising the terminology of the Act provides no direction or guidance as to the nature of the course of action to be undertaken.

735. This is still more the case with those submissions seeking that adverse effects be managed.

736. For these reasons, we do not recommend acceptance of the relief sought in these submissions.

737. We do, however, accept that the focus on minimising adverse effects is not entirely satisfactory.

738. While we do not accept the opinion of Mr Ben Farrell (that a policy of minimising adverse effects is ambiguous), the relevant objective we have recommended seeks that rural character and amenity values in these landscapes be maintained and enhanced by directing new subdivision, use and development to occur in appropriate areas – areas that have the potential to absorb change without materially detracting from those values.

739. We also have regard to notified Policy 6.3.5.1 which states that subdivision and development should only be allowed "*where it will not degrade landscape quality or character, or diminish identified visual amenity values."*

740. We think that particular policy goes too far, seeking no degradation of landscape quality and character and diminution of visual amenity values and needs to have some qualitative test inserted[447], but the consequential effect of aligning the policy with the objective together with incorporating elements from Policy 6.3.5.1 is that the policy addressing activities in Rural Character Landscapes should be renumbered 3.3.32 and read:

"Only allow further land use change in areas of the Rural Character Landscape able to absorb that change and limit the extent of any change so that landscape character and visual amenity values are not materially degraded."

741. We consider that the recommended Policies 3.3.31 and 3.3.32 are the most appropriate way to achieve Objectives 3.2 1.9 and 3.2.5.2, in the context of the package of high-level policies recommended in this report.

[447] To that extent we accept the substance of Submissions 456, 598 and 806 on Policy 6.3.5.1.

3.17. Section 3.2.5.3 – Policies – Urban Development

742. As notified, this policy read:

> *"Direct urban development to be within urban growth boundaries (UGBs) where these apply, or within the existing rural townships."*

743. Mr Paetz recommended that this policy be amended to provide both for urban development within and outside UGBs.

744. Either in its notified form or as Mr Paetz has recommended it be amended, this policy entirely duplicates the policies discussed above related to urban development (the recommended revised versions of Policies 3.2.2.1.2 and 3.2.2.1.6).

745. Accordingly, we recommend that the most appropriate way to achieve the objectives of this chapter related to urban development is that it be deleted, consistent with the Real Journeys' submission that duplication generally be avoided.

3.18. Section 3.2.5.4 Policies – Rural Living

746. As notified, these two policies addressed provision for rural living as follows:

> "3.2.5.4.1 *Give careful consideration to cumulative effects in terms of character and environmental impact when considering residential activity in rural areas.*
>
> *3.2.5.4.2 Provide for rural living opportunities in appropriate locations."*

747. There were two submissions on Policy 3.2.5.4.1, one seeking its deletion on the basis that it may conflict with case law related to weighting of cumulative effects, the permitted baseline and the future environment[448] and the other seeking more effective guidance on how much development is too much[449].

748. Most of the submissions on Policy 3.2.5.4.2 supported the policy in its current form. One submitter[450] sought that the Council should continue with its plans to rezone land west of Dalefield Road to Rural Lifestyle or Rural Residential, but did not seek any specific amendment to the policy. Mr Paetz did not recommend any change to the wording of these policies.

749. While we do not support the submission seeking that Policy 3.2.5.4.1 be deleted, the submitter has a point in that the policy is expressed so generally that it may have consequences that cannot currently be foreseen. Notwithstanding that, clearly cumulative effects of residential activity is an issue requiring careful management, as we heard from Dr Read. The problem is that a policy indicating that cumulative effects will be given "*careful consideration"* is too non-specific as to what that careful consideration might entail. As Submission 806 suggests, greater clarity is required as to how it will operate in practice.

750. The policies of Section 6.3.2 (as notified) give some sense of what is required (acknowledging the finite capacity of rural areas to accommodate residential development, not degrading landscape character and visual amenity, taking into account existing and consenting

448 Submission 519: Supported in FS1015; Opposed in FS1356

449 Submission 806: Supported in FS1313

450 Submission 633

subdivision or development). We recommend that some of these considerations be imported into policy 3.2.5.4.1 to confine its ambit, and thereby address the submitter's concern.

751. One issue in contention was whether the description in the ODP of rural non-outstanding landscapes as being *"pastoral (in the poetic and picturesque sense rather than the functional sense) or Arcadian landscapes"*[451] should be retained. Mr Goldsmith[452] argued that this description, which was coined by the Environment Court[453], should be retained if circumstances have not changed.

752. The evidence of Dr Read was that this description has proven confusing, and has been interpreted as a goal, rather than as a description. Her June 2014 Report[454] fleshed this out, suggesting that neither lay people nor professionals have had a clear understanding of what an arcadian landscape is, and that a focus on replicating arcadia has produced an English parkland character in some areas of the Wakatipu Basin that, if continued, would diminish the local indigenous character.

753. Dr Read also emphasised the need to acknowledge the differences between the character of the Upper Clutha Basin and the Wakatipu Basin.

754. Mr Goldsmith acknowledged those differences but suggested to us that the PDP treated the Wakatipu Basin as if it were the Hawea Flats, whereas his description of the ODP was that it did the reverse (i.e. treated the Hawea Flats as they were the Wakatipu Basin)[455].

755. We take his point and have accordingly looked for a broader description that might exclude ONL's and ONF's (where the focus is necessarily on protection rather than enabling development), but capture both areas, while allowing their differences (and indeed the differences in landscape character within the Wakatipu Basin that Mr Goldsmith sought recognition for) to be taken into account.

756. Mr Jeff Brown[456] suggested to us that the ultimate goal is met if the character of an area remains '*rural'*[457], and therefore the test should be if the area retains a rural '*feel'.* While this comes perilously close to a test based on the '*vibe'*[458]*,* we found Mr Brown's evidence helpful and have adapted his suggested approach to provide a more objective test.

757. The interrelationship with Policy 3.2.5.4.2 also needs to be noted. Better direction as to what a careful consideration of cumulative effects means, requires, among other things, identification of where rural living opportunities might be appropriate. As Submission 633 notes, one obvious way in which the PDP can and does identify such appropriate locations is through specific zones. Another is by providing greater direction of areas within the Rural Zone

451 ODP 4.2.4(3)

452 Addressing us on this occasion on behalf of GW Stalker Family Trust and others

453 In C180/99

454 '*Wakatipu Basin Residential Subdivision and Development: Landscape Character Assessment*'

455 Legal Submissions for GW Stalker and others at 6.3(c)

456 Giving evidence on behalf of Ayrburn Farms Ltd, Bridesdale Farms Developments Ltd, Shotover Park Ltd and Trojan Helmet Ltd

457 NZIA's Submission 238 makes a similar point

458 Refer the film, 'The Castle' (1997)

where rural living developments are not appropriate[459]. We agree that a greater level of direction would assist plan users in this regard.

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

"Provide for rural living opportunities in areas identified on the District Plan maps as appropriate for rural living developments.

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

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

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

760. It is appropriate at this point that we address the many submissions we had before us from infrastructure providers seeking greater recognition of the needs of infrastructure.

761. Objective 3.2.1.9 discussed above is the reference point for any additional policies on infrastructure issues.

762. In the rural environment, the principal issue for determination is whether infrastructure might be permitted to have greater adverse effects on landscape values than other development, and if so, in what circumstances and to what extent. Consideration also has to be given as to whether recognition needs to be given at a strategic level to reverse sensitivity effects on infrastructure in the rural environment.

763. Among the suggestions from submitters, new policies were sought to enable the continued operation, maintenance, and upgrading of regionally and nationally significant infrastructure and to provide that such infrastructure should where practicable, mitigate its impacts on ONLs and ONFs [460].

---

459 Mr Goldsmith (on this occasion when appearing for GW Stalker Family Trust and Others) suggested to us that specific areas might be identified and nominated the north side of Malaghans Road and a portion of Speargrass Flat Road as potential areas that could be specifically identified as being unable to absorb further development, rather than relying on generic policies. Mr Ben Farrell similarly supported what he termed a finer grained approach to management of the Wakatipu Basin. We note that PDP Chapter 24 notified as part of the Stage 2 Variations seeks to provide greater guidance to development within the Wakatipu Basin

460 Submissions 251, 433: Supported in FS1077, FS1092, FS1097, FS1115, FS1121 and FS1211; Opposed in FS1040 and FS1132

764. Transpower New Zealand Limited[461] sought the inclusion of a new definition for regionally significant infrastructure which would include:

a. "Renewable electricity generation facilities, where they supplied the National Electricity Grid and local distribution network; and
b. The National Grid; and
c. The Electricity Distribution Network; and
d. Telecommunication and Radio Community facilities; and
e. Road classified as being of national or regional importance; and
f. Marinas and airports; and
g. Structures for transport by rail".

765. Transpower's focus on nationally and regionally significant infrastructure is consistent with Policy 4.3.2 of the Proposed RPS, which now reads:

a. "Recognise the national and regional significance of all of the following infrastructure:
b. Renewable electricity generation activities, where they supply the national electricity grid and local distribution network;
c. Electricity transmission infrastructure;
d. Telecommunication and radiocommunication facilities;
e. Roads classified as being of national or regional importance;
f. Ports and airports and associated navigation infrastructure;
g. Defence facilities;
h. Structures for transport by rail."

766. This policy wording differs from the corresponding policy (3.5.1) in the notified version of the Proposed RPS that was the relevant document at the date of hearing[462] in the following material respects:
a. (a) now applies to renewable electricity generation "activities", rather than facilities;
b. Reference to associated navigation infrastructure has been added to (e);
c. Recognition of defence facilities is new.

In addition, the term *'electricity transmission infrastructure'* is now defined to mean the National Grid (adopting the definition in the NPSET 2008).

767. The submission of Aurora Energy Limited[463] suggested a different definition of regionally significant infrastructure that varied from both that suggested by Transpower and the Proposed RPS, but included among other things, electricity distribution networks, community water supply systems, land drainage infrastructure and irrigation and stock water infrastructure. Aurora also sought the inclusion of an additional definition for *'critical electricity lines'*[464].

768. Mr Paetz's Section 42A Report largely adopted the *'definition'* of regionally significant infrastructure in the notified version of the Proposed RPS with the following changes:

461 Submission 805: Supported in whole or in part in FS1077, FS1106, FS1121, FS1159, FS1208, FS1211, FS1253 and FS1340
462 And that obviously formed the basis of the relief sought in the Transpower submission
463 Submission 635: Supported in whole or in part in FS1077, FS1097 and FS1211; Opposed in FS1132
464 Opposed in FS1301 and FS1322

a. Mr Paetz recommended that renewable electricity generation facilities qualify where they are operated by an electricity operator (a defined term under the Electricity Act 1992) so as to exclude small and community-scale electricity generators;
b. He suggested reference to '*designated*' airports;
c. He deleted reference to ports, there being none in a landlocked District;
d. He deleted reference to rail structures, there being no significant rail lines within the District.

769. This recommendation produced considerable discussion and debate during the course of the hearing.

770. QAC pointed out that Glenorchy is a designated airport, but one would struggle to regard it as regionally significant. QAC agreed that reference might appropriately be limited to Queenstown and Wanaka airports.

771. Transpower New Zealand Limited expressed considerable concern that the National Grid was not specifically mentioned. We found this a little puzzling since the NPSET uses the term *'electricity transmission infrastructure'* and the National Grid clearly comes within that term (the NPSET 2008 in fact defines them to be one and the same thing). Also, quite apart from the NPSET 2008, no one could seriously contend that the National Grid was not regionally and nationally significant.

772. The discussion we had with representatives of Transpower did however, highlight an issue at the other end of the spectrum. While the Decisions Version of the Proposed RPS now puts it beyond doubt (by adopting the NPSET 2008 definition), the general term *'electricity transmission infrastructure'* could be argued to include every part of the electricity transmission network, down to individual house connections, which while extremely important to the individuals concerned, could not be considered regionally significant.

773. We invited the representative of Aurora Energy, Ms Dowd, to come back to us with further information on those parts of Aurora's electricity distribution network that might properly be included within the term regionally significant infrastructure. She identified those parts of the Aurora Network operating at 33kV and 66kV and four specific 11kV lines servicing specific communities. Ms Dowd also drew our attention to the fact that a number of other Regional Policy Statements and District Plans have a focus on "*critical infrastructure"*.

774. In Mr Paetz's reply evidence, he suggested a further iteration of this definition to limit electricity transmission infrastructure to the National Grid (necessarily excluding any electricity transmission lines in the Aurora network), add reference to key centralised Council infrastructure, and refer only to Queenstown and Wanaka airports.

775. Having regard to the Proposed RPS, as we are bound to do, we take the view that the focus should primarily be on regionally significant infrastructure (not some more broad ranging description such as '*critical*' infrastructure).

776. Secondly, identification of '*regionally*' significant infrastructure is primarily a matter for the Regional Council, except where the Proposed RPS might be considered ambiguous or inapplicable.

777. We therefore agree with Mr Paetz that reference to ports and rail structures might be deleted.

778. We cannot recommend acceptance of Mr Paetz's suggestion that key Council infrastructure should be included. While it would satisfy the Aurora test of critical infrastructure, the Regional Council has not chosen to identify it as regionally significant and while critical to the District, it is difficult to contend that it has significance beyond the District boundaries.

779. For similar reasons, we do not recommend identifying particular aspects of the Aurora distribution network. Again, while they would meet a test of critical infrastructure from the District's perspective, the Regional Council has not identified them as *'regionally significant'* – in the Decisions Version of the Proposed RPS, the Regional Council has explicitly excluded electricity transmission infrastructure that does not form part of the National Grid. Mr Farrell's contention that tourism infrastructure should be included within *'regionally significant infrastructure'* fails for the same reasons.

780. We also think that the reference to roads of national or regional significance can be simplified. These are the state highways.

781. Reference to Airports can, as QAC suggested, be limited to Queenstown and Wanaka Airports, but as a result of the amendment in the Proposed RPS to the relevant policy, reference should be made to associated navigation infrastructure.

782. We do not consider, however, that reference needs to be made to defence facilities. NZ Defence Force did not seek that relief in its submission[465] which is limited to relief related to temporary activities (in Chapter 35), from which we infer the Defence Force has no permanent facilities in the District. Certainly, we were not advised of any.

783. Lastly, the representatives of Transpower New Zealand Limited advised us that there are no electricity generation facilities supplying the National Grid in the District. The Roaring Meg and Wye Creek hydro generation stations are embedded in the Aurora line network and the Hawea Control Structure stores water for the use of the large hydro generation plants at Clyde and Roxburgh (outside the District) but does not generate any electricity of its own. We think that having regard to Policy A of the NPSREG 2011, this aspect of the definition needs to be amended to recognise the national significance of those activities.

784. In summary, we recommend that the Stream 10 Hearing Panel consider a definition of regionally significant infrastructure for insertion into the PDP as follows:

"Regionally significant infrastructure – means:

a. Renewable electricity generation activities undertaken by an electricity operator; and
b. The National Grid; and
c. Telecommunication and radiocommunication facilities; and
d. State highways; and
e. *Queenstown and Wanaka Airports and associated navigation infrastructure."*

785. This then leaves the question of the extent to which recognition of regionally significant infrastructure is required in the PDP.

786. Mr Paetz did not recommend an enabling approach to new infrastructure given the potential conflicts with section 6(a) and (b) of the Act.

---

465 Submission 1365

787. We appreciate his point. The Proposed RPS would not require that and in the extensive discussion earlier regarding the inter-relationship between significant infrastructure, in particular the National Grid, and the objective related to ONLs and ONFs, we concluded that the NPSET 2008 did not require provisions that would permit development of the National Grid in ways that would have significant adverse effects on ONLs and ONFs.

788. We do think, however, that it would be appropriate to provide some recognition to the locational constraints that infrastructure can be under.

789. Nor are locational constraints solely limited to infrastructure. The District has a number of examples of unique facilities developed for the visitor industry in the rural environment that by their nature, are only appropriate in selected locations. We have also already discussed submissions on behalf of the mining industry seeking to provide for the location-specific nature of mining[466].

790. As with infrastructure, provisions providing for such developments cannot be too enabling, otherwise they could conflict with the Plan's objectives (and the relevant higher order provisions) related to the natural character of waterways, ONLs and ONFs and areas of indigenous vegetation and significant habitats of indigenous fauna. However, we consider that it is appropriate to make provision for such facilities.

791. Accordingly, we recommend that the following policy (numbered 3.3.25) be inserted:

"Provide for non-residential development with a functional need to locate in the rural environment, including regionally significant infrastructure where applicable, through a planning framework that recognises its locational constraints, while ensuring maintenance and enhancement of the quality of the rural environment."

792. So far as regionally significant (and other) infrastructure in rural areas is concerned, this general recognition will need to be augmented by more specific policies. We will return to the point in the context of Chapter 6.

793. We have also considered the separate question, as to whether specific provision needs to be made for reverse sensitivity effects on infrastructure (regionally significant or otherwise) at a strategic level, in the rural environment. Clearly the Proposed RPS (Policy 4.3.4) supports some policy provision being made and we accept that this is an issue that needs to be addressed. The only issue is where it is best covered. We have concluded that this is a matter that can properly be left for the Utilities and Subdivision Chapters of the PDP.

794. This leaves open the question of provision for infrastructure in urban environments. We have taken the view that with limited exceptions, the high-level policy framework for urban development should be addressed in an integrated manner in Chapter 4. Consistent with that position, we will return to the question of infrastructure in that context.

795. It follows that we consider that recommended Policy 3.3.25 is the most appropriate way to achieve Objectives 3.2.1.8, 3.2.1.9, 3.2.5.1 and 3.2.5.2 as they relate to locationally-constrained developments, supplemented by more detailed policies in Chapters 4, 27 and 30.

3.19. Section 3.2.5.5 Policies – Ongoing Agricultural Activities

796. As notified there are two related policies on this subject that read as follows:

[466] Policy 5.3.5 of the Proposed RPS also supports recognition of mining in this context

"3.2.5.5.1 *Give preference to farming activity in rural areas except where it conflicts with significant nature conservation values;*

3.2.5.5.2 Recognise that the retention of the character of rural areas is often dependent on the ongoing viability of farming and that evolving forms of agricultural land use which may change the landscape are anticipated."

797. These policies attracted a number of submissions.

798. Some submissions sought deletion of Policy 3.2.5.5.1[467].

799. Many other submissions sought that Policy 3.2.5.5.1 be broadened to refer to "*other activities that rely on rural resources."*[468]

800. Some submissions sought deletion of the qualification referring to significant nature conservation values[469].

801. Many of the same submitters sought that Policy 3.2.5.5.2 be broadened, again to refer to activities that rely on rural resources, and to expand the reference to agricultural land use to include "*other land uses"*[470]*.*

802. Other more minor changes of emphasis were also sought.

803. Consideration of these policies takes place against a background of evidence we heard from Mr Philip Bunn of the challenges farmers have in continuing to operate in the District, particularly in the Wakatipu Basin.

804. The theme of many of the submitters who appeared before us was to challenge the preference given to farming over other land uses. As such, this formed part of the more general case seeking recognition of non-farming activities in the rural environment, particularly visitor industry related activities and rural living, but also including recreational use[471].

805. We discussed with the counsel and expert planners appearing for those submitters the potential ambit of a reference to activities *"relying on rural resources"*. From the answers we received, this is a somewhat elastic concept, depending on definition. Some counsel contended, for instance, that rural living (aka houses) would satisfy the test of being reliant on rural resources[472].

---

467 Submissions 598, 608, 696: Supported in FS1097 and FS1287; Opposed in FS1034, FS1091, and FS1132

468 Submissions 345, 375, 437, 456, 513, 515, 522, 531, 532, 534, 535, 537: Supported in FS1097, FS1256, FS1286 and FS1322; Opposed in FS1068, FS1071, FS1120 and FS1282

469 Submissions 701 and 784: Supported in FS1162

470 Submissions 343, 345, 375, 437, 456, 515, 522, 531, 532, 534, 535: Supported in FS1097, FS1292 and FS1322; Opposed in FS1068, FS1071 and FS1282. See also Submissions 607, 615, 643; Supported in FS1097, FS1105and FS1077 to like effect

471 See e.g. submission 836

472 For example, Ms Wolt advanced that position, appearing for Trojan Helmet Ltd, and supported by Mr Jeff Brown's evidence. Mr Tim Williams, giving planning evidence for Skyline Enterprises Ltd, Totally Tourism Ltd, Barnhill Corporate Trustee Ltd & DE, ME Bunn & LA Green, AK & RB Robins & Robins Farm Ltd, Slopehill JV, expressed the same opinion from a planning perspective. By contrast Chris Ferguson, the planning witness for Darby Planning LP and Hansen Family Partnership, suggested that a slightly different test (functional need) would be met by rural contracting depots but not by '*rural living*'.

806. We have made recommendations above as to how use of rural land for rural living should be addressed at a strategic policy level. We therefore do not consider that changes are necessary to these policies to accommodate that point, particularly given the potential ambiguities and definitional issues which might arise.

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

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

808. This wording would respond to the evidence of Mr Jeff Brown on behalf of Kawarau Jet Services Limited supporting specific reference to commercial recreational activities in recreational areas and on lakes and rivers in the district[473]. We do not think that specific reference needs to be made to lakes and rivers in this context, as, with the exception of Queenstown Bay, they are all within the Rural Zone. As discussed above, any unique issues arising in relation to waterways can more appropriately be addressed in Chapter 6.

809. Policy 6.3.8.2 was supported by Darby Planning LP[474], but a number of other submissions with interests in the visitor industry sector sought amendments to it. Some submissions[475] sought that the policy refer only to managing adverse effects of landscape quality, character and visual amenity values. Others sought that the policy be more positive towards such activities. Real Journeys Limited[476] for instance sought that the policy be reframed to encourage commercial recreation and tourism related activities that enhanced the appreciation of landscapes. Submissions 677[477] and 696[478] suggested a "*recognise and provide for"* type approach, combined with reference only to appreciation of the District's landscapes. Lastly, Submission 806 sought to remove any doubt that recreational and tourism related activities are appropriate where they enhance the appreciation of landscapes and have a positive influence on landscape quality, character and visual amenity values, as well as provision of access to the alpine environment.

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

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

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

---

473 J Brown, EiC at 4.11

474 Submission 608: Opposed in FS1034

475 Submissions 610, 613: Supported in FS1097.

476 Submission 621: Supported in FS1097

477 Supported in FS1097; Opposed in FS1312

478 Supported in FS1097

813. Lastly, incorporation of provision of access to the alpine environment as being a precondition for appropriateness would push the policy to far in the opposite direction, excluding visitor industry activities that enable passive enjoyment of the District's distinctive landscapes.

814. In summary, we recommend that Policy 6.3.8.2 be shifted into Chapter 3, renumbered 3.3.21 but otherwise not be amended.

815. Reverting to farming activities in rural areas, we accept that the policy of giving preference to farming might go too far, particularly where it is not apparent what the implications are of that preference. Mr Paetz recommended that these two policies be amended to read:

"3.2.5.5.1 Enable farming activity in rural areas except where it conflicts with significant nature conservation values;

3.2.5.5.2 Provide for evolving forms of agricultural land use."

816. We agree that an enabling focus better expresses the underlying intent of the first policy (as well as being consistent with Policy 5.3.1 of the Proposed RPS), but we also think that some reference is required to landscape character, since as already discussed, not all farming activities are consistent with maintenance of existing landscape character.

817. We also think that while it is appropriate to enable changing agricultural land uses (to address the underlying issue of lack of farming viability), reference to landscape character has been lost, and that should be reinserted, along with reference to protection of significant nature conservation values.

818. We also see the opportunity for these two policies to be combined. We recommend one policy replace Policies 3.2.5.5.1 and 2, numbered 3.3.20 and worded as follows:

"Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with significant nature conservation values or degrade the existing character of rural landscapes."

819. We are satisfied that recommended Policy 3.3.20 is the most appropriate way to achieve Objectives 3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1 and 3.2.5.2 in the context of a package of high-level policies and taking account of the additional policies we recommend for Chapter 6.

3.20. Section 3.2.6.3 Policies – Urban Development

820. Policies 3.2.6.3.1 and 3.2.6.3.2 related to the location and design of open spaces and community facilities. While Mr Paetz recommended that these policies remain as is, for similar reasons as above, we recommend that these are more appropriately deleted from Chapter 3 and their subject matter addressed in the context of Chapter 4.

3.21. Overall Conclusion on Chapter 3 Policies

821. We have considered all the of the policies we have recommended for this chapter. We are satisfied that individually and collectively, they are the most appropriate way to achieve the Chapter 3 policies at this high level, taking account of the additional policies we recommend for Chapters 4 and 6. We note that the revised version of Chapter 3 annexed as Appendix 1 contains three additional policies we have not discussed (3.3.33-35 inclusive). These policies are discussed in the Stream 1A Report and included in our revised Chapter 3 for convenience,

in order that the chapter can be read as a whole. Lastly, we consider that understanding of the layout of the policies would be assisted by insertion of headings to break up what would otherwise be a list of 35 policies on diverse subjects. We have therefore inserted headings intended to capture the various groupings of policies.

4. PART B RECOMMENDATIONS

822. Attached as Appendix 1 is our recommended Chapter 3.

823. In addition, as discussed in our report, we recommend to the Stream 10 Hearing Panel that the following new and amended definitions be included in Chapter 2:

***"Nature Conservation Values** – means the collective and interconnected intrinsic values of indigenous flora and fauna, natural ecosystems (including ecosystem services), and their habitats.*

***Regionally significant infrastructure** - means:*

a. Renewable electricity generation activities undertaken by an electricity operator; and
b. The National Grid; and
c. Telecommunication and radio communication facilities; and
d. State Highways; and
e. Queenstown and Wanaka airports and associated navigation infrastructure.

***Urban Development** – means development which is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development.*

***Resort-** means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing temporary visitor accommodation and forming part of an overall development focused on on-site visitor activities."*

824. Lastly, as discussed in the context of our consideration of Objective 3.2.5.2, if the Council intends that provisions related to the Rural Character Landscape apply in the Wakatipu Basin, and more generally, outside the Rural Zone, we recommend Council notify a variation to the PDP to make that clear.

6 LANDSCAPES AND RURAL CHARACTER

QUEENSTOWN LAKES DISTRICT COUNCIL

6.1 Purpose

The purpose of this chapter is to provide greater detail as to how the landscape, particularly outside urban settlements, will be managed in order to implement the strategic objectives and policies in Chapter 3. This chapter needs to be read with particular reference to the objectives in Chapter 3, which identify the outcomes the policies in this chapter are seeking to achieve. The relevant Chapter 3 objectives and policies are identified in brackets following each policy.

Landscapes have been categorised to provide greater certainty of their importance to the District, and to respond to regional policy and national legislation. Categorisations of landscapes will provide decision makers with a basis to consider the appropriateness of activities that have adverse effects on those landscapes.

6.2 Values

The District's landscapes are of significant value to the people who live in, work in or visit the District. The District relies in a large part for its social and economic wellbeing on the quality of the landscape, open spaces and the natural and built environment. Those landscapes also have inherent values, particularly to tangata whenua.

The landscapes consist of a variety of landforms created by uplift and glaciations, which include mountains, ice-sculpted rock, scree slopes, moraine, fans, a variety of confined and braided river systems, valley floors and lake basins. These distinct landforms remain easily legible and strong features of the present landscape.

Indigenous vegetation also contributes to the quality of the District's landscapes. While much of the original vegetation has been modified, the colour and texture of indigenous vegetation within these landforms contribute to the distinctive identity of the District's landscapes.

The open character of rural land is a key element of the landscape character that can be vulnerable to degradation from subdivision, development and non-farming activities. The prevalence of large farms and landholdings contributes to the open space and rural working character of the landscape. The predominance of open space over housing and related domestic elements is a strong determinant of the character of the District's rural landscapes.

Some rural areas, particularly those closer to the Queenstown and Wanaka urban areas and within parts of the Wakatipu Basin, have an established pattern of housing on smaller landholdings. The landscape character of these areas has been modified by vehicle accesses, earthworks and vegetation planting for amenity, screening and shelter, which have reduced the open character exhibited by larger scale farming activities.

While acknowledging these rural areas have established rural living and development, and a substantial amount of further subdivision and development has already been approved in these areas, the landscape values of these areas are vulnerable to degradation from further subdivision and development. Areas where rural living development is at or is approaching the finite capacity of the landscape need to be identified if the District's distinctive rural landscape values are to be sustained. Areas where the landscape can accommodate sensitive and sympathetic rural living developments similarly need to be identified.

The lakes and rivers both on their own and, when viewed as part of the distinctive landscape, are a significant element of the national and international identity of the District and provide for a wide range of amenity and recreational opportunities. They are nationally and internationally recognised as part of the reason for the District's importance as a visitor destination, as well as one of the reasons for residents to belong to the area. Managing the landscape and recreational values on the surface of lakes and rivers is an important District Plan function.

Landscapes have been categorised into three classifications within the Rural Zone. These are Outstanding Natural Landscapes (ONL) and Outstanding Natural Features (ONF), where their use, development and protection are a matter of national importance under Section 6 of the RMA. The Rural Landscapes (RLC) makes up the remaining Rural Zoned land and has varying types of landscape character and amenity values. Specific policy and assessment matters are provided to manage the potential effects of subdivision and development in these locations [1].

6.3 Policies

Rural Landscape Categorisation

6.3.1 Classify the Rural Zoned landscapes in the District as:

a. Outstanding Natural Feature (ONF);

b. Outstanding Natural Landscape (ONL);

c. Rural Character Landscape (RCL) (3.2.5.1, 3.2.5.2, 3.3.29, 3.3.31).

6.3.2 Exclude identified Ski Area Sub-Zones and the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps from the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories applied to the balance of the Rural Zone and from the policies of this chapter related to those categories. (3.2.1.1, 3.4.4.4, 3.3.21).

6.3.3 Provide a separate regulatory regime for the Gibbston Valley (identified as the Gibbston Character Zone), Rural Residential Zone, Rural Lifestyle Zone and the Special Zones within which the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories and the policies of this chapter related to those categories do not apply unless otherwise stated. (3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.5.2, 3.3.20-24, 3.3.32).

Managing Activities in the Rural Zone, the Gibbston Character Zone, the Rural Residential Zone and the Rural Lifestyle Zone

6.3.4 Avoid urban development and subdivision to urban densities in the rural zones. (3.2.2.1, 3.2.5.1, 3.2.5.2, 3.3.13-15, 3.3.23, 3.3.30, 3.3.32).

6.3.5 Ensure that the location and direction of lights does not cause excessive glare and avoids unnecessary degradation of views of the night sky and of landscape character, including of the sense of remoteness where it is an important part of that character. (3.2.5.1, 3.2.5.2, 3.3.19, 3.3.20, 3.3.30, 3.3.32).

6.3.6 Ensure the District's distinctive landscapes are not degraded by production forestry planting and harvesting activities. (3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.29, 3.3.31).

6.3.7 Enable continuation of the contribution low-intensity pastoral farming on large landholdings makes to the District's landscape character. (3.2.1.7, 3.2.5.1, 3.2.5.2, 3.3.20).

[1]. Greyed out text indicated the provision is subject to variation and is therefore not part of the Hearing Panel's recommendation.

6.3.8 Avoid indigenous vegetation clearance where it would significantly degrade the visual character and qualities of the District's distinctive landscapes. (3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.30, 3.3.32).

6.3.9 Encourage subdivision and development proposals to promote indigenous biodiversity protection and regeneration where the landscape and nature conservation values would be maintained or enhanced, particularly where the subdivision or development constitutes a change in the intensity in the land use or the retirement of productive farm land. (3.2.1.7, 3.2.4.1, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.20, 3.3.30, 3.3.32).

6.3.10 Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes adjacent to Outstanding Natural Features does not have more than minor adverse effects on the landscape quality, character and visual amenity of the relevant Outstanding Natural Feature(s). (3.2.5.1, 3.3.30).

6.3.11 Encourage any landscaping to be ecologically viable and consistent with the established character of the area. (3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.30, 3.3.32).

Managing Activities in Outstanding Natural Landscapes and on Outstanding Natural Features

6.3.12 Recognise that subdivision and development is inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site the subject of application. (3.2.1.1, 3.2.5.1, 3.3.21, 3.3.30).

6.3.13 Ensure that the protection of Outstanding Natural Features and Outstanding Natural Landscapes includes recognition of any values relating to cultural and historic elements, geological features and matters of cultural and spiritual value to tangata whenua, including tōpuni and wahi tūpuna. (3.2.3.1, 3.2.5.1, 3.2.7.1, 3.3.16, 3.3.30, 3.3.33 - 35, Chapter 5).

6.3.14 Recognise that large parts of the District's Outstanding Natural Landscapes include working farms and accept that viable farming involves activities that may modify the landscape, providing the quality and character of the Outstanding Natural Landscape is not adversely affected. (3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1, 3.3.20, 3.3.30).

6.3.15 The landscape character and amenity values of Outstanding Natural Landscapes are a significant intrinsic, economic and recreational resource, such that new large scale renewable electricity generation or new large scale mineral extraction development proposals are not likely to be compatible with them. (3.2.5.1, 3.3.25, 3.3.30).

6.3.16 Maintain the open landscape character of Outstanding Natural Features and Outstanding Natural Landscapes where it is open at present. (3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1, 3.3.20-21, 3.3.30).

6.3.17 Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases. (3.2.1.9, 3.2.5.1, 3.3.25, 3.3.30).

6.3.18 In cases where it is demonstrated that regionally significant infrastructure cannot avoid adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features, avoid significant adverse effects and minimise other adverse effects on those landscapes and features. (3.2.1.9, 3.2.5.1, 3.3.25, 3.3.30).

Managing Activities in Rural Character Landscapes

6.3.19 Recognise that subdivision and development is unsuitable in many locations in Rural Character Landscapes and successful applications will need to be, on balance, consistent with the objectives and policies of the Plan. (3.2.1.1, 3.2.1.7, 3.2.5.2, 3.3.20-24, 3.3.32).

6.3.20 Encourage plan changes applying Rural Lifestyle and Rural Residential Zones to land as the appropriate planning mechanism to provide for any new rural lifestyle and rural residential developments in preference to ad-hoc subdivision and development and ensure these zones are located in areas where the landscape can accommodate the change. (3.2.1.8, 3.2.5.2, 3.3.22, 3.3.24, 3.3.32).

6.3.21 Require that proposals for subdivision or development for rural living in the Rural Zone take into account existing and consented subdivision or development in assessing the potential for adverse cumulative effects. (3.2.1.8, 3.2.5.2, 3.3.23, 3.3.32).

6.3.22 Have particular regard to the potential adverse effects on landscape character and visual amenity values where further subdivision and development would constitute sprawl along roads. (3.2.1.1, 3.2.1.7, 3.2.5.2, 3.3.21, 3.3.24-25, 3.3.32).

6.3.23 Ensure incremental changes from subdivision and development do not degrade landscape quality or character, or important views as a result of activities associated with mitigation of the visual effects of proposed development such as screen planting, mounding and earthworks. (3.2.1.1, 3.2.1.8, 3.2.5.2, 3.3.21, 3.3.24, 3.3.32).

6.3.24 Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid significant adverse effects on the character of the landscape, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases. (3.2.1.9, 3.2.5.2, 3.3.25, 3.3.32).

6.3.25 In cases where it is demonstrated that regionally significant infrastructure cannot avoid significant adverse effects on the character of the landscape, such adverse effects shall be minimised. (3.2.1.9, 3.2.5.2, 3.3.25, 3.3.32).

6.3.26 Avoid adverse effects on visual amenity from subdivision, use and development that:

a. is highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); or

b. forms the foreground for an Outstanding Natural Landscape or Outstanding Natural Feature when viewed from public roads. (3.2.1.1, 3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.20-21, 3.3.24-25, 3.3.30, 3.3.32).

6.3.27 In the Wakatipu Basin, avoid planting and screening, particularly along roads and boundaries that would degrade openness where such openness is an important part of its landscape quality or character. (3.2.1.1, 3.2.1.8, 3.2.5.2, 3.3.20-21, 3.3.24-25, 3.3.32).

6.3.28 In the Upper Clutha Basin, have regard to the adverse effects from subdivision and development on the open landscape character where it is open at present. (3.2.1.1, 3.2.1.8, 3.2.5.2, 3.3.20-21, 3.3.24-26, 3.3.32).

6.3.29 Encourage development to utilise shared accesses and infrastructure, and to locate within the parts of the site where it will minimise disruption to natural landforms and to rural character. (3.2.1.1, 3.2.1.8, 3.3.21, 3.3.24, 3.3.32).

Managing Activities on Lakes and Rivers

6.3.30 Control the location, intensity and scale of buildings, jetties, moorings and infrastructure on the surface and margins of water bodies and ensure these structures maintain or enhance landscape quality and character, and amenity values. (3.2.1.1, 3.2.4.1, 3.2.4.3, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.21, 3.3.26, 3.3.30, 3.3.32).

6.3.31 Recognise the character of the Frankton Arm including the established jetties and provide for these on the basis that the visual qualities of the District's distinctive landscapes are maintained and enhanced. (3.2.4.3, 3.2.5.1, 3.3.30).

6.3.32 Recognise the urban character of Queenstown Bay and provide for structures and facilities providing they protect, maintain or enhance the appreciation of the District's distinctive landscapes. (3.2.1.1, 3.2.4.1, 3.2.4.4, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.21, 3.3.30, 3.3.32).

6.3.33 Provide for appropriate commercial and recreational activities on the surface of water bodies that do not involve construction of new structures. (3.2.1.1, 3.2.4.4, 3.2.5.1, 3.2.5.2, 3.3.21, 3.3.30, 3.3.32).

6.4 Rules

6.4.1 The Landscape Chapter and Strategic Direction Chapter's objectives and policies are relevant and applicable in all zones where landscape values are at issue.

6.4.2 The landscape assessment matters do not apply to the following within the Rural Zone:

a. ski Area Activities within the Ski Area Sub Zones.;

b. the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps;

c. the Gibbston Character Zone;

d. the Rural Lifestyle Zone;

e. the Rural Residential Zone [1].

[1]. Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

QUEENSTOWN LAKES DISTRICT COUNCIL

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

Commissioners
Denis Nugent (Chair)
Lyal Cocks
Cath Gilmour
Trevor Robinson
Mark St Clair

PART D - CHAPTER 6

8. OVERVIEW

1107. The purpose of this chapter is to recognise the landscape as a significant resource to the District which requires protection from inappropriate activities that could degrade its qualities, character and values. General submissions on Chapter 6 included requests that the entire chapter, or alternatively the objectives and policies in the chapter, be deleted and either replaced with the provisions already in section 4.2 of the ODP or unspecified elements thereof[611].

1108. Some of these submissions made quite specific suggestions as to desired amendments to the existing section 4.2 of the ODP. Others were more generalised. A variation was in submissions such as submissions 693[612] and 702 asking that Chapter 6 be deleted, and parts amalgamated with the Rural Chapter Section.

1109. Collectively, these submissions provide a broad jurisdiction to amend Chapter 6.

1110. We have addressed at some length in the context of our discussion of submissions on Chapter 3 whether it is appropriate to revert to the approach taken in the ODP to landscape management and have concluded that while a number of aspects of the ODP remain both relevant and of considerable assistance, the changed circumstances some 17 years after the initial key decision of the Environment Court on the form of the ODP[613] mean that a more strategic, directive approach is required. The commentary provided by Mr Barr in his Section 42A Report on Chapter 6 provides additional support for this view.

1111. Accordingly, we do not recommend wholesale changes to Chapter 6 to bring it into line with the ODP. Nor do we recommend it be amalgamated into the rural chapters. We consider it provides valuable strategic direction, consistent with the general structure of the PDP, with separate 'strategic' chapters. At an overview level, though, we recommend that the title of the chapter be amended to "*Landscapes and Rural Character"* to more correctly describe its subject matter. We regard this as a minor non-substantive change.

1112. Another theme of submissions on landscape issues was that the PDP's provisions were too protective of landscape values and existing activities that contribute to those values[614]. In his evidence, Mr Jeff Brown put to us the proposition that growth will inevitably affect landscape values, that this needed to be accepted and that the focus of PDP needed to be on appropriate management of those effects[615]. Counsel for Skyline Enterprises Ltd and others, Ms Robb, put a similar proposition to us, submitting[616]:

---

611 Submissions 145, 632, 636, 643, 669, 688, 693, 702: Opposed in FS1097, FS1162, FS1254 and FS1313

612 Supported in FS1097

613 C180/99

614 See e.g. Submission 806

615 J Brown, EiC at [2.2]

616 Summary of legal submissions for Skyline Enterprises Ltd, Totally Tourism Ltd, Barnhill Corporate Trustee Ltd, DE, ME Burn and LA Green, AK and RB Robins and Robins Farm Ltd and Slopehill JV at 6.1.-6.3

"The regime does not recognise the fundamental need for development to accommodate inevitable growth (both in the tourism and living sectors) or that certain development will contribute to people and communities' appreciation of the District.
The assumption to be gained from the PDP is that Council is trying to protect rural areas from any development (other than productive rural activity) when in fact that is not what the PDP should be striving to achieve, at all.

Overall the PDP does not strike an appropriate balance between the protection, use and development of all resources. Accordingly, it is not the most appropriate regime to achieve the purpose of the Act."

1113. Such submissions raise questions of the extent to which the PDP can and should provide for growth.

1114. We posed the question to Ms Black, who gave evidence on behalf of Real Journeys Ltd, whether it might be time to put out the *"full up"* sign at the entrance to Queenstown, rather than seek to cater for an ever-expanding influx of visitors to the District. Her initial reaction was one of surprise that one could contemplate such a position. Having reflected on the point, she suggested that it was very difficult to stop development. She drew our attention to the economic benefits to other districts from the number of visitors drawn to Queenstown and Wanaka, and also to the national objectives of the tourism industry.

1115. All of these matters are worthy of note, but Ms Black accepted also that there is a risk of too much development in the District *'killing the golden goose'*. Ms Black's opinion might also be contrasted with the view expressed by Mr Goldsmith[617] that Queenstown can't just keep growing.

1116. Overlaid on these considerations is now the NPSUDC 2016 which aims "*to ensure that planning decisions enable the supply of housing needed to meet demand"* while not anticipating *"development occurring with disregard to its effect"*[618].

1117. Ultimately, it is about arriving at the best balance we can between the use, development and protection of the District's natural and physical resources[619], while complying with the legal obligations the Act imposes.

1118. We have not considered submissions[620] that although nominally on Chapter 6, in fact raise issues outside the Council's jurisdiction.

1119. Lastly, we note that our consideration of submissions on Chapter 6 needs to take into account the variation of some of its provisions notified on 23 November 2017. At a purely practical level, to the extent that the Stage 2 Variations delete or amend parts of Chapter 6, we do not need to make recommendations on those parts and existing submissions on them have been automatically transferred to the variation hearing process, by virtue of Clause 16B(1) of the First Schedule to the Act.

---

617 When giving submissions for Ayrburn Farms Ltd, Bridesdale Farm Ltd, Shotover Country Ltd and Mt Cardrona Station Ltd

618 NPSUDC 2016 Forward at pages 3 and 4

619 Noting that that was how Ms Robb concluded her submissions – putting her position in terms of how the PDP had struck that balance.

620 See Submission 380

1120. Our recommended version of Chapter 6 in Appendix 1 therefore shows the provisions of the notified Chapter the subject of the Stage 2 Variation greyed out, to differentiate them from the provisions we recommend.

8.1. Section 6.1 - Purpose

1121. This section provides a general outline of the Purpose of the chapter as whole.

1122. The only submission seeking specific amendments to it was that of NZIA[621] seeking that it also refer to urban landscapes.

1123. Mr Barr recommended only drafting changes in his Section 42A Report.

1124. The primary focus of Chapter 6 is on rural landscapes, and the visual amenity issues in urban areas are dealt with in Chapter 4, and the more detailed provisions of Part Three of the PDP. However, Chapter 6 is not solely on rural landscapes and we accept that some amendment to the Statement of Purpose in Section 6.1 is appropriate to recognise that.

1125. In addition, submissions on Chapter 3 discussed above[622] sought greater guidance on the relationship between Chapter 3 and the balance of the PDP. We have recommended an amendment to Section 3.1 to provide such guidance. As a consequential measure, we recommend that parallel changes should be made to Section 6.1.

1126. Lastly, the second paragraph of Section 6.1 requires amendment in various respects:
   a. It is something of an overstatement to say categorisation of landscapes will provide certainty of their importance to the District. We recommend inserting the word "*greater"* to make it clear that this is an issue of degree;
   b. The reference to regional legislation needs to be corrected. The relevant instruments are Regional Policy Statements;
   c. Saying that categorisation of landscapes has been undertaken "*to align with"* regional [policy] and national legislation is somewhat misleading. Certainly, categorisation of landscapes aligns with the Proposed RPS, but it would be more correct to say that categorisation of landscapes "*responds to*" regional policy and national legislation;
   d. The reference to the RMA at the end of the second paragraph appears an unnecessary duplication, as well as lacking clarity. Given the specific reference to ONLs and ONFs, this is shorthand for consideration of adverse effects.

1127. In summary, we recommend that the Statement of Purpose be amended to read as:

"The purpose of this chapter is to provide greater detail as to how the landscape, particularly outside urban settlements, will be managed in order to implement the strategic objectives and policies in Chapter 3. It needs to be read with particular reference to the objectives in Chapter 3, which identify the outcomes the policies in this chapter are seeking to achieve.

Landscapes have been categorised to provide greater certainty of their importance to the District, and to respond to regional policy and national legislation. Categorisations of landscapes will provide decision makers with a basis to consider the appropriateness of activities that have adverse effects on those landscapes."

---

621 Submission 238: Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

622 Submissions 179, 191, 781: Supported in FS1121; Opposed in FS1132

8.2. Section 6.2 - Values

1128. Section 6.2 contains a general discussion of landscape values that provide the background to the objectives and policies that follow in the balance of the chapter.

1129. Submissions on Section 6.2 include:
   a. Requesting that it be more descriptive and acknowledge the inherent values of the District's rural landscapes, especially ONLs and ONFs[623];
   b. Requesting it acknowledge urban landscapes and their values, and that references to farmland, farms and farming activities be amended[624];
   c. Requesting it acknowledge the role of infrastructure and the locational constraints that activity has[625];
   d. Requesting that it note the form of landscape Council wishes to retain and plan for a variety of future housing in both urban and rural areas[626];
   e. Requesting it acknowledge the appropriateness of rural living, subject to specified preconditions[627];
   f. Requesting insertion of a broader acknowledgement of activities that might be enabled in rural locations[628];
   g. Support for its current text[629] or its intent[630].

1130. Mr Barr recommended an amendment to the text to acknowledge that there is some, albeit limited, capacity for rural living in appropriate locations in rural areas, but otherwise recommends only minor drafting changes.

1131. We also record that the Stage 2 Variations delete the final (eighth) paragraph of the notified Section 6.2. Our recommended version of Chapter 6 accordingly shows that paragraph as greyed out, and we have not addressed submissions on it.

1132. We accept NZIA's request that reference in the fourth paragraph to productive farmland be amended to "*rural land"*. While Dr Marion Read noted in her evidence the relationship of farming to rural character, its open character is not related to the productivity of the land. Otherwise, we do not recommend acceptance of the NZIA submissions, reflecting the fact that the primary focus of the chapter is on rural landscapes.

1133. We agree with Mr Barr that some acknowledgement of rural living is required. We take the view, however, that the amendments to the sixth paragraph of Section 6.2 need to be a little more extensive than Mr Barr suggests. If the discussion is going to acknowledge that rural living is appropriate in some locations, it needs to provide greater guidance as to where those locations might be (and equally where the locations are where such development would not be appropriate). We do not consider that the broader acknowledgement requested in submission 608 is required in an introductory discussion.

---

623 Submission 110: Opposed in FS1097

624 Submission 238: Opposed in FS1107, FS1226, FS1234, FS1238, FS1241, FS1242, FS1248, FS1249 and FS1255

625 Submissions 251, 433, 805: Supported in FS1077, FS1092, FS1097, FS1115 and FS1117

626 Submission 442

627 Submissions 375, 430, 437, 456: Supported in FS1097; Opposed in FS1084, FS1087, FS1160 and FS1282

628 Submission 608: Supported in FS1097, FS1154 and FS1158; Opposed in FS1034

629 Submission 600: Opposed in FS1034

630 Submission 755

1134. Similarly, we do not recommend that specific reference be made to infrastructure requirements in this context. While these issues are important and need to be addressed in the policies of Chapter 6, this introductory discussion does not purport to discuss every matter addressed in the substantive provisions that follow, nor need it to do so.

1135. We acknowledge that landscapes have inherent values, and agree that such values might be acknowledged.

1136. Other submissions are expressed too generally for us to base substantive amendments on.

1137. The first paragraph of Section 6.2 uses the term '*environmental image'*. The same term was used in Section 4.1 and we have recommended that *"the natural and built environment*" be substituted in that context. For consistency, the same amendment should be made in this context.

1138. The fifth paragraph refers to rural areas closer to Queenstown and Wanaka town centres as having particular characteristics. It would be more accurate to refer to rural areas closer to Queenstown and Wanaka urban areas.

1139. In summary, we recommend the following changes to Section 6.2:
   a. Substitute *"the natural and built environment"* for "*environmental image"* at the end of the first paragraph and add a further sentence:

      "T*hose landscapes also have inherent values, particularly to tangata whenua."*

   b. Substitute "*rural land"* for "*productive farmland"* in the first line of the fourth paragraph;
   c. Substitute reference to "*urban areas"* for "*town centres"* in the fifth paragraph;
   d. Amend the sixth paragraph to read as follows:

      "While acknowledging these areas have established rural living and development, and a substantial amount of further subdivision and development has already been approved in these areas, the landscape values of these areas are vulnerable to degradation from further subdivision and development. Areas where rural living development is at or approaching the finite capacity of the landscape need to be identified if the District's distinctive rural landscape values are to be sustained. Areas where the landscape can accommodate sensitive and sympathetic rural living developments similarly need to be identified."

8.3. Section 6 Objectives

1140. A number of submissions have been made on the objectives of Chapter 6. Mr Barr recommended one objective be deleted and that amendments be made to the balance. We have taken a broader view of the matter.

1141. The objectives all overlap with the objectives of Chapter 3, insofar as the latter address landscape values and rural character. The submissions on the objectives, if accepted, would not materially alter this position[631]. The Chapter 3 objectives already specify the desired end result and our view is that Chapter 6 need only specify additional policies to assist achievement of those broad objectives.

631 Many submissions, if accepted, would make the objectives inconsistent with the direction provided in Chapter 3, or alternatively would make them generalised to the point where they provide no meaningful assistance in achieving the purpose of the Act.

1142. In summary, therefore, to avoid duplication[632] we recommend deletion of all of the objectives in Chapter 6 as being the most appropriate way to achieve the purpose of the Act, as it relates to landscape and rural character.

1143. We have generally classified the many submissions seeking to soften the effects of the objectives as notified in a multitude of different ways as 'Accepted in Part'.

1144. Some submitters have sought additional objectives be inserted into Chapter 6. In particular, NZIA[633] requests addition of a new objective framed:

"Recognise the importance of high quality town centre landscapes within the District's natural landscape."

1145. We do not recommend that this objective be inserted for the following reasons:
   a. It is not framed as an objective (an environmental end point) and it is difficult to discern how it could be redrafted in order to do so.
   b. The urban areas of the District are too small to constitute a landscape in their own right[634].
   c. As above, the principal focus of Chapter 6 is on rural landscapes.

1146. None of the other objectives suggested appeared to us to add value against the background of the provisions recommended in Chapter 3.

8.4. Policies – Categorising Rural Landscapes

1147. As notified, Policies 6.3.1.1.and 6.3.1.2 provided for identification of ONLs and ONFs on the planning maps and classification of Rural Zoned landscapes as ONL, ONF and Rural Landscape Classification.

1148. The only submissions specifically seeking changes to them, sought their deletion[635], identification of the balance of rural landscapes on the planning maps[636] and a change in the label for those rural landscapes[637].

1149. Policy 6.3.1.1 duplicated recommended Policy 3.3.29 and accordingly, we recommend that it be deleted.

1150. As regards Policy 6.3.1.2, the notified version of Chapter 6 has a number of other provisions relating to the landscape classifications: Policy 6.3.8.3 and 6.3.8.4 together with Rules 6.4.1.2-4. It is appropriate that those provisions be considered here, subject to the effect of the Stage 2 Variations.

1151. As notified, Policy 6.3.8.3 read:

---

632 Consistent with Real Journeys Limited's submission (Submission 621)

633 Submission 238: Supported in FS1097; Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

634 See the discussion for example in *Lakes District Rural Landowners Society Inc and Ors v Queenstown Lakes District Council* C75/2001 at paragraph 7 on the need for a '*landscape'* to meet a minimum areal requirement.

635 Submission 806

636 Submission 761

637 Submissions 375 and 456: Opposed in FS1282

"Exclude identified Ski Area Sub-Zones from the landscape categories and full assessment of the landscape provisions while controlling the impact of the ski field structures and activities on the wider environment."

1152. Policy 6.3.8.4 read:

"Provide a separate regulatory regime for the Gibbston Valley, identified as the Gibbston Character Zone, in recognition of its contribution to tourism and viticulture while controlling the impact of buildings, earthworks and non-viticulture related activities on the wider environment."

1153. Lastly, Rules 6.4.1.2-4 read:

"6.4.1.2 The landscape categories apply only to the Rural Zone. The Landscape Chapter and Strategic Directions Chapter's objectives and policies are relevant and applicable in all zones where landscape values are in issue.

6.4.1.3 The landscape categories do not apply to the following within the Rural Zones:

a. *Ski Area Activities within the Ski Area Sub-Zones;*
b. *The area of the Frankton Arm located to the east of the Outstanding Natural Landscape Line as shown on the District Plan maps;*
c. *The Gibbston Character Zone;*
d. *The Rural Lifestyle Zone;*
e. *The Rural Residential Zone.*

6.4.1.4 The landscape categories apply to lakes and rivers. Except where otherwise stated or shown on the Planning Maps, lakes and rivers are categorised as Outstanding Natural Landscapes."

1154. The Stage 2 Variations have made amendments to both Rules 6.4.1.2 and 6.4.1.3, which will need to be considered as part of the hearing process for these variations. Specifically:
a. The first sentence of Rule 6.4.1.2 has been deleted;
b. The first line of Rule 6.4.1.3 has been amended to refer to landscape "*assessment* matters*"* rather than landscape "*categories"*;
c. Rules 6.4.1.3 c., d. and e. have been deleted.

1155. The submissions on the provisions quoted included:
a. Support for exclusion of the ski areas from landscape categories[638];
b. A request to extend the ski area exclusion to include access corridors, delete reference to environmental controls and add recognition of the importance of these areas[639];
c. A request to extend the ambit of Rule 6.4.1.2 to exclude Chapter 6 from having any application outside the Rural Zone[640];
d. A request for clarification as to whether landscape classification objectives and policies apply to special zones like Millbrook[641];
e. A request for clarification that landscape classification objectives and policies do not apply to the Rural Lifestyle Zone and the Rural Residential Zone[642];

638 Submissions 608, 610, 613: Opposed in FS1034
639 Submission 806: Supported in FS1229
640 Submissions 443 and 452
641 Submission 696
642 Submissions 669 and 694

f. A request to revise the drafting of Rule 6.4.1.2 and 6.4.1.3 to more clearly express what is included or excluded[643];
g. A request to add the Hydro Generation Zone as a further zone excluded from the landscape classifications[644];
h. A request to add reference to trails undertaken by the Queenstown Trail or Upper Clutha Tracks Trusts[645];
i. A request to delete Rule 6.4.1.4 or clarify the reference to ONLs[646].

1156. Mr Barr recommended deletion of Rules 6.4.1.2 and 6.4.1.4 and amendment of Rule 6.4.1.3 to refer to landscape assessment matters (rather than landscape categories) and to delete reference in the Rule to the Gibbston Character Zone, the Rural Lifestyle Zone and the Rural Residential Zone. Some of those recommendations have been overtaken by the Stage 2 Variations and do not need to be considered further. Mr Barr did not recommend amendment to the two policies noted above (which are not the subject of the Stage 2 Variations).

1157. We found these provisions collectively exceedingly confusing, overlapping, and, in part, contradictory. It is not surprising there were so many submissions seeking clarification of them.

1158. Mr Barr's recommendations did not materially assist and, in one view, confused the matter still further by implying that while the landscape assessment criteria apply only in the Rural Zone, the landscape categorisations as ONL, ONF and Rural Character Landscape (as relabelled) apply as shown on the planning maps, with the sole exceptions of the Ski Area Sub-Zones and the Gibbston Valley Character Zone (by virtue of Policies 6.3.8.3 and 6.3.8.4). That would mean all of the special zones, the Rural Lifestyle Zone and the Rural Residential zone are subject to the landscape categorisations. Inclusion of the special zones would in turn be inconsistent with Mr Barr's recommended revised Policy 6.3.1.1. (that like notified Policy 6.3.1.2) indicates that the intention is to classify the "*Rural Zoned Landscapes"*. On the face of the matter, land in the Rural Lifestyle Zone and the Rural Residential Zone would not qualify as "*Rural Zoned landscapes"* either (given it refers to "*Rural Zoned"* rather than "*rural zoned"* landscapes).

1159. The effect of the Stage 2 Variations is to remove the explicit statements in Section 6.2 and Rule 6.4.1.2 that the landscape categories apply only in the Rural Zone, but does not change notified Policy 6.3.1.2.

1160. Last, but not least, as some submitters pointed out at the hearing, the planning maps identify ONFs within special zones in Arrowtown and at Jacks Point. The Stage 2 Variations do not change that position either.

1161. Stepping back from the explicit and implicit statements in the PDP regarding application of the landscape categories, we make the following observations:
a. The Planning Maps do not clearly or consistently identify the boundaries of the areas denoted ONL, ONF and (particularly) RLC (now RCL) in all locations.
b. Land in the Rural Residential and Rural Lifestyle Zones has been identified as such either because it is already developed or because it has the capacity (in landscape terms) to absorb a greater density of development than the balance of rurally zoned areas. If more

643 Submission 836: Supported in FS1085
644 Submission 580: Opposed in FS1040
645 Submission 671
646 Submission 836

land is identified as appropriately having one or other of these zones applied to it following the mapping hearings, it will be for the same reasons. While the objectives and policies of Chapter 22 refer to the potential for such zones to be located in sensitive landscapes, and have provisions to address that situation, those provisions are not framed with reference to the landscape categories.

c. The Gibbston Character Zone has its own specific provisions to manage landscape character and there might similarly be considered to be a case for it to sit outside the categorisation process as a result;

d. The special zones are just that, "*special"*. They vary in nature, but a common feature is that landscape provisions have already been taken into account in identifying the land as subject to a special zone. In addition, to the extent that Mr Barr's recommended relief would or might have the effect that special zones are subject to the landscape classifications, we consider there is no scope to make that change. Submission 836 (that Mr Barr has relied upon), seeks only non- substantive drafting changes. As regards the specific request by Contact Energy Ltd to add specific reference to the Hydro Generation Zone, this is neither necessary nor appropriate. The Hydro Generation Zone is a *'special*' zone under the ODP. Assuming it retains that status in subsequent stages of the District Plan process, it will be excluded automatically. More to the point, if we were to list that particular zone, we would presumably have to list all the special zones, to avoid the implication that they were not excluded;

e. The Frankton Arm is not readily considered under a classification that seeks to retain its rural character. It is obviously not "*rural"*. As such, it might appropriately be excluded from the classification process entirely, having been identified as not outstanding. That raises questions in our minds as to the apparent classification of a large section of the Hawea River, and the lower section of the Cardrona River, above its confluence with the Clutha, as Rural Character Landscapes, but those rivers might be considered small enough that the policies related to that classification are still applicable;

f. The fact that the District Plan maps show parts of ONFs in Arrowtown and Jacks Point respectively as being within special zones is an anomaly if the intention is that all ONFs and ONLs be managed in accordance with the objectives and policies governing ONLs and ONFs. The special zone at Arrowtown will be considered as part of a subsequent stage of the District Plan review and we recommend the area occupied by the ONF be zoned Rural as part of that process. The Jacks Point Structure Plan already recognises the landscape values of the areas currently identified as ONF and ONL within the boundary of the zone, with provisions precluding development in those areas, reinforced by the recommended provisions of Chapter 41, and so there is not the same imperative to address it.

g. The fact that the PDP maps shows ONL and ONF lines as extending into residential zones appears to be an error, given the provisions of the PDP already noted. We discussed the incursion of the Mt Iron ONF line into the residential zoned land on the west side of the mountain with Mr Barr and he advised it was a mapping error. We will treat that (and the other examples we noted) as being something to be addressed in the mapping hearings, assuming there is jurisdiction and evidence to do so.

h. Although perpetuating the ODP in this regard, the exclusion for the Ski Area Sub-Zones is anomalous because it is contrary to case law[647] holding that the inquiry as to whether a landscape is outstanding is a discrete issue that needs to be resolved on landscape grounds, and that the planning provisions are a consequence of its categorisation as outstanding, not the reverse. Counsel for Darby Planning LP argued that the ski areas were properly excluded from the ONL classification because they are not *'natural'*. That may be the case (Darby Planning did not adduce expert evidence to support that contention), but the ski areas appear too small to constitute a separate *'landscape'* based

647 *Man O'War Station Limited v Auckland Council* [2015] NZHC 767: Affirmed [2017] NZCA 24

on the tests previously applied by the Environment Court. In any event, we have no submission that would give us jurisdiction to delete the exclusion for the ski area subzones in Policy 6.3.8.3[648] and thus we only note it as an anomaly. The Council should consider whether it is necessary to initiate a variation in this regard;

i. Given the *Man O'War* decisions (referred to above) though, the submissions for Queenstown Park Limited[649] and Queenstown Trails Trusts seeking additional exclusions from the consequences of classification as ONL (or ONF) cannot be accepted.

1162. We also note that it was not at all clear to us whether the contents of Section 6.4.1 are correctly described as "*rules".*

1163. While section 76(4) of the Act is silent as to what a rule in a District Plan may do, normally rules govern activities having an adverse effect on the environment. Rules 6.4.1.2-4 quoted above are (as the heading for Section 6.4.1 suggests) essentially explanations as to how policies should be interpreted and applied. Rule 6.4.1.1. is a clarification of the term "*subdivision and development".* Rule 6.4.1.5 is similarly a clarification as to the applicability of the objectives and policies of the landscape chapter to utilities. Mr Barr recommended, in any event, that it be deleted as it is not necessary.

1164. Mr Barr recommended in his reply evidence that Section 6.4 might more appropriately be headed Implementation Methods. That recommendation has now been overtaken by the Stage 2 Variations, meaning that Rules 6.4.1.2-3 must remain in Chapter 6, as amended, for future consideration. We consider, however, that the content of Rule 6.4.1.4 would more appropriately be addressed in policies in common with notified Policies 6.3.8.3 and 6.3.8.4. Rule 6.4.1.1 might appropriately be shifted to the definition section (Chapter 2). Currently that rule reads:

"The term 'subdivision and development' includes subdivision, identification of building platforms, any buildings and associated activities such as roading, earthworks, lighting, landscaping, planting and boundary fencing and access/gateway structures".

1165. A submission was made on this *'rule'* by PowerNet Limited[650] seeking that "*subdivision and development"* should not include "*infrastructure structures and activities that are not associated with the subdivision and development".*

1166. It is not clear whether the submitter seeks an exclusion from the policies in Chapter 6 for infrastructure that is associated with subdivision and development (read literally that would be the effect of the submission, if accepted). If that is the intention, we do not accept it. It is important that the effects of a subdivision be considered holistically. It would be unrealistic and undesirable if, for instance, the effects of a subdivision on landscape character were considered without taking into account the effects of the internal roading network necessitated by the subdivision. No amendment is necessary for infrastructure not associated with the subdivision and development because the existing rule only includes "*associated"* activities as it is.

1167. In summary, we recommend no change to the rule, but that it be shifted to Chapter 2. The end result will of course be the same.

---

[648] The exclusion formerly in Rule 6.4.1.2(a) has been effectively removed by the Stage 2 Variations.

[649] Submission 806

[650] Submission 251: Supported in FS1092 and FS1097

1168. We agree with Mr Barr that Rule 6.4.1.5 is an unnecessary duplication and should be deleted.

1169. Turning then as to how Rule 6.4.1.4 might be amalgamated into the policies along with 6.3.8.3 and 6.3.8.4, we have no jurisdiction to expand notified Policy 6.3.1.2 to apply beyond the Rural Zone. Its deletion (as sought in Submission 806) would have the effect that the landscape categories would not have any policy support indicating where they apply. Given the deletions from the text of Chapter 6 accomplished by the Stage 2 Variations and the lack of consistency in the planning maps identifying their location, we do not regard that as a satisfactory outcome – the lack of clarity, legitimately the subject of a number of submissions, would be exacerbated.

1170. We do not regard retention of Policy 6.3.1.2 as inconsistent with the varied provisions notified in November 2017. While Rule 6.4.1.2, as revised by the Stage 2 Variations, states that the objectives and policies of Chapters 3 and 6 apply in all zones where landscape values are in issue, that application presumably must depend on the terms of the relevant objective or policy. Recommended Objective 3.2.5.1 for instance will not apply to landscapes that are not ONL's.

1171. In summary, therefore, we recommend that Policy 6.3.1.2 be renumbered 6.3.1, and refer to Rural Character Landscapes, but otherwise be retained unamended, and that two amended policies numbered 6.3.2 and 6.3.3 be inserted to follow it, building on existing policies as follows:

"Exclude identified Ski Area Sub-Zones and the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps from the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape landscape categories applied to the balance of the Rural Zone.

Provide a separate regulatory regime for the Gibbston Character Zone, Rural Residential Zone, Rural Lifestyle Zone and the Special Zones within which the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape landscape categories, and the policies of this chapter related to those categories, do not apply unless otherwise stated."

1172. While the two policies have a similar end result and could potentially be collapsed together, we consider there is some value in differentiating the zones that have discrete chapters in the PDP outlining how they are to be managed, from the Ski Area Sub-Zones and the Frankton Arm that are part of the Rural Zone.

1173. We recommend that Rule 6.4.1.4 should be deleted, as a consequence.

1174. We consider that these policies, operating in conjunction with the policies of Chapter 3 related to categorisation of landscapes are the most appropriate way to achieve Objectives 3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.5.1 and 3.2.5.2 at a strategic level, having regard to the jurisdictional limitations on our consideration of these matters.

8.5. Policies – Managing Activities in the Rural Zones

1175. Consequential on the suggested deletion of the objectives in this chapter, there is a need to organise the policies flowing from categorisation of rural landscapes into a logical order. We recommend that this be done first by grouping the policies managing activities throughout the

rural zones (that is, within the Rural, Rural Residential, Rural Lifestyle and Gibbston Character Zones); secondly by gathering the policies that are specific to managing activities in ONLs and ONFs; thirdly by grouping together policies related to managing activities in RCLs; and lastly by grouping together the policies related to managing activities related to lakes and rivers. We recommend that this division be made clear by including suitable headings as follows:

a. *"Managing Activities in the Rural Zone, the Gibbston Character Zone, the Rural Residential Zone and the Rural Lifestyle Zone;*
b. *Managing Activities in Outstanding Natural Landscapes and on Outstanding Natural Features;*
c. *Managing Activities in Rural Character Landscapes;*
d. *Managing Activities on Lakes and Rivers".*

1176. Insertion of headings for the balance of the chapter requires a new heading for the three policies related to land categorisation that we have already recommended. We recommend the heading "*Rural Landscape Categorisation"* be inserted.

1177. Turning to the policies falling under the first bullet pointed heading above, the first that requires consideration is what was formerly numbered Policy 6.3.1.5, which read:

"Avoid urban subdivision and development in the rural zones."

1178. Submissions on this policy sought a wide range of relief from its deletion to significant amendments. Mr Barr recommended its amendment to read:

"Discourage urban subdivision and urban development in the rural zones."

1179. The substance of this policy has already been addressed in the context of our Chapter 3 report above and we have recommended that urban development outside the defined UGBs and existing settlements where UGBs have not been defined should be avoided. It follows that we recommend that all of the submissions on this policy (apart from the single submission seeking its retention) be rejected. The only amendment we recommend to the policy is to clarify what is meant by "*urban subdivision"*.

1180. Accordingly, we recommend that Policy 6.3.1.5 be renumbered 6.3.4 and amended to read:

"Avoid urban development and subdivision to urban densities in the rural zones".

1181. The second policy common to all of the rural zones is Policy 6.3.1.8 which as notified, read:

"Ensure that the location and direction of lights does not cause glare to other properties, roads, and public places or the night sky."

1182. Submissions on this policy sought variously its deletion[651], shifting provision for lighting into the rural chapter[652], carving out an exception for navigation and safety lighting[653], and generally to give greater prominence to the significance of the night sky as a key aspect of the District's natural environment[654].

---

651 Submission 761
652 Submission 806
653 Submission 621: Supported in FS1097; Opposed in FS1282
654 Submission 340

1183. We also note a separate submission seeking recognition of the maintenance of the ability to view and appreciate the naturalness of the night sky and to avoid unnecessary light pollution in Chapter 3[655]. As discussed in Part C of our r report, while we do not consider that this passes the rigorous requirement for inclusion in Chapter 3, we have taken this submission into account in this context.

1184. Mr Barr recommended the policy be amended to read:

"Ensure that the location and direction of lights avoids degradation of the night sky, landscape character and sense of remoteness where it is an important part of that character."

1185. As Submission 568 (G Bisset) pointed out, the issue under this policy is views of the night sky (rather than degradation of the night sky per se). The night sky itself cannot be impacted by any actions taken on the ground.

1186. Second, we think that Real Journeys is correct, and provision needs to be made for navigation and safety lighting. We suggest that the policy refer to "*unnecessary*" degradation of views of the night sky. We also take on board a point made by Mr Ben Farrell in his evidence, that Mr Barr's recommendation omitted reference to glare, the minimisation of which is important to night-time navigation on Lake Wakatipu.

1187. Mr Barr's reasoning[656] was that zone provisions control glare. However, in our view, some reference to glare is required at broader policy level. Again though, it is not all glare that needs to be avoided.

1188. We also think that Mr Barr's suggested reformulation treats loss of remoteness as a discrete issue when (where applicable) it is an aspect of landscape character. It might also be seen to introduce some ambiguity as to what the qualifier (where it is an important part of that character) refers to. This can be avoided with a little redrafting.

1189. Accordingly, we recommend that Policy 6.3.1.8 be renumbered 6.3.5 and amended to read:

"Ensure that the location and direction of lights does not cause excessive glare and avoids unnecessary degradation of views of the night sky and landscape character, including of the sense of remoteness where it is an important part of that character."

1190. Policy 6.3.1.9 as notified read:

"Ensure the District's distinctive landscapes are not degraded by forestry and timber harvesting activities."

1191. One submission on this policy sought clarification of linkages with provisions related to indigenous vegetation and biodiversity and as to the extent of any limitations on timber harvesting[657]. Another submission sought that the policy be deleted in this context and shifted to the rural chapter[658].

---

655 Submission 568

656 In the Section 42A Report at page 22

657 Submission 117

658 Submission 806

1192. We do not recommend the latter as this is a landscape issue common to all rural zones. We do recommend minor changes responding to Submission 117, to make it clear that this policy has no connection to indigenous vegetation or biodiversity provisions and to limit the breadth of the reference to timber harvesting (which might otherwise be seen as inconsistent with the policy focus on controlling wilding species). Accordingly, we recommend that Policy 6.3.1.9 be renumbered 6.3.6 and amended to read:

"Ensure the District's distinctive landscapes are not degraded by production forestry planting and harvesting activities."

1193. Policy 6.3.1.10, as notified, read:

"Recognise that low-intensity pastoral farming on large land holdings contributes to the District's landscape character."

1194. Submissions on this policy sought variously deletion of specific reference to pastoral farming and to the size of land holdings[659], deletion of the reference to the size of land holdings[660], deletion of the policy entirely or its amendment to recognise that it is the maintenance of landscape values that contributes to landscape character[661].

1195. Mr Barr did not recommend any change to his policy. Consequent with our recommendations in relation to notified Policy 3.2.5.5.1, we recommend that the focus of this policy should be enabling low intensity pastoral farming to continue its contribution to landscape character. While it is understandable that submitters take the view that many activities contribute to rural landscape character, large pastoral land holdings in the District have a particular role in this regard and we consider it is appropriate that they be recognised. We also consider no specific reference is required to more intensive farming[662], since the policy does not purport to enable that.

1196. In summary, we recommend that Policy 6.3.1.10 be renumbered 6.3.7 and amended to read:

"Enable continuation of the contribution low-intensity pastoral farming on large land holdings makes to the District's landscape character."

1197. Policy 6.3.7.2, as notified, read:

"Avoid indigenous vegetation clearance where it would significantly degrade the visual character and qualities of the District's distinctive landscapes."

1198. Submissions on this policy sought variously its deletion[663], its retention[664] or softening the policy to refer to avoiding, remedying or mitigating indigenous vegetation clearance[665] or

---

659 Submission 238: Supported in FS1097; Opposed in FS1107, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

660 Submission 600: Supported in FS1209; Opposed in FS1034 and FS1282

661 Submission 806

662 See e.g. Submission 110

663 Submission 806

664 Submission 600: Supported in FS1209; Opposed in FS1034

665 Submissions 519 and 598 (the latter in tandem with deletion of the word "*significantly")*: Supported in FS1015, FS1097 and FS1287; Opposed in FS1356

alternatively to significant ONFs and ONLs[666]. Mr Barr did not recommend any change to the policy as notified.

1199. Given that the focus of the policy is on significant degradation to visual character and landscape qualities, we take the view that an avoidance policy is appropriate. It could be amended to expand its focus (as Submission 598 suggests) but we see little value in an "*avoid, remedy or mitigate"* type policy in this context. We also consider that the policy has broader application than just indigenous vegetation in ONLs and on ONFs (that are significant by definition).

1200. Accordingly, we recommend no change to this policy, other than to renumber it 6.3.8.

1201. Policy 6.3.7.1, as notified, read:

"Encourage subdivision and development proposals to promote indigenous biodiversity protection and regeneration where the landscape and nature conservation values would be maintained or enhanced, particularly where the subdivision or development constitutes a change in the intensity in the land use or the retirement of productive farm land."

1202. Two submissions[667] sought amendment to this policy – that it refers to 'biodiversity' rather that 'nature conservation' values, and recognise that values might change over time. Mr Barr recommended that it remain as notified and, other than renumbering it 6.3.9, we concur. Given the revised definition of 'nature conservation values' we consider it an appropriate focus in this context. Similarly, we consider the policy already contemplates change.

1203. We also consider that this policy provides adequate support at a high level for offsetting, fleshed out by the provisions of Chapters 21 and 33. We therefore concur with Mr Barr's view that no new policy on the subject[668] is required.

1204. Policies 6.3.8.1 and 6.3.8.2 related to tourism infrastructure, commercial recreation and tourism related activities. Policy 6.3.8.1 provided for acknowledgement of tourism infrastructure. 6.3.8.2 involved recognition of the appropriateness of commercial recreation and tourism related activities. Most of the submissions on these policies were supportive, seeking amendments to extend their ambit.

1205. We have recommended that Policy 6.3.8.2 be shifted into the Strategic Chapter to better recognise the importance of these matters. We do not see Policy 6.3.8.1 as adding any value independently of 6.3.8.2 and accordingly both should be deleted from this chapter, as a consequential change.

1206. Policy 6.3.3.2 as notified read:

"Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Landscapes adjacent to Outstanding Natural Features would not degrade the landscape quality, character and visual amenity of Outstanding Natural Features."

666 Submission 378: Opposed in FS1049 and FS1282

667 Submissions 378 and 806: Opposed in FS1049 and FS1282

668 As sought in Submission 608: Supported in FS1097 and FS1117; Opposed in FS1015 and FS1034

1207. Submissions on this policy sought variously minor drafting changes[669], clarification that a significant degree of degradation is required[670] and its deletion[671].

1208. Mr Barr did not recommend any change to this policy.

1209. We have considered whether this policy should properly extend to subdivision and development in the Rural Residential, Rural Lifestyle and Gibbston Character Zones. While Mr Carey Vivian suggested an amendment that would have this effect, given the limited scope of submissions on this policy, an extension of its ambit would in our view be outside scope and require a variation. Having considered that possibility on its merits, we do not recommend such a variation be advanced. Land is zoned Rural Lifestyle, or Rural Residential in the knowledge that that zoning involves acceptance of a greater density of development than the Rural Zone. If land is adjacent to an ONF, that proximity, and the potential for adverse effects on the ONF should be considered at the point the land is zoned. The Gibbston Character Zone is not adjacent to an ONF, and so the issue does not arise for land in the Gibbston Valley.

1210. Returning to the notified form of Policy 6.3.3.2, we regard degradation as importing a more than minor adverse effect, but for clarity, recommend that the policy be amended to say that. We have considered the evidence as to alternative ways in which a qualitative element might be introduced into this policy. Ms Louise Taylor[672] suggested adding "*as a whole",* so as to give it a spatial dimension. Mr Carey Vivian suggested that the test be whether the landscape quality and visual amenity "*values"* of the ONF are adversely affected. Given the objective sought to be achieved (3.2.5.1), we consider a *'more than minor adverse effect'* test is a more appropriate test. We also think that a more than minor adverse effect would, in all likelihood degrade an ONF *'as a whole'* and adversely affect the values that make it significant[673]. The only other amendments we would recommend are consequential (to refer to Rural Character Landscapes and renumber it 6.3.10) and clarification (to make it clear that the focus is on the ONF to which subdivision and development is adjacent).

1211. Accordingly, we recommend that this Policy be amended to read:

"Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes adjacent to Outstanding Natural Features does not have more than minor adverse effects on the landscape quality, character and visual amenity of the relevant Outstanding Natural Feature(s)."

1212. Policy 6.3.5.4 as notified read:

"Encourage any landscaping to be sustainable and consistent with the established character of the area."

1213. The only submissions specifically on this policy sought its retention. Mr Barr recommended one minor change, to clarify that the reference to sustainability in this context is not the broad concept in section 5 of the Act, but rather relates to whether landscaping is viable.

669 Submission 375: Opposed in FS1097 and FS1282

670 Submissions 519 and 598: Supported in FS1015, FS1097 and FS1287; Opposed in FS1282 and FS1356

671 Submissions 355 and 598: Supported in FS1287; Opposed in FS1282 and FS1320

672 Giving evidence for Matukituki Trust

673 The focus of Proposed RPS, Policy 3.2.4

1214. We agree with the thinking behind that suggested change, but consider it could be made clearer. Accordingly, we recommend that this Policy be renumbered 6.3.11 and amended to read:

"Encourage any landscaping to be ecologically viable and consistent with the established character of the area."

1215. In summary, having reviewed the policies in this section, we consider that individually and collectively with the policies both in Chapter 3 and in the balance of this chapter, they are the most appropriate way to achieve the objectives in Chapter 3 relevant to use, development and protection of the rural areas of the District at a strategic level.

8.6. Policies – Managing Activities in ONLs and on ONFs

1216. As notified, Policy 6.3.1.3 read:

"That subdivision and development proposals located within the Outstanding Natural Landscape, or an Outstanding Natural Feature, be assessed against the assessment matters in provisions 21.7.1. and 21.7.3 because subdivision and development is inappropriate in almost all locations meaning successful applications will be exceptional cases."

1217. Submissions on this policy included:

a. Seeking that the Policy be restricted to a cross reference to the assessment matters[674];
b. Seeking to delete reference to the assessment matters, but retain the emphasis on subdivision and development being generally inappropriate[675];
c. Seeking to delete it entirely[676];
d. Seeking to amend the concluding words to soften the expectations as the number of locations where developments will be inappropriate[677];
e. Seeking to amend the policy to state the intention to protect ONLs or ONFs from inappropriate subdivision, use or development[678];
f. Seeking to qualify the policy to provide specifically for infrastructure with its own test, or alternatively add a new policy the same effect[679].

1218. In his reply evidence, Mr Barr recommended this policy be amended to read:

"That subdivision and development proposals located within the Outstanding Natural Landscape, or an Outstanding Natural Feature, be assessed against the assessment matters in provisions 21.7.1 and 21.7.3 because subdivision development is inappropriate in almost all locations within the Wakatipu Basin, and inappropriate in many locations throughout the districtwide Outstanding Natural Landscapes."

674 Submissions 249, 355, 502, 519, 621: Supported in FS1012, FS1015 and FS1097; Opposed in FS1282, FS1320 and FS1356
675 Submissions 375, 437, 456: Opposed in FS1015, FS1097, FS1160 and FS1282
676 Submissions 624, 806
677 Submissions 598: Supported in FS1097, FS1117 and FS1287; Opposed in FS1282
678 Submission 581: Supported in FS1097; Opposed in FS1282
679 Submissions 251, 805: Supported in FS1092, FS1097 and FS1115; Opposed in FS1282

1219. The recommended amendment recognises a distinction drawn in the initial Environment Court decision on the ODP[680] between the reduced capacity of the Wakatipu Basin ONLs to absorb change, compared to the ONLs in the balance of the District[681].

1220. A number of the planning witnesses who appeared at the hearing criticised this policy as notified as inappropriately prejudicing applications yet to be made. Ms Louise Taylor suggested to us for instance that such predetermination was inconsistent with the caselaw applying a *'broad judgment'* to resource consent applications.

1221. Mr Tim Williams noted also that there were a number of examples where developments in ONLs had been found to be appropriate. While Mr Williams did not say so explicitly, the implication was that it is not factually correct that appropriate development in an ONL is an exceptional case.

1222. As against those views, Mr John May gave evidence suggesting that the notified policy was both realistic and reflected the sensitivity and value of the District's landscapes.

1223. The Environment Court thought it was necessary to make comment about the likelihood of applications being successful in the ODP to make it clear that the discretionary activity status afforded activities in ONLs and ONFs under the ODP did not carry the usual connotation that such activities are potentially suitable in most if not all locations in a zone[682]. The Environment Court made it clear that, were this not able to be stated, a more restrictive, non-complying activity would be appropriate.

1224. Mr Goldsmith[683] submitted to us that the existing reference to appropriate development in ONLs being an exceptional case originated from the Environment Court's identification of the ONLs in the Wakatipu Basin as requiring a greater level of protection. He also submitted that elevation of the existing provision into a policy required justification and evidence[684].

1225. We do not think Mr Goldsmith's first point is factually correct. While the initial consideration in the Environment Court's mind might have been the vulnerability of the Wakatipu Basin ONLs, the ODP text the Court approved reads:

> *"… in or on outstanding natural landscapes and features, the relevant activities are inappropriate in almost all locations within the zone, **particularly** within the Wakatipu Basin or in the Inner Upper Clutha area…"* [Emphasis added]

1226. On the second point, we do not think elevation from a provision explaining the rule status ascribed to a policy requires justification in the sense Mr Goldsmith was arguing. Clearly the Environment Court thought that was the position as a fact. Whether it should now be expressed as a policy turns on whether that is the most appropriate way to achieve the relevant objective (3.2.5.1) which we have already found to be the most appropriate way to achieve the purpose of the Act. This is the basis on which we have approached the matter.

---

680 C180/99 at [136]

681 See ODP Section 1.5.3iii(iii)

682 Refer the discussion in Lakes District Rural Landowners Society Inc v Queenstown Lakes District Council C75/2001 at 41-46

683 When appearing for Ayrburn Farm Estate Ltd, Bridesdale Farm Developments Ltd, Shotover Country Ltd and Mt Cardrona Station Ltd. Mr Brown gave planning evidence supporting that submission.

684 Mr Carey Vivian also drew our attention to the way in which the language had been changed from the ODP, and expressed the view that it made little sense as a policy.

1227. As regards Ms Taylor's *'broad judgment'* point, we rely on the confirmation provided by the Supreme Court in *King Salmon* that plan policies may emphasise protection rather than use and development consistently with the purpose of the Act, depending on the circumstances. We also note more recent authority[685] holding that reference back to Part 2 of the Act[686] is only required where plan provisions are invalid, incomplete or unclear.

1228. For our part, we had a problem with Policy 6.3.1.3 (and Policy 6.3.1.4 that follows it) because of the way they refer to assessment matters. As Ms Taylor observed[687], the role of assessment matters is to assist implementation of policies in a plan. We do not consider that it is appropriate that assessment matters act as quasi-policies. If they are effectively policies, they should be stated as policies in the Plan.

1229. We also consider it would be more helpful to explain not just that successful applications will be exceptional, but also to give some guidance as to what characteristics will determine whether they will be successful. As Mr Vivian observed, merely stating the general point makes little sense as a policy. The capacity to absorb change is clearly one important factor – refer notified Policy 6.3.4.1. The ODP identifies as another important touchstone (in the context of the policies governing ONLs in the Wakatipu Basin and ONFs) whether buildings and structures and associated roading and boundary developments are reasonably difficult to see. Mr Haworth (arguing in support of the more general UCES submission seeking that the ODP provisions governing development in rural areas should be retained in preference to the PDP provisions) was particularly critical of the loss of this criterion, and we consider it to be an aspect of the ODP that could usefully be carried over into the PDP.

1230. There is, however, one issue with the ODP wording. The ODP provides no indication of the viewpoint from which changes to the landscape must be reasonably difficult to see. This is surprising given that in the initial Environment Court decision on the ODP, the Environment Court observed:

> *"Further, even if one considers landscapes in the loose sense of 'views of scenery' the first question that arises is as to where the view is from. One cannot separate the view from the viewer and their viewpoint."*[688]

1231. The specific question of how this particular criterion should be framed was considered in a later decision in the sequence finalising the ODP[689].

1232. From that decision, it appears that the Council proffered a test of visibility based on what could be seen "*outside the property they are located on"*. Mr Goldsmith, then acting for a number of parties on the ODP appeals, is recorded as having argued that that qualification was otiose[690]. Counsel for the Council, Mr Marquet, is recorded as having argued that they protected landowners' rights.

---

685 *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52

686 And therefore to a broad judgment on the application of section 5

687 As part of her evidence on behalf of X-Ray Trust Ltd.

688 C180/99 at [74]

689 C74/2000

690 That is, serving no useful purpose

1233. The Court took the position[691] that the views enjoyed by neighbours should not be determinative, and directed that the qualification be deleted.

1234. With respect to the reasoning of the Environment Court, the problem we see with the end result is that without definition of the viewpoint, reasonable visibility should presumably be determined from every relevant point. Moreover, virtually nothing will be "*reasonably difficult to see"* if one views it from sufficiently close range (unless a development takes place entirely underground). The point of having a visibility test depends on having a viewpoint that is far enough away to provide a developer with an opportunity to construct a development that meets the test. Clearly that will not be possible in all cases, nor, perhaps, in many cases.

1235. But the developer needs to have that opportunity, otherwise the policy becomes one which, as counsel and witnesses for a number of submitters contended was the case with the existing PDP policies in relation to development in ONLs, can never be met.

1236. In summary, we think that the test needs to be what is reasonably difficult to see "*from beyond the boundary of the site the subject of application"*. The location of the boundary of the site in relation to the development will of course vary according to the circumstances. The land beyond the boundary might be privately or publicly owned. We considered specifying visibility from a public viewpoint (i.e. a road). Given, however, that the purpose of this requirement is ultimately to provide better definition of more than minor adverse effects of subdivision, use and development on (among other things) visual amenity values of ONLs (refer recommended Objective 3.2.5.1), this would not be the most appropriate way to achieve the objective in section 32 terms.

1237. Any alternative viewpoint would necessarily be arbitrary (some specified minimum distance perhaps) and somewhat unsatisfactory for that reason.

1238. In summary, therefore, we recommend that Policy 6.3.1.3 be renumbered 6.3.12 and amended to read:

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

1239. Policy 6.3.1.12, as notified read:

> *"Recognise and provide for the protection of Outstanding Natural Features and Landscapes with particular regard to values relating to cultural and historic elements, geological features and matters of cultural and spiritual value to Tangata Whenua including* Tōpuni*."*

1240. Submissions on this policy sought variously its deletion[692], introduction of reference to inappropriate subdivision, use and development both with and without reference to the

691 C74/2000 at [15]

692 Submissions 621 and 806: Opposed in FS1282

specific values currently identified[693], reference to a method that would identify the values in question[694], and expansion of the policy to include reference to Wāhi Tupuna[695]

1241. When Mr Barr appeared at the hearing, we asked why it was appropriate to refer to the specific values noted in this policy as a subset of all of the values that ONLs and ONFs might have. He explained that the intention was to capture the values that might not be obvious, and he recommended no change to the policy.

1242. Mr Barr makes a good point, that these particular values would not be obvious to the casual observer. As is discussed in the Hearing Panel's Stream 1A report (Report 2), consultation with Tangata Whenua is an important mechanism by which one can identify cultural elements in a landscape that would not otherwise be obvious. On that basis, we think it appropriate in principle to identify the significance of these particular values.

1243. For the same reason, we do not think it necessary or appropriate to insert reference to a method whereby the Council will identify all the values in question. In the case of cultural values at least, while the mapping of Wāhi Tupuna planned as part of a later stage in the District Plan review process will assist, it is primarily the responsibility of applicants for resource consent to identify whether and what values are present in landscapes that might be affected by their proposals.

1244. Submitter 810 makes a valid point, seeking reference to wāhi tupuna. The representatives of the submitter who gave evidence as part of the Stream 1A hearing indicated that there was likely to be an overlap in practice between ONLs and wāhi tupuna. Chapter 5 addresses the protection of wāhi tupuna, but if this policy is going to make specific reference to tōpuni as a matter of cultural and spiritual value to tangata whenua, we think that reference should also be made to wāhi tupuna.

1245. We have already discussed at length the utility of a qualification of policies such as this by reference to inappropriate subdivision, use and development. In summary, given the interpretation of that term by Supreme Court in its *King Salmon* decision, we do not think that it would materially alter the effect of a policy such as this.

1246. Having said that, we do have a problem with the existing wording in that recommended Objective 3.2.5.1. and Policy 3.3.29 already "*recognise and provide for"* the protection of ONLs and ONFs. The role of this policy is to flesh out how Objective 3.2.5.1 is achieved beyond what Policy 3.3.29 already says. To avoid that duplication, we recommend that the policy be renumbered 6.3.13 and reframed slightly to read:

"Ensure that the protection of Outstanding Natural Features and Outstanding Natural Landscapes includes recognition of any values relating to cultural and historic elements, geological features and matters of cultural and spiritual value to tangata whenua, including tōpuni and wāhi tupuna."

1247. Policy 6.3.4.2 as notified read:

---

693 Submissions 355 and 806: Supported in FS1097; Opposed in FS1282 and FS1320

694 Submission 355: Supported in FS1097; Opposed in FS1282 and FS1320

695 Submission 810 (noting that the other aspect of the relief sought by this submitter – referring to Manawhenua rather than Tangata Whenua – was withdrawn by the submitter by submitters representatives when they appeared in the Stream 1A Hearing)

"Recognise that large parts of the District's Outstanding Natural Landscapes include working farms and accept that viable farming involves activities which may modify the landscape, providing the quality and character of the Outstanding Natural Landscapes is not adversely affected."

1248. Only one submitter sought amendments specifically to this policy, seeking that it be broadened to enable any uses that might modify the landscape[696].

1249. Mr Barr did not recommend any change to this policy. We concur.

1250. In the part of our report addressing Chapter 3, we recommended that the viability of farming be identified as a specific issue to be addressed by the strategy objectives and policies of that chapter. The same reasoning supports this policy.

1251. We do not consider it is appropriate to provide an open-ended recognition for any changes to ONLs. We do not think such recognition would be consistent with recommended Objective 3.2.5.1. We note also that Mr Jeff Brown, giving evidence on behalf of submitter 806 among others, did not support the relief sought in this submission.

1252. Mr Tim Williams suggested that reference might be made to other land uses, while retaining reference to the quality and character of the ONLs. While that approach is not open to the obvious objection above, we regard the extent to which non-farming activities in ONLs are accommodated as something generally best left for determination under the more general policies of Chapter 3. We discuss possible exceptions to that position below.

1253. Accordingly, we recommend that policy 6.3.4.2 be renumbered 6.3.14 but otherwise adopted with only a minor grammatical change to read:

"Recognise that large parts of the District's Outstanding Natural Landscapes include working farms and accept that viable farming involves activities that may modify the landscape, providing the quality and character of the Outstanding Natural Landscapes is not adversely affected."

1254. Policy 6.3.3.1 of the PDP as notified read:

"Avoid subdivision and development on Outstanding Natural Features that does not protect, maintain or enhance Outstanding Natural Features."

1255. Submitters on this policy sought that it be deleted or alternatively qualified to refer to qualities of the relevant ONFs, to refer to inappropriate subdivision and development, or to have less of an avoidance focus. Although Mr Barr did not recommend any change to this policy, we view it as duplicating recommended Policy 3.3.30 and therefore recommend that it be deleted as adding no additional value.

1256. Policy 6.3.4.4. as notified read:

"The landscape character and amenity values of the Outstanding Natural Landscape are a significant intrinsic, economic and recreational resource, such that large scale renewable electricity generation or new large scale mineral extraction development proposals including

696 Submission 806

windfarm or hydro energy generation are not likely to be compatible with the Outstanding Natural Landscapes of the District".

1257. Submissions on this policy largely opposed it. The view was expressed that the policy inappropriately predetermines the outcome of resource consent applications yet to be made.

1258. Mr Barr recommended one minor change to make it clear that the policy refers to '*new*' large scale renewable electricity generation proposals.

1259. Mr Vivian suggested to us that there was a need to balance the landscape values affected against the positive benefits of renewable electricity generation.

1260. At least in the case of ONLs and ONFs, we do not think there is scope for the balancing process Mr Vivian had in mind.

1261. Mr Napp, appearing for Straterra[697] sought to persuade us that the Waihi and Macraes mines provided examples of large scale proposals with well-developed restoration protocols. Mr Napp, however, accepted that the nature of the terrain any open cast mine would encounter in this District would make reinstatement a difficult proposition and that it was hard to imagine any large open cast mining proposal in an ONL would be consentable. While Mr Napp emphasised that modern mining techniques are much less destructive of the landscape than was formerly the case, we think that the existing policy wording still leaves room for an exceptional proposal. Mr Napp also did not seek to persuade us that there was any great likelihood of such a proposal being launched within the planning period.

1262. Mr Druce, appearing as the representative of Contact Energy[698], likewise indicated that that company was not anticipating any new generation being installed in the Upper Clutha Catchment. Given the terms of the Water Conservation Order on the Kawarau River and its tributaries (as recently extended to include the Nevis River), there would thus appear to be no likelihood of any new large hydro generation facilities being constructed in the District within the planning period either.

1263. The policy refers specifically to wind farm or hydro energy developments. We do not think that specific reference is necessary given the definition of renewable electricity generation in the NPSREG 2011. We think that a new large scale solar electricity generation plant would be equally unlikely to be compatible with the values of ONLs and the resources to fuel any other renewable electricity generation project are not available within the District.

1264. We also find the duplicated reference to ONLs somewhat clumsy and consider it could be shortened without loss of meaning.

1265. Accordingly, we recommend that this policy be renumbered 6.3.15 and amended to read:

"The landscape, character and amenity values of the Outstanding Natural Landscapes are a significant intrinsic, economic, and recreational resource, such that new large scale renewable electricity generation or new large-scale mineral extraction development proposals are not likely to be compatible with them."

697 Submission 598

698 Submission 580

1266. In relation to activities in ONLs and ONFs, Trojan Helmet Limited[699] sought that the notified Policy 6.3.5.6 (which applied to non-outstanding landscapes and emphasised the relevance of open landscape character where it is open at present), be shifted so as to apply to ONLs. As the submitter noted, this is already a policy of the ODP. Mr Jeff Brown supported that position in his evidence.

1267. We will address the relevance of open landscape character in non-outstanding landscapes shortly, but in summary, we agree that open landscape character is an aspect both of ONLs and ONFs that should be emphasised.

1268. Accordingly, we recommend that this submission be accepted and that a new policy related to managing activities of ONLs and ONFs numbered 6.3.16 be inserted as follows:

"Maintain the open landscape character of Outstanding Natural Landscapes and Outstanding Natural Features where it is open at present."

1269. Another area where submissions sought new policies was in relation to recognition of infrastructure. We heard extensive evidence and legal argument from both Transpower New Zealand Limited and QAC seeking greater recognition of the significance of infrastructure and the locational constraints it is under. Representatives for Transpower also emphasised the relevance of the NPSET 2008 to this issue.

1270. We have already discussed at some length the latter point, but in summary, we recognise that greater recognition for regionally significant infrastructure is desirable.

1271. Mr Barr recommended that a new Policy 6.3.1.12 be inserted reading:

"Regionally significant infrastructure shall be located to avoid, remedy or mitigate degradation of the landscape, while acknowledging location constraints, technical or operational requirements."

1272. We agree that the correct focus, consistent with Policy 4.3.2 and 4.3.3 of the Proposed RPS, is on regionally significant infrastructure. We have already commented on the appropriate definition of that term[700].

1273. When we discussed this policy wording with Mr Barr, he explained that reference to "*acknowledging"* locational constraints was intended to mean something between just noting them and enabling infrastructure to proceed as a result of such constraints. He was reluctant, however, to recommend qualifiers that, in his view, would require a significant amplification of the text.

1274. We also bear in mind the reply evidence of Mr Paetz who, after initially been supportive of an alternative policy wording (in the context of Chapter 3) providing for mitigation of the impacts of regionally significant infrastructure on ONLs and ONFs where practicable, came to the view that this would not be likely to allow the Council to fulfil its functions in terms of sections 6(a) and 6(b) of the Act.

699 Submission 437: Supported (in part) in FS1097

700 Refer our discussion of this issue at Section 3.18 above.

1275. We note the comments of the Environment Court in its initial ODP decision[701] rejecting a "*where practicable"* exclusion for infrastructure effects on ONLs. The Court stated:

"That is not a correct approach. The policy should be one that gives the Council the final say on location within Outstanding Natural Features."

1276. We record that counsel for Transpower Limited appeared reluctant to accept that even a "*where practicable"* type approach would be consistent with the NPSET 2008 formulation, "*seek to avoid"*. For the reasons stated in our Chapter 3 report, we do not agree with that interpretation of the NPSET 2008.

1277. Having regard to the fact that we are considering what policies would most appropriately give effect to our recommended Objectives 3.2.1.9 and 3.2.5.1, we think it follows that the policy cannot permit significant adverse effects on ONLs and ONFs.

1278. Similarly, and consistently with the NPSET 2008, we think the initial approach should be to seek to avoid all adverse effects. Where adverse effects cannot be avoided, we think that they should be reduced to the smallest extent practically possible; i.e. minimised.

1279. In summary, therefore, we recommend insertion of two new policies numbered 6.3.17 and 6.3.18, worded as follows:

"Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases.

"In cases where it is demonstrated that regionally significant infrastructure cannot avoid adverse effects on Outstanding Natural Landscapes and Outstanding Natural Features, avoid significant adverse effects and minimise other adverse effects on those landscapes and features."

1280. We recognise that this leaves a potential policy gap for infrastructure that does not fall within the definition of regionally significant infrastructure. We consider the issues posed by such infrastructure are appropriately addressed in the more detailed provisions of Chapters 21 and 30. This is also consistent with our recommendation above that the former Rule 6.4.1.1 be converted to a new definition. As a result, the provision of infrastructure associated with subdivision and development will be considered at the same time as the development to which it relates.

1281. Submission 608[702] also sought a new policy providing for offsetting for wilding tree control within ONLs and ONFs. The submitter did not provide evidence supporting the suggested policy, relying on the reasons in its submission which, while advocating for the policy, did not explain how it would work in practice. Mr Barr recommended against its acceptance. As he put it, it seemed "*the submitter wishes to trade the removal of a pest for accepting degradation of the landscape resource"*. We agree. In the context of ONLs and ONFs, whose protection we are required to recognise and provide for, we would require considerable convincing that this is an appropriate policy response, including but not limited to a cogent section 32AA analysis, which the submitter did not provide.

---

701 C180/99 at [72]

702 Supported in FS1097 and FS1117; Opposed in FS1015 and FS1034

1282. Lastly under this heading, we note that Policy 6.3.1.7 as notified read:

"When locating urban growth boundaries or extending urban settlements though plan changes, avoid impinging on Outstanding Natural Landscapes or Outstanding Natural Features and minimise disruption to the values derived from open rural landscapes."

1283. Mr Barr recommended a minor drafting change to this policy. For our part, and for the reasons discussed in our Chapter 4 report, we view this as a matter that is more appropriately dealt with in Chapter 4. We recommend that it be deleted from Chapter 6 and the submissions on it addressed in the context of Chapter 4.

1284. In summary, having reviewed the policies in this section, we consider that individually and collectively with the policies of Chapter 3 and those in the balance of this chapter, these policies are the most appropriate way, at a strategic level, to achieve the objectives in Chapter 3 relevant to use, development and protection of ONLs and ONFs – principally Objective 3.2.5.1, but also including Objectives 3.2.1.1, 3.2.1.7, 3.2.1.9, 3.2.3.1, 3.2.4.1 and 3.2.7.1.

8.7. Policies – Managing Activities in Rural Character Landscapes

1285. Policy 6.3.1.4, as notified, read:

"That subdivision and development proposals located within the Rural Landscape be assessed against the assessment matters in provisions 21.7.2 and 21.7.3 because subdivision and development is inappropriate in many locations in these landscapes, meaning successful applications will be, on balance, consistent with the assessment matters."

1286. This policy attracted a large number of submissions. Submissions included:
   a. Seeking deletion of the policy[703];
   b. That it refer only to assessment against the assessment matters[704];
   c. Deleting reference to the assessment matters and providing for adverse effects to be avoided, remedied or mitigated[705];
   d. Qualifying the application of the policy by reference to the requirements of regionally significant infrastructure[706].

1287. Mr Barr recommended that the word "*inappropriate"* be substituted by "*unsuitable"* but otherwise did not recommend any changes to this policy.

1288. For the reasons set out above in relation to Policy 6.3.1.3, we do not support a policy cross referencing the assessment criteria. The reference point should be the objectives and policies of the PDP. We also do not support a policy that refers simply to avoidance, remediation or mitigation of adverse effects. For the reasons set out at the outset of this report, such a policy would provide no guidance, and would not be satisfactory.

1289. We accept that regionally significant infrastructure raises particular issues. We recommend that those issues be dealt with in new and separate policies, which will be discussed shortly.

---

703 Submission 806

704 Submissions 355, 761: Supported in FS1097; Opposed in FS1282 and FS1320

705 Submissions 437, 456, 513, 515, 522, 531, 532, 534, 535, 537, 608: Supported in FS1097, FS1256, FS1286, FS1292 and FS1322; Opposed in FS1034, FS1120 and FS1160

706 Submissions 635, 805: Opposed in FS1282

1290. We accept Mr Barr's suggested minor drafting change.

1291. In summary, we recommend that Policy 6.3.1.4 be renumbered 6.3.19 and reworded as follows:

"Recognise that subdivision and development is unsuitable in many locations in these landscapes and successful applications will need to be, on balance, consistent with the objectives and policies of the Plan."

1292. Policy 6.3.1.6, as notified, read:

"Enable rural lifestyle living through applying Rural Lifestyle Zone and Rural Residential Zone plan changes in areas where the landscape can accommodate change".

1293. A number of submissions on this policy sought amendments so it would refer to "*rural living"* rather than "*rural lifestyle living",* deleting specific reference to the Rural Residential and Rural Lifestyle Zones, and adding reference to "*carefully considered applications for subdivision and development for rural living"*, or similar descriptions.

1294. Millbrook Country Club[707] sought to broaden the focus of the policy to include resort activities and development.

1295. Queenstown Park Ltd[708] sought that reference be added to the positive effects derived from rural living.

1296. Mr Barr initially recommended some recognition for resort zone plan changes in his Section 42A Report, but when we discussed the matter with him, accepted that given there is no "*Resort Zone"* as such, the matter needed further consideration[709].

1297. In his reply evidence, Mr Barr discussed the issue more generally. He characterised some of the planning evidence for submitters seeking to rely on the extent to which the landscape character of the Wakatipu Basin has been and will continue to be affected by consented development as reading like '*the horse has bolted'* and that this position should be accepted. Mr Barr did not agree. He relied on Dr Read's evidence where she had stated that the ODP had not succeeded in appropriately managing adverse cumulative effects. We asked Dr Read that specific question: whether the horse had bolted? She did not think so, or that management of the cumulative effects of rural living in the Wakatipu Basin was a lost cause, and neither do we[710]. However, it is clearly an issue that requires careful management.

1298. Mr Barr recommended in his reply evidence that this policy be reframed as follows:

"Encourage rural lifestyle and rural residential zone plan changes in preference to ad-hoc subdivision and development and ensure these occur in areas where the landscape can accommodate change."

---

707 Submission 696

708 Submission 806

709 Mr Chris Ferguson suggested in his evidence that the reference be to Special Zones for this reason

710 That conclusion also accords with Mr Baxter's evidence that while the Wakatipu Basin is not composed of working farms any more, lots of properties in the Basin still look like farms, from which we infer they still have an identifiably *'rural'* character.

1299. We largely accept the thinking underpinning Mr Barr's recommendation. It follows that we do not accept the many submissions insofar as they sought that reference be made to rural living being enabled through resource consent applications (the epitome of ad-hoc development). Indeed, this policy is focussing on plan changes as an appropriate planning mechanism, in preference to development by a resource consent application. If anything, we think that needs to be made clearer.

1300. We do not think that specific reference needs to be made to plan reviews as an alternative planning mechanism to plan changes (as suggested by Mr Ferguson). On any plan review including management of residential development in rural areas, all of these issues will be considered afresh.

1301. Ideally also, this policy would refer to the new zone (the Wakatipu Basin Lifestyle Precinct) proposed in the Stage 2 Variationss, but we cannot presume that zoning will be confirmed after the hearing of submissions on the variations, and we lack jurisdiction to do so in any event.

1302. In summary, therefore, we recommend that Policy 6.3.1.6 be renumbered 6.3.20 and reworded as follows:

"Encourage Rural Lifestyle and Rural Residential Zone Plan Changes as the planning mechanism to provide for any new rural lifestyle and rural residential developments in preference to ad-hoc subdivision and development and ensure these zones are located in areas where the landscape can accommodate the change."

1303. Policy 6.3.2.3 as notified read:

"Recognise that proposals for residential subdivision or development in the Rural Zone that seek support from existing and consented subdivision or development have potential for adverse cumulative effects. Particularly where the subdivision and development would constitute sprawl along roads."

1304. Submissions on this policy included:
   a. Seeking deletion of the final sentence referring to sprawl along roads[711];
   b. Seeking to insert reference to inappropriate development in the Rural Zone[712];
   c. Seeking to delete this policy and the one following it, and substitute a policy that would ensure incremental subdivision and development does not degrade landscape character or visual amenity values including as a result of 'mitigation' of adverse effects[713].

1305. When Mr Barr appeared, we asked him what the words "*seeking support"* were intended to refer to, and he explained that this was intended to be a reference to the "*existing environment"* principle recognised in the case law[714]. In his reply evidence, Mr Barr sought to make this clearer. He also recommended acceptance of a submission seeking deletion of the last sentence of the Policy, given that it duplicates matters covered in Policy 6.3.2.4.

---

711 Submission 456

712 Submission 600: Supported in FS1209; Opposed in FS1034

713 Submission 761: Opposed in FS1015

714 Acknowledging the observations of the High Court in *Royal Forest and Bird Protection Society v Buller District Council* [2013] NZHC1324 at [13] and following regarding the inappropriateness of it as a description of the relevant legal principles.

1306. We largely accept Mr Barr's recommendation. The exception is that we think that the reference to "*residential subdivision or development"* would benefit from clarification. The term 'rural living' was used extensively in the planning evidence we heard and we suggest that as an appropriate descriptor. We do not accept the suggestion in Submission 761 – for the reasons set out in our discussion of the appropriate strategic policy in Chapter 3 governing rural character landscapes, a general policy of *'no degradation'* would in our view go too far.

1307. However, we think there is room for a more restrictive approach to '*mitigation'* of proposed developments, which is also suggested in this submission, but which more properly relates to Policy 6.3.2.5. This is addressed shortly.

1308. In summary, we recommend Policy 6.3.2.3 be renumbered 6.3.21 and amended to read:

"Require that proposals for subdivision or development for rural living in the Rural Zone take into account existing and consented subdivision or development in assessing the potential for adverse cumulative effects."

1309. Policy 6.3.2.4 as notified read:

"Have particular regard to the potential adverse effects on landscape character and visual amenity values from infill within areas with existing rural lifestyle development or where further subdivision and development would constitute sprawl along roads."

1310. Apart from Submission 761 already noted, submissions included a suggestion that reference to infill be deleted[715].

1311. Mr Barr recommended that that submission be accepted. We agree. To the extent the policy seeks to manage the adverse effects of infill development, this is caught by Policy 6.3.2.3 (now 6.3.21) and as Mr Jeff Brown noted in his evidence, the assessment should be the same for *'infill'* as for *'outfill'*. Accordingly, we recommend that the policy be renumbered 6.3.22 and worded:

"Have particular regard to the potential adverse effects on landscape, character and visual amenity values where further subdivision and development would constitute sprawl along roads."

1312. Policy 6.3.2.5 as notified read:

"Ensure incremental changes from subdivision and development do not degrade landscape quality, character or openness as a result of activities associated with mitigation of the visual effects of a proposed development such as a screening planting, mounding and earthworks."

1313. Submissions included:
   a. Seeking deletion of the policy[716];
   a. Seeking to delete or amend reference to "*openness"*[717]*;*
   b. Amending the policy to require a significant effect or to focus on significant values[718];

---

715 Submission 456

716 Submission 378: Opposed in FS1049 and FS1282

717 Submissions 437, 456: Supported in FS1097; Opposed in FS1160

718 Submissions 598 and 621: Supported in FS1287; Opposed in FS1282

c. Seeking that specific reference to mitigation be deleted[719]
d. Softening the policy to be less directive[720].

1314. Mr Barr did not recommend any changes to the policy as notified.

1315. As noted above in the discussion of the relief sought in Submission 761, we take the view that '*mitigation'* of adverse effects from subdivision and development should not be permitted itself to degrade important values. Clearly landscape quality and character qualify.

1316. The submissions challenging reference to openness in this context, however, make a reasonable point. The policy overlaps with others referring to openness and this duplication is undesirable. The submission of Hogans Gully Farming Ltd[721] suggested that "important views" be substituted. We regard this suggestion as having merit, since it captures an additional consideration.

1317. We also find the term "*screening planting"* difficult to understand. We think the intention is to refer to "*screen planting".*

1318. In summary, therefore, we recommend that this policy be renumbered 6.3.23 and read:

"Ensure incremental changes from subdivision and development do not degrade the landscape quality or character, or important views, as a result of activities associated with mitigation of the visual effects of proposed development such as screen planting, mounding and earthworks."

1319. As above, we recognise that provision also needs to be made for regionally significant infrastructure in the management of activities in RCLs. Many of the considerations discussed above in relation to recognising the role of infrastructure in relation to the ONL policies also apply although clearly, given the lesser statutory protection for RCLs, a more enabling policy is appropriate in this context.

1320. Having said that, we still regard it as appropriate that infrastructure providers should seek to avoid significant adverse effects on the character of RCLs.

1321. In summary, we recommend that two new policies be inserted in this part of the PDP numbered 6.3.24 and 25, reading:

"Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid significant adverse effects on the character of the landscape, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases.

In cases where it is demonstrated that regionally significant infrastructure cannot avoid significant adverse effects on the character of the landscape, such adverse effects shall be minimised."

1322. Policy 6.3.5.2 as notified read:

---

719 Submission 621: Opposed in FS1282
720 Submission 696
721 Submission 456

"Avoid adverse effects from subdivision and development that are:

- *Highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); and*
- *Visible from public roads."*

1323. Again, a large number of submissions were made on this policy. Most of those submissions sought that the policy provide for avoiding, remedying or mitigating adverse effects (paralleling the ODP in this regard). Some submissions[722] sought deletion of visibility from public roads as a test.

1324. One submitter[723] sought greater clarity that this policy relates to subdivision and development on RCLs. Another submitter[724] sought reference be inserted to "*inappropriate subdivision, use and development".*

1325. Lastly, Transpower New Zealand Limited[725] sought an explicit exclusion for regionally significant infrastructure.

1326. Having initially (in his Section 42A Report) recommended against any change to the notified policy, Mr Barr recommended in his reply evidence that this policy be qualified in two ways – first to provide for avoiding, remedying or mitigating adverse effects, and secondly to limit the policy to focussing on visibility from public *'formed'* roads.

1327. We accept the point underlying the many submissions on this policy that avoiding adverse effects (given the clarification the Supreme Court has provided as to the meaning of "*avoid"* in *King Salmon)* poses too high a test when the precondition is whether a subdivision and development is visible from any public road. On the other hand, if the precondition is that the subdivision and development is "*highly visible"* from public places, we take the view that an avoidance approach is appropriate, because of the greater level of effect.

1328. The first bullet in Policy 6.3.5.2 also needs to be read in the light of the definition of trails, given that trails are excluded from the list of relevant public places.

1329. The current definition of trail reads:

"Means any public access route (excluding (a) roads and (b) public access easements created by the process of tenure review under The Crown Pastoral Land Act) legally created by way of grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities."

1330. There are no submissions on this definition. However, we consider clarification is desirable as to the exclusions noted (which are places, the visibility from which will be relevant to the application of notified Policy 6.3.4.2). Among other things, we recommend that the status of public access routes over reserves be clarified. Such access routes will not be the subject of a grant of easement and so this is not a substantive change.

---

722 E.g. Submissions 513, 515, 531, 537, 608: Supported in FS1097, FS1256, FS1286 and FS1292; Opposed in FS1034

723 Submission 761: Opposed in FS1015

724 Submission 806

725 Submission 805

1331. In summary, we recommend to the Stream 10 Hearing Panel that the definition of trail be amended to read:

"Means any public access route legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities, and specifically excludes:

a. Roads, including road reserves;

b. Public access easements created by the process of a tenure review under the Crown Pastoral Land Act; and

c. Public access routes over any reserve administered by Queenstown Lakes District Council, the Crown or any of its entities."

1332. Returning to Policy 6.3.4.2, Mr Goldsmith[726] sought to justify constraining the policy to refer to public formed roads on the basis that the policy should not apply to roads that were not actually used. He accepted, however, that paper roads were used in the District as cycle routes and agreed that visibility from such routes was something the policy might focus on.

1333. For the same reason, we do not accept Mr Barr's recommendation that the policy refer to public formed roads.

1334. Rather than insert an *'avoid, remedy or mitigate'* type policy or some variation thereof (Mr Jeff Brown suggested "*avoid or appropriately mitigate"*), we prefer to provide greater direction by limiting the scope of the policy in other ways.

1335. Given that public roads are public places (and as such, would be used when testing whether a proposal would be highly visible), we recommend greater focus on narrowing the description of roads that are relevant for this aspect of the policy. To us, the key roads where visibility is important are those where the land adjoining the road forms the foreground for ONLs or ONFs. Effects on visual amenity from such roads are important because they diminish the visual amenity of the ONL or ONF.

1336. The second way in which we suggest the restrictiveness of the policy might be lessened is to make it clear that what is in issue are adverse effects on visual amenity, rather than any other adverse effects subdivision and development might have.

1337. Lastly, we recommend that the focus of the policy should be on subdivision, use and development as suggested in Submission 806. For the reasons set out above, we do not consider adding the word "*inappropriate"* would materially change the meaning of the policy.

1338. In summary, we recommend that Policy 6.3.5.2 be renumbered 6.3.26 and amended to read:

"Avoid adverse effects on visual amenity from subdivision, use and development that:

a. is highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); or

b. forms the foreground for an Outstanding Natural Landscape or Outstanding Natural Feature when viewed from public roads."

1339. Policies 6.3.5.3 and 6.3.5.6 both deal with the concept of openness. As notified, they read:

[726] Then appearing for GW Stalker Family Trust (Submission 535) and others.

"6.3.5.3 Avoiding planting and screening, particularly along roads and boundaries, which would degrade openness where such openness is an important part of the landscape, quality or character;

6.3.5.6 Have regard to the adverse effects from subdivision and development on the open landscape character where it is open at present."

1340. Submissions on Policy 6.3.5.3 included:
   a. Seeking amendment to refer to significant adverse effects on existing open landscape character[727];
   b. Seeking to substitute reference to views rather than openness, combined with emphasising that it is the appreciation of landscape quality or character which is important [728;]
   c. Seeking to reframe the policy to be enabling of planting and screening where it contributes to landscape quality or character[729].

1341. Many submitters sought deletion of the policy in the alternative. One submitter[730] sought that reference be made to inappropriate subdivision use and development.

1342. A similar range of submissions were made on Policy 6.3.5.6.

1343. A number of parties appearing before us on these policies emphasised to us the finding of the Environment Court in its 1999 ODP decision that protection of the open character of landscape should be limited to ONLs and ONFs and that non-outstanding landscapes might be improved both aesthetically and ecologically by appropriate planting[731].

1344. We note that the Court also mentioned views from scenic roads as an exception which might justify constraints on planting, so clearly in the Court's mind, it was not a legal principle that admitted of no exceptions.

1345. More generally, we think that open landscape character is not just an issue of views as many submitters suggest, although clearly views are important to visual amenity, and that a differentiation needs to be made between the floor of the Wakatipu Basin, on the one hand, and the Upper Clutha Basin on the other. It appears to us that the Environment Court's comments were made in the context of evidence (and argument) regarding the Wakatipu Basin. In that context, and on the evidence we heard, the focus should be on openness where it is important to landscape character (i.e. applying notified policy 6.3.5.3). We note that the Stage 2 Variations provide detailed guidance of the particular landscape values of different parts of the Wakatipu Basin.

1346. Dr Read identified the different landscape character of the Wakatipu Basin compared to the Upper Clutha Basin in her evidence, with the former being marked by much more intensive use and development, as well as being more enclosed, whereas the Upper Clutha Basin is marked by more extensive farming activities and is much bigger. She noted though that on

---

727 Submission 356: Supported in FS1097

728 Submissions 437, 456, 513, 515, 522, 531, 537, 608: Supported in FS1097, FS1256, FS1286 and FS1292; Opposed in FS1034

729 Submission 806

730 Submission 513

731 C180/99 at [154]

the Hawea Flat, existing shelter belts mean that while more open, the Upper Clutha Basin is not as open as one might think.

1347. In summary, we recommend that Policies 6.3.5.3 and 6.3.5.6 be renumbered 6.3.27 and 6.3.28 and amended to read as follows:

"In the Wakatipu Basin, avoid planting and screening, particularly along roads and boundaries, that would degrade openness where such openness is an important part of its landscape quality or character.

In the Upper Clutha Basin, have regard to the adverse effects from subdivision and development on the open landscape character where it is open at present."

1348. Policy 6.3.5.5 as notified read:

"Encourage development to utilise shared accesses and infrastructure, to locate within the parts of the site where they will be least visible, and have the least disruption of the landform and rural character."

1349. Submissions on this policy sought variously, qualification to reflect what is operationally and technical feasible[732] and to delete reference to visibility substituting reference to minimising or mitigating disruption to natural landforms and rural character[733].

1350. Mr Barr recommended acceptance of the substance of the latter submission. We agree. Visibility is dealt with by other policies and should not be duplicated in this context. However, saying both minimise or mitigate would make the policy unclear. Consistent with the existing wording, minimisation is the correct focus.

1351. We do not consider that qualification is necessary to refer to operational and technical feasibility given that the policy only seeks to encourage the desired outcomes.

1352. We do accept, however, that the focus should be on 'natural' landforms, as opposed to any landforms that might have been created artificially.

1353. In summary, we recommend that Policy 6.3.5.5 be renumbered 6.3.29 and amended to read:

"Encourage development to utilise shared accesses and infrastructure, and to locate within the parts of the site where it will minimise disruption to the natural landform and to rural character."

1354. Policy 6.3.4.1 as notified read:

"Avoid subdivision and development that would degrade the important qualities of the landscape, character and amenity, particularly where there is little or no capacity to absorb change. "

1355. While Mr Barr recommended that this policy be retained as is, the amendments we have recommended to notified Policy 6.3.1.3 (in relation to ONLs and ONFs) means that Policy

732 Submission 635

733 Submission 836: Supported in FS1097

6.3.4.1 no longer serves a useful purpose. Accordingly, it should be deleted as a consequential change.

1356. The same reasoning prompts us to recommend deletion of Policy 6.3.1.11 which as notified, read:

"Recognise the importance of protecting the landscape character and visual amenity values particularly as viewed from public places."

1357. This policy has effectively been overtaken by the package of policies we have recommended and should be deleted as a consequential change.

1358. Policy 6.3.1.11 was almost identical to notified Policy 6.3.4.3 which read:

"Have regard to adverse effects on landscape character and visual amenity values as viewed from public places, with emphasis on views from formed roads."

1359. It too should be deleted as a consequential change.

1360. Policy 6.3.5.1 as notified read:

"Allow subdivision and development only where it will not degrade landscape quality or character, or diminish the visual amenity values identified for any Rural Landscape."

1361. While Mr Barr recommended that this policy remain as is, it overlaps (and conflicts) with Policy 3.3.32 that we have recommended.

1362. Accordingly, we recommend that this policy be deleted as a consequential change.

1363. Lastly, under this heading, we should discuss Policies 6.3.2.1 and 6.3.2.2, which relate to residential development in the rural zones. As notified, these policies read respectively:

"Acknowledge that subdivision and development in the rural zones, specifically residential development, has a finite capacity if the District's landscape quality, character and amenity values are to be sustained.

Allow residential subdivision only in locations where the District's landscape character and visual amenity would not be degraded."

1364. While Mr Barr recommended that these policies be retained, we have a number of issues with them. As discussed in the context of Objective 3.2.5.2, a Plan provision referring to finite capacity for development is of little use without a statement as to where the line is drawn, and where existing development is in relation to the line. More materially, the two policies purport to govern development across the rural zones and therefore encompasses ONLs, ONFs and Rural Character Landscapes. We have endeavoured to emphasise the different tests that need to be applied, depending on whether a landscape is an ONL (or ONF) or not.

1365. Last but not least, these policies overlap (and in some respects conflict) with other policies we have recommended in Chapter 3 (specifically 3.3.21-23, 3.3.30 and 3.3.32) and in Chapter 6 (specifically 6.3.12). Therefore, we recommend they be deleted.

1366. In summary, having reviewed the policies in this section, we consider that individually and collectively with the policies of Chapter 3 and the balance of this chapter, these policies are the most appropriate way, at a strategic level, to achieve the objectives in Chapter 3 relevant to use, development and protection of landscapes that are not ONLs or ONFs – principally Objective 3.2.5.2 but also including Objectives 3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.1.9, 3.2.3.1, 3.2.4.1 and 3.2.7.1.

8.8. Policies – Managing Activities on Lakes and Rivers

1367. Policy 6.3.6.1 as notified read:

"Control the location, intensity and scale of buildings, jetties, moorings and utility structures on the surface and margins of water bodies and ensure these structures maintain or enhance the landscape quality, character and amenity values."

1368. Submissions on this policy sought variously:
   a. Qualification of amenity values to refer to "*visual amenity values"*[734]*;*
   a. Deletion of the latter part of the policy identifying the nature of the controls intended[735];
   b. Qualifying the reference to enhancement so that it occurs *"where appropriate"*[736];
   c. Qualifying the policy so it refers to management rather than controlling, identifies the importance of lakes and rivers as a resource and refers to avoiding, remedying or mitigating effects[737].

1369. Mr Barr recommended that the word "*infrastructure"* be substituted for utility structures as the only suggested change to this policy. This is more consistent with the terminology of the PDP and we do not regard it as a substantive change.

1370. Against the background of recommended Objective 3.2.4.3, which seeks that the natural character of the beds and margins of lakes, rivers and wetlands is preserved or enhanced, it is appropriate that buildings on the surface and margins of water bodies are controlled so as to assist achievement of the objective. For the same reason, a generalised "*avoid, remedy or mitigate"* policy is not adequate.

1371. We also do not consider that adding the words "*where appropriate"* will provide any additional guidance to the application of the policy.

1372. Further, we do not agree that reference to amenity values should be qualified and restricted to just visual amenity. To make that point clear requires a minor drafting change.

1373. We also recommend that the word "*the"* before landscape be deleted to avoid any ambiguity as to which values are in issue. Again, we consider that this is a minor non-substantive change.

1374. In summary, we recommend that these, together with the drafting change suggested by Mr Barr be the only substantive amendments, with the result that the policy, now renumbered 6.3.30, would read as follows:

734 Submission 110
735 Submission 621
736 Submission 635
737 Submission 766 and 806: Supported in FS1341

"Control the location, intensity and scale of buildings, jetties, moorings and infrastructure on the surface and margins of water bodies and ensure these structures maintain or enhance landscape quality and character, and amenity values."

1375. Policy 6.3.6.2 as notified read:

"Recognise the character of the Frankton Arm including the established jetties and provide for these on the basis that the visual qualities of the District's distinctive landscapes are maintained and enhanced."

1376. Submissions on this policy included:
   a. A request to refer to the "*modified"* character of the Arm and to delete reference to how the Arm should be managed[738].
   b. A request to provide greater guidance as to how this policy will be applied to applications for new structures and activities and to support the importance of providing a water based public transport system[739]

1377. Mr Barr did not recommend any change to this policy.

1378. We consider that, as with Policy 6.3.6.1, the relief suggested in Submission 621 would not be consistent with Objective 3.2.4.5. Having said that, to the extent that the existing character of the Frankton Arm is modified, the policy already provides for that. To the extent that other submissions seek greater guidance on how this policy might be applied, it is supplemented by more detailed provisions in the Rural Zone Chapter.

1379. Accordingly, we do not recommend any changes to this policy other than to renumber it 6.3.31.

1380. Policy 6.3.6.3 as notified read:

"Recognise the urban character of Queenstown Bay and provide for structures and facilities providing they protect, maintain or enhance the appreciation of the District's distinct landscapes."

1381. Submissions on this policy sought to delete the proviso[740] and to seek additional guidance along the same lines as sought for the previous policy[741]

1382. Mr Barr did not recommend any change.

1383. With one minor exception, we agree. A policy that recognises and provides for something with no indication of the extent of that provision is not satisfactory, as it provides no guidance to the implementation of the PDP. However, as with the previous policy, more detailed guidance is provided in the relevant zone chapter[742].

738 Submission 621
739 Submissions 766 and 806: Supported in FS1341
740 Submission 621
741 Submissions 766, 608 and 806: Supported in FS1341
742 Chapter 12: Queenstown Town Centre Zone

1384. The exception noted above relates to the reference to "*distinct"* landscapes in the policy. This appears to be a typographical error. The term should be "*distinctive"*. Correcting that error, the policy we recommend, renumbered 6.3.31, is:

"Recognise the urban character of Queenstown Bay and provide for structures and facilities providing they protect, maintain or enhance the appreciation of the District's distinctive landscapes."

1385. It is notable that the three policies we have just reviewed under the heading Lakes and Rivers all relate to structures and other facilities on the surface and margins of the District's water bodies. There is no policy specifically relating to the use of the surface of the District's water bodies. That omission was the subject of comment in the evidence. We have already discussed the submission of Kawarau Jet Services Limited[743] seeking a new policy worded:

"Provide for a range of appropriate Recreational and Commercial Recreational activities in the rural areas and on the lakes and rivers of the District."

1386. In the part of this report discussing Chapter 3[744], we said that we thought it appropriate that commercial recreation activities in rural areas be addressed there and that the specific issue of commercial recreation activities on the District's waterways be addressed in Chapter 6. We also note the submission of Real Journeys Limited[745] seeking, as part of greater recognition for tourism activities at a policy level, protection for "*existing transport routes and access to key visitor attractions from incompatible uses and development of land and water".*

1387. Mr Ben Farrell provided evidence on this submission. Mr Farrell supported the concept proposed in the Real Journeys' submission that there be a separate chapter for water, as he described it, "*to more appropriately recognise and provide for the significance of fresh water".*

1388. When Mr Farrell appeared at the hearing in person, he clarified that what he was suggesting was greater emphasis on water issues and that this might be achieved either by a separate chapter, or at least a separate suite of provisions. He summarised his position as being one where he was not seeking substantive change in the provisions, but rather to focus attention on it as an issue. He noted specifically that the landscape provisions seemed silent on water.

1389. We concur that there appears insufficient emphasis on water issues in Chapter 6. We have endeavoured to address that by appropriate headings, but we think that the Kawarau Jet submission points the way to a need to address both recreational and commercial use of the District's waterways in policy terms.

1390. Having said that, we think that there are flaws with the relief Kawarau Jet has sought. As the Real Journeys' submission indicates, one of the issues that has to be confronted in the implementation of the PDP is competition for access to the District's waterways. A policy providing for a range of activities on lakes and rivers could be read as implying that every waterway needs to accommodate a range of activities, whereas the reality is that in many situations, access is constrained because the waterways in question are not of sufficient breadth or depth to accommodate all potential users.

---

743 Submission 307

744 Refer Section 3.14 above

745 Submission 621

1391. The Kawarau Jet submission does not provide a sufficient jurisdictional basis for us to recommend direction on how these issues should be resolved. The Real Journeys' submission gets closer to the point, but only addresses some of the issues. One point that can be made is that any general policy is not intended to cut across the more detailed policies already governing structures. Other than that however, while we would prefer a more directive policy, we have concluded that the best that can be done in the context of Chapter 6 is a policy that provides a framework for more detailed provisions in Chapters 12 and 21.

1392. We also do not consider that commercial use should be limited to commercial recreation – that would exclude water taxis and ferry services, and we do not consider there is a case for doing that.

1393. Accordingly, we recommend a new policy numbered 6.3.33, worded as follows:

"Provide for appropriate commercial, and recreational activities on the surface of water bodies that do not involve construction of new structures."

1394. Contact Energy[746] sought a new policy, seeking to recognise changes to landscape values on a seasonal basis resulting from electricity generation facilities. The submitter's focus is obviously on changes to levels and flows in Lake Hawea and the Hawea River resulting from operation of the Hawea Control Structure. Those activities are regional council matters and we do not consider the proposed policy is required in this context.

1395. In summary, within the jurisdictional limits we are working within, we consider that the policies we have recommended in relation to lakes and rivers are the most appropriate way, at a strategic level, to achieve the objectives of Chapter 3 applying to waterways – specifically Objectives 3.2.1.1, 3.2.1.7, 3.2.4.1, 3.2.4.3, 3.2.4.4, 3.2.5.1 and 3.2.5.2.

1396. We have also stood back and reflected on the policies and other provisions of Chapter 6 as a whole. For the reasons set out above, we consider that individually and collectively the policies are the provisions recommended represent the most appropriate way to achieve the objectives of Chapter 3 relevant to landscape and rural character.

9. PART D RECOMMENDATIONS

1397. As with Chapters 3 and 4, Appendix 1 contains our recommended Chapter 6.

1398. In addition, we recommend[747] that the Stream 10 Hearing Panel consider addition of a new definition of 'subdivision and development' be inserted in Chapter 2, worded as follows:

"Subdivision and Development - *includes subdivision, identification of building platforms, any buildings and associated activities such as roading, earthworks, lighting, landscaping, planting and boundary fencing and access/gateway structures".*

1399. We also recommend[748] the Stream 10 Hearing Panel consider amendment of the existing definition of 'trail' as follows:

---

746 Submission 580: Opposed in FS1040

747 Refer the discussion of this point at Section 8.4 above.

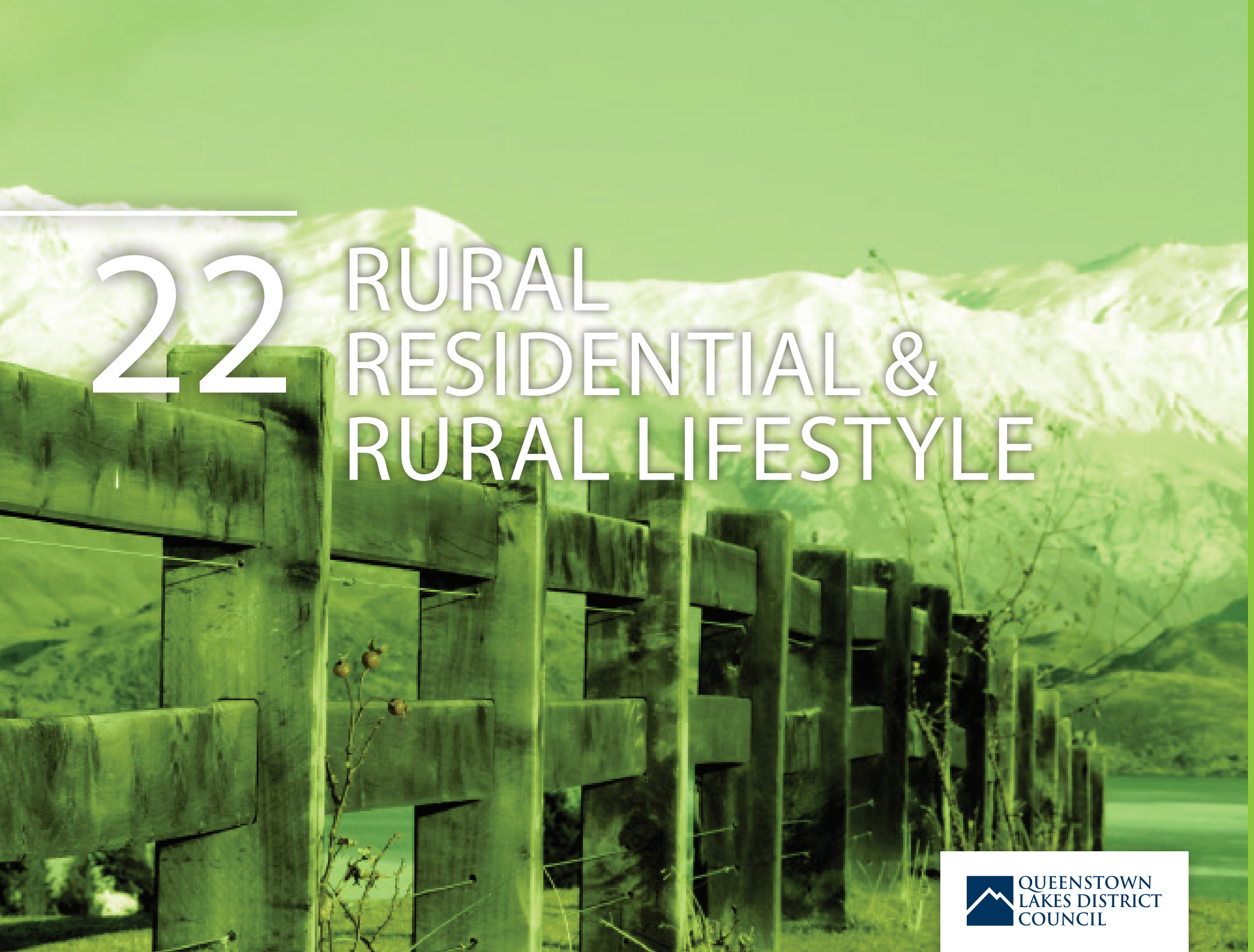
748 Refer in this instance to Section 8.7above.

Trail *– means any public access route legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its entities, and specifically excludes:*

a. roads, including road reserves;

d. public *access easements created by the process of tenure review under the Crown Pastoral Land Act; and*

e. public *access routes over any reserve administered by Queenstown Lakes District Council, the Crown or any of its entities*



22 RURAL RESIDENTIAL & RURAL LIFESTYLE

QUEENSTOWN LAKES DISTRICT COUNCIL

22.1 Zone Purpose

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

The Rural Residential and Rural Lifestyle zones provide residential living opportunities on the periphery of urban areas and within specific locations amidst the Rural Zone. In both zones a minimum allotment size is necessary to maintain the character and quality of the zones and the open space, rural and natural landscape values of the surrounding Rural Zone.

While development is anticipated in the Rural Residential and Rural Lifestyle zones, the district is subject to natural hazards and, where applicable, it is anticipated that development will recognise and manage the risks of natural hazards at the time of subdivision or the identification of building platforms.

Rural Residential Zone

The Rural Residential zone generally provides for development at a density of up to one residence every 4000m^2. Some Rural Residential areas are located within visually sensitive landscapes. Additional provisions apply to development in some areas to enhance landscape values, indigenous vegetation, the quality of living environments within the zone and to manage the visual effects of the anticipated development from outside the zone, particularly from surrounding rural areas, lakes and rivers. The potential adverse effects of buildings are controlled by bulk and location, colour and lighting standards and, where required, design and landscaping controls imposed at the time of subdivision.

Rural Lifestyle Zone

The Rural Lifestyle zone provides for rural living opportunities with an overall density of one residential unit per two hectares across a subdivision. Building platforms are identified at the time of subdivision to manage the sprawl of buildings, manage adverse effects on landscape values and to manage other identified constraints such as natural hazards and servicing. The potential adverse effects of buildings are controlled by height, colour and lighting standards.

Many of the Rural Lifestyle zones are located within sensitive parts of the district's distinctive landscapes. While residential development is anticipated within these zones, provisions are included to manage the visual prominence of buildings, control residential density and generally discourage commercial activities. Building location is controlled by the identification of building platforms, bulk and location standards and, where required, design and landscaping controls imposed at the time of subdivision.

The Deferred Rural Lifestyle (Buffer) zone east of Dalefield Road places limits on the expansion of rural lifestyle development at that location.

The 'Hawthorn Triangle' Rural Lifestyle Zone bordered by Speargrass Flat, Lower Shotover and Domain Roads defines an existing settlement of properties. The adjoining Rural Lifestyle zoned areas within the Wakatipu Basin identify the potential for further limited residential development, within the density limits set out in the provisions[1].

[1] Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

22.2 Objectives and Policies

22.2.1 Objective - The District's landscape quality, character and amenity values are maintained and enhanced while enabling rural living opportunities in areas that can absorb development.

Policies

22.2.1.1 Ensure the visual prominence of buildings is avoided, remedied or mitigated particularly development and associated earthworks on prominent slopes, ridges and skylines.

22.2.1.2 Set density and building coverage standards in order to maintain rural living character and amenity values and the open space and rural qualities of the District's landscapes.

22.2.1.3 Allow for flexibility of the density provisions, where design-led and innovative patterns of subdivision and residential development, roading and planting would enhance the character and amenity values of the zone and the District's landscapes.

22.2.1.4 Manage anticipated activities that are located near Outstanding Natural Features and Outstanding Natural Landscapes so that they do not diminish the qualities of these landscapes and their importance as part of the District's landscapes.

22.2.1.5 Maintain and enhance landscape values and amenity values within the zones by controlling the colour, scale, location and height of permitted buildings and in certain locations or circumstances require landscaping and vegetation controls.

22.2.1.6 Lights be located and directed so as to avoid glare to other properties, roads, and other public places and to avoid degradation of views of the night sky.

22.2.1.7 Have regard to fire risk from vegetation and the potential risk to people and buildings, when assessing subdivision, development and any landscaping.

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

22.2.2 Objective - The predominant land uses within the Rural Residential and Rural Lifestyle Zones are rural and residential activities.

Policies

22.2.2.1 Enable residential and farming activities in both zones, and provide for community and visitor accommodation activities which, in terms of location, scale and type, community are compatible with and enhance the predominant activities of the relevant zone.

22.2.2.2 Any development, including subdivision located on the periphery of residential and township areas, shall avoid undermining the integrity of the urban rural edge and where applicable, the urban growth boundaries.

22.2.2.3 Discourage commercial, community and other non-residential activities, including restaurants, visitor accommodation and industrial activities, that would diminish amenity values and the quality and character of the rural living environment.

22.2.2.4 The bulk, scale and intensity of buildings used for visitor accommodation activities are to be commensurate with the anticipated development of the zone and surrounding residential activities.

22.2.3 Objective - New development does not exceed available capacities for servicing and infrastructure.

Policies

22.2.3.1 Discourage new development that requires servicing and infrastructure at a cost to the community.

22.2.3.2 Ensure traffic generated by new development does not compromise road safety or efficiency.

22.2.4 Objective - Sensitive activities conflicting with existing and anticipated rural activities are managed.

Policies

22.2.4.1 Recognise existing and permitted activities, including activities within the surrounding Rural Zone might result in effects such as odour, noise, dust and traffic generation that are established, or reasonably expected to occur and will be noticeable to residents and visitors in rural areas.

22.2.5 Objective - Bob's Cove Rural Residential Sub-Zone - Residential Development is comprehensively-planned with ample open space and a predominance of indigenous vegetation throughout the zone.

22.2.5.1 Ensure at least 75% of the zone is retained as undomesticated area and at least 50% of this area is established and maintained in indigenous species such that total indigenous vegetation cover is maintained over that area.

22.2.5.2 Ensure there is open space in front of buildings that remains generally free of vegetation to avoid disrupting the open pastoral character of the area and the lake and mountain views.

22.2.6 Objective - Bob's Cove Rural Residential Zone - The ecological and amenity values of the Bob's Cove Rural Residential zone are maintained and enhanced.

22.2.6.1 To ensure views of Lake Wakatipu and the surrounding landforms from the Glenorchy-Queenstown Road are retained through appropriate landscaping and the retention of view shafts.

22.2.6.2 To ensure the ecological and amenity values of Bob's Cove are retained and, where possible, enhanced through:

a. appropriate landscaping using native plants;

b. restricting the use of exotic plants;

c. removing wilding species;

d. providing guidance on the design and colour of buildings;

e. maintaining view shafts from the Queenstown-Glenorchy Road.

22.3 Other Provisions and Rules

22.3.1 District Wide

Attention is drawn to the following District Wide chapters.

1	Introduction	2	Definitions	3	Strategic Direction
4	Urban Development	5	Tangata Whenua	6	Landscapes and Rural Character
25	Earthworks	26	Historic Heritage	27	Subdivision
28	Natural Hazards	29	Transport	30	Energy and Utilities
31	Signs	32	Protected Trees	33	Indigenous Vegetation
34	Wilding Exotic Trees	35	Temporary Activities and Relocated Buildings	36	Noise
37	Designations		Planning Maps		

22.3.2 Interpreting and Applying the Rules

22.3.2.1 A permitted activity must comply with all the rules listed in the Activity and Standards tables, and any relevant district wide rules.

22.3.2.2 Where an activity does not comply with a Standard listed in the Standards table, the activity status identified by the 'Non-Compliance Status' column shall apply. Where an activity breaches more than one Standard, the most restrictive status shall apply to the Activity.

22.3.2.3 Compliance with any of the following standards, in particular the permitted standards, does not absolve any commitment to the conditions of any relevant land use consent, consent notice or covenant registered on the site's computer freehold register.

22.3.2.4 Development and building activities are to be undertaken in accordance with the conditions of resource and subdivision consent and may be subject to monitoring by the Council.

22.3.2.5 Applications for building consent for permitted activities shall include information to demonstrate compliance with the following standards, and any conditions of the applicable resource consent or subdivision.

22.3.2.6 For controlled and restricted discretionary activities, the Council shall restrict the exercise of its control and discretion to the matters listed in the rule.

22.3.2.7 Building platforms identified on a site's computer freehold register must have been registered as part of a resource consent approval by the Council.

22.3.2.8 Sub-Zones, being a subset of the respective Rural Residential and Rural Lifestyle zones require that all rules applicable to the respective zone apply, unless specifically stated to the contrary.

22.3.2.9 In addition to Tables 1 and 2, the following standards apply to the areas specified:

Table 3: Rural Residential Zone at Forest Hill.

Table 4: Rural Residential Bob's Cove and Sub Zone.

Table 5: Rural Residential Zone at Camp Hill.

Table 6: Wyuna Station Rural Lifestyle Zone.

22.3.2.10 These abbreviations are used in the following tables. Any activity which is not permitted (P) or prohibited (PR) requires resource consent.

P	Permitted	C	Controlled	RD	Restricted Discretionary
D	Discretionary	NC	Non-Complying	PR	Prohibited

22.3.3 Exemptions

22.3.3.1 The standards pertaining to the colours and materials of buildings in Table 2 do not apply to soffits or, doors that are less than 1.8m wide.

22.3.3.2 Internal alterations to buildings including the replacement of joinery is permitted.

22.4 Rules - Activities

	Table 1: Activities - Rural Residential and Rural Lifestyle Zones	Activity Status
22.4.1	Rural Residential Zone The construction and exterior alteration of buildings.	P
22.4.2	Rural Lifestyle Zone	
	22.4.2.1 The construction and exterior alteration of buildings located within a building platform approved by resource consent, or registered on the applicable computer freehold register.	P
	22.4.2.2 Where there is not an approved building platform on the site the exterior alteration of existing buildings located outside of a building platform not exceeding 30% of the ground floor area of the existing building in any ten year period.	P
	22.4.2.3 Where there is not an approved building platform on the site the exterior alteration of existing buildings located outside of a building platform that do not comply with Rule 22.4.2.2. Discretion is restricted to: a. external appearance; b. visibility from public places; c. landscape character; d. visual amenity.	RD
	22.4.2.4 The identification of a building platform not less than 70m^2 and not greater than 1000m^2 for the purposes of a residential unit except where identified by Rule 27.7.10.	D
	Rural Residential and Rural Lifestyle Zones	
22.4.3	Residential Activity	P
22.4.4	Residential Flat (activity only, the specific rules for the construction of any buildings apply).	P
22.4.5	Farming Activity	P
22.4.6	Home Occupation that complies with the standards in Table 2.	P
22.4.7		
22.4.8	Informal Airports for emergency landings, rescues, fire-fighting and activities ancillary to farming activities.	P

	Table 1: Activities - Rural Residential and Rural Lifestyle Zones	Activity Status
22.4.9	Home Occupation activity involving retail sales limited to handicrafts or items grown or produced on the site. Control is reserved to: a. privacy on neighbouring properties; b. scale and intensity of the activity; c. traffic generation, parking, access; d. noise; e. signs and Lighting.	C
22.4.10	Visitor accommodation including the construction or use of buildings for visitor accommodation.	D
22.4.11	Informal airports in the Rural Lifestyle Zone, except as provided for by Rule 22.4.8.	D
22.4.12	Any building within a Building Restriction Area that is identified on the planning maps.	NC
22.4.13	Any other activity not listed in Table 1.	NC
22.4.14	Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building or any activity requiring an Offensive Trade Licence under the Health Act 1956 except where such activities are undertaken as part of a Farming Activity, Residential Activity or a permitted Home Occupation.	PR

22.5 Rules - Standards

	Table 2: Standards - Rural Residential and Rural Lifestyle Zones	Non- compliance Status
22.5.1	Building Materials and Colours All buildings, including any structure larger than 5m^2, new, relocated, altered, reclad or repainted, are subject to the following in order to ensure they are visually recessive within the surrounding landscape. All exterior surfaces* must be coloured in the range of browns, greens or greys including: 25.5.1.1 Pre-painted steel and all roofs must have a light reflectance value not greater than 20%; and 25.5.1.2 All other surface** finishes except for schist, must have a light reflectance value of not greater than 30%. * Excludes soffits, windows and skylights (but not glass balustrades). ** Includes cladding and built landscaping that cannot be measured by way of light reflectance value but is deemed by the Council to be suitably recessive and have the same effect as achieving a light reflectance value of 30%.	RD Discretion is restricted to: a. whether the building would be visually prominent, especially in the context of the wider landscape, rural environment and as viewed from neighbouring properties; b. whether the proposed colour is appropriate given the existence of established screening or in the case of alterations, if the proposed colour is already present on a long established building; c. the size and height of the building where the subject colours would be applied.

	Table 2: Standards - Rural Residential and Rural Lifestyle Zones	Non- compliance Status
22.5.2	Building Coverage (Rural Residential Zone only) The maximum ground floor area of any building must not exceed 15% of the net site area.	RD Discretion is restricted to: a. the effect on open space, character and amenity; b. effects on views and outlook from neighbouring properties; c. ability of stormwater and effluent to be disposed of on-site.
22.5.3	Building Size The maximum ground floor area of any individual building must not exceed 500m^2.	RD Discretion is restricted to: a. visual dominance; b. the effect on open space, rural living character and amenity; c. effects on views and outlook from neighbouring properties; d. building design.
22.5.4	Setback from internal boundaries The minimum setback of any building from internal boundaries shall be: 22.5.4.1 Rural Residential zone: 6m 22.5.4.2 Rural Lifestyle zone: 10m 22.5.4.3 Rural Residential zone at the north of Lake Hayes - 15m [2]	RD Discretion is restricted to: a. visual dominance; b. The effect on open space, rural living character and amenity; c. effects on privacy, views and outlook from neighbouring properties; d. reverse sensitivity effects on adjacent properties; e. landscaping.
22.5.5	Setback from roads The minimum setback of any building from a road boundary shall be: 22.5.5.1 Rural Lifestyle Zone: 20m 22.5.5.2 Rural Residential Zone: 10m 22.5.5.3 Rural Residential Zone where the road is a State Highway: 15m	NC

[2] Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

	Table 2: Standards - Rural Residential and Rural Lifestyle Zones	Non- compliance Status
22.5.6	Setback of buildings from water bodies The minimum setback of any building from the bed of a river, lake or wetland shall be 20m.	RD Discretion is restricted to: a. any indigenous biodiversity values; b. visual amenity values; c. landscape character; d. open space; e. whether the waterbody is subject to flooding or natural hazards and any mitigation to manage the location of the building.
22.5.7	Home Occupation Home occupation activities must comply with the following: 22.5.7.1 No more than one full time equivalent person from outside the household may be employed in the home occupation activity. 22.5.7.2 The maximum number of vehicle trips* shall be: a. heavy vehicles: 2 per week; b. other vehicles: 10 per day. 22.5.7.3 The net floor area must not exceed: a. Rural Residential Zone: 60m^2; b. Rural Lifestyle Zone: 150m^2. 22.5.7.4 Activities and the storage of materials must be indoors. *A vehicle trip is two movements, generally to and from a site.	D
22.5.8	Building Height The maximum height shall be 8 metres.	NC
22.5.9	Lighting and Glare 22.5.9.1 All fixed exterior lighting must be directed away from adjacent roads and sites. 22.5.9.2 Activities on any site must not result in more than a 3 lux spill (horizontal and vertical) of light to any other site, measured at any point within the boundary of the other site. 22.5.9.3 There must be no upward light spill.	NC
22.5.10	Heavy Vehicle Storage No more than one heavy vehicle shall be stored or parked outside, overnight on any site for any activity.	NC

	Table 2: Standards - Rural Residential and Rural Lifestyle Zones	Non- compliance Status
22.5.11	Residential Density: Rural Residential Zone 22.5.11.1 Not more than one residential unit per 4000m^2 net site area.	NC
22.5.12	Residential Density: Rural Lifestyle Zone 22.5.12.1 One residential unit located within each building platform. 22.5.12.2 On sites less than 2ha there must be only one residential unit. 22.5.12.3 On sites equal to or greater than 2 hectares there must be no more than one residential unit per two hectares on average with a minimum of 1 residential unit per one hectare. For the purpose of calculating any average, any allotment greater than 4 hectares, including the balance, is deemed to be 4 hectares.	NC
22.5.13	Fire Fighting water and access New buildings where there is no reticulated water supply or it is not sufficient for fire-fighting water supply must provide the following provision for firefighting: 22.5.13.1 A water supply of 20,000 litres and any necessary couplings. 22.5.13.2 A hardstand area adjacent to the firefighting water supply capable of supporting fire service vehicles. 22.5.13.3 Firefighting water connection point within 6m of the hardstand, and 90m of the dwelling. 22.5.13.4 Access from the property boundary to the firefighting.	RD Discretion is restricted to all of the following: a. the extent to which SNZ PAS 4509: 2008 can be met including the adequacy of the water supply; b. the accessibility of the firefighting water connection point for fire service vehicles; c. whether and the extent to which the building is assessed as a low fire risk.

Table 3	Rural Lifestyle Deferred and Buffer zones	Non-Compliance Status
22.5.14	The erection of more than one non-residential building[3].	NC
22.5.15	In each area of the Deferred Rural Lifestyle zones east of Dalefield Road up to two residential allotments may be created with a single residential building platform on each allotment[4].	D
22.5.16	The land in the Deferred Rural Lifestyle (Buffer) zone shall be held in a single allotment containing no more than one residential building platform[5].	D
22.5.17	In the Deferred Rural Lifestyle (Buffer) zone, apart from the curtilage area, the land shall be maintained substantially in pasture. Tree planting and natural revegetation shall be confined to gullies and watercourses, as specified in covenants and on landscape plans[6].	D
22.5.18	In the Buffer zone, the maximum building height in the building platform shall be 6.5m[7].	NC

[3, 4, 5, 6, 7] Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

	Table 3: Rural Residential Forest Hill	Non- Compliance Status
22.5.19	Indigenous Vegetation The minimum area on any site to be retained or reinstated in indigenous vegetation shall be 70 percent of the net site area. For the purpose of this rule net area shall exclude access to the site, consideration of the risk of fire and the building restriction area.	NC
22.5.20	Building Restriction The building restriction area adjoining the Queenstown-Glenorchy Road, shall be retained and/or reinstated in indigenous vegetation.	NC

	Table 4: Rural Residential Bob's Cove and Sub-Zone	Non- compliance Status
22.5.21	Building Height (Sub-Zone only) Maximum building height is 6m.	RD The matters of discretion are listed in provision 22.5.32.
22.5.22	Setback from roads Buildings shall be setback a minimum of 10m from roads, and 15m from Glenorchy – Queenstown Road.	NC
22.5.23	Open space (Sub-Zone only) Those areas that are set aside as "open space" shall not contain any vegetation of a height greater than 2 metres, such that the vegetation does not disrupt the open pastoral character or the views of the lake and mountains beyond.	RD The matters of discretion are listed in provision 22.5.32.
22.5.24	Residential Density The maximum average density of residential units shall be 1 residential unit per 4000m^2 calculated over the total area within the zone.	D
22.5.25	Boundary Planting Sub-Zone only 22.5.25.1 Where the 15 metre Building Restriction Area adjoins a development area, it shall be planted in indigenous tree and shrub species common to the area, at a density of one plant per square metre. 22.5.25.2 Where a building is proposed within 50 metres of the Glenorchy-Queenstown Road, such indigenous planting shall be established to a height of 2 metres and have survived for at least 18 months prior to any residential buildings being erected.	RD The matters of discretion are listed in provision 22.5.32.
22.5.26	Building setbacks Buildings shall be located a distance of 10m from internal boundaries.	RD The matters of discretion are listed in provision 22.5.32.

	Table 4: Rural Residential Bob's Cove and Sub-Zone	Non- compliance Status
22.5.27	Building setbacks and landscaping Where a building is proposed within 50 metres of the Glenorchy-Queenstown Road, all landscaping to be undertaken within this distance on the subject property shall consist of native species in accordance with the assessment criteria in provision 22.5.32, subject to the requirement below: 22.5.27.1 All landscaping within 15 metres of the Glenorchy-Queenstown Road shall be planted prior to the commencement of the construction of the proposed building. 22.5.27.2 All landscaping from 15 metres to 50 metres from the Glenorchy-Queenstown Road shall be established within the first planting season after the completion of the building on the site.	RD The matters of discretion are listed in provision 22.5.32.
22.5.28	Building setbacks: Sub-Zone only No building shall be erected within an area that has been identified as Undomesticated Area.	NC
22.5.29	Landscaping: Sub-Zone only Where development areas and undomesticated areas have not been identified as part of a previous subdivision, at least 75% of the total area of the zone shall be set aside as "Undomesticated Area" and the remainder as "Development Area"; and at least 50% of the 'undomesticated area' shall be retained, established, and maintained in indigenous vegetation with a closed canopy such that this area has total indigenous litter cover. This rule shall be given effect to by consent notice registered against the title of the lot created, to the benefit of the lot holder and the Council. Such areas shall be identified and given effect to by way of covenant, as part of any land use consent application.	NC
22.5.30	Indigenous vegetation: Sub-Zone only At least 50% of the undomesticated area within the zone shall be retained, established, and maintained in indigenous vegetation with a closed canopy, such that complete indigenous litter cover is maintained over the area; and The landscaping and maintenance of the undomesticated area shall be detailed in a landscaping plan that is provided as part of any subdivision application. This landscaping plan shall identify the proposed species and shall provide details of the proposed maintenance programme to ensure a survival rate of at least 90% within the first 5 years.	NC

	Table 4: Rural Residential Bob's Cove and Sub-Zone	Non- compliance Status
22.5.31	Definitions that apply within the Bob's Cove Rural-Residential Sub-Zone: Development Area Means all that land used for: a. buildings; b. outdoor living areas; c. pathways and accessways, but excluding the main accessway leading from the Glenorchy Queenstown Road to the development areas; d. private garden; and e. mown grass surfaces, but excluding large areas of commonly-owned mown pasture or grazed areas that are to be used for recreational purposes. Undomesticated Area Means all other land not included in the definition of "Development Area".	
22.5.32	Matters of discretion for restricted discretionary activities: 22.5.32.1 The form and density of development (including buildings and associated accessways) are designed to: a. compliment the landscape and the pattern of existing and proposed vegetation; and b. mitigate the visual impact of the development when viewed from Lake Wakatipu and the Glenorchy-Queenstown Road. 22.5.32.2 The vegetation is, or is likely to be, of sufficient maturity to effectively minimise the impact of the proposed building when viewed from Lake Wakatipu and the Glenorchy-Queenstown Road. 22.5.32.3 The development provides for 75% of the zone to be established and maintained as undomesticated, such that there is a predominance of indigenous vegetation. 22.5.32.4 The form of development mitigates the visual impact from Lake Wakatipu and the Glenorchy-Queenstown Road. 22.5.32.5 Whether and the extent to which the proposed landscaping contains predominantly indigenous species (comprising a mix of trees, shrubs, and grasses) that are suited to the general area, such as red beech, native tussocks, hebes, pittosporum, coprosmas, cabbage trees, and lancewoods.	

	Table 5: Rural Residential Camp Hill	Non-compliance Status
22.5.33	Zone Boundary Setback The minimum setback of any building from the zone boundary, or the top of the escarpment where this is located within the zone boundary, shall be 20m.	NC
22.5.34	Building Height The maximum height of any building shall be 5.5m.	NC
22.5.35	Maximum Number of Residential Units There shall be no more than 36 residential units within the Rural Residential Zone Camp Hill.	NC

Table 6	Ferry Hill Rural Residential Sub Zone - Refer to Part 22.7.2 for the concept development plan	Non-compliance Status
22.5.33	Density There shall be no more than one residential unit per lot[9].	NC
22.5.34	Building Height The maximum building height shall be 6.5m for lots 9-15 on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone. Chimney and ventilation structures may be 7.2m high in this sub-zone[10].	D
22.5.35	Building Location The location of buildings shall be in accordance with the Concept Development Plan for the Ferry Hill Rural Residential sub-zone, in rule 22.7.2 [11].	D
22.5.36	Design Standards Within Lots 9-15 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone: 22.5.36.1 The roof pitch shall be between 20° and 30° and roof dormers and roof lights are to be incorporated in the roof pitch; 22.5.36.2 Roof finishes of buildings shall be within the following range: Slate shingle, cedar shingle, steel roofing (long run corrugated or tray) in the following colours, or similar, only: Coloursteel colours New Denim Blue, Grey Friars, Ironsand or Lignite; 22.5.36.3 Wall claddings of buildings shall be within the following range: cedar shingles, natural timber (clear stain), painted plaster in the following colours or equivalent: Resene 5YO18, 5B025, 5B030, 4GR18, 1B55, 5G013, 3YO65, 3YO20; stone cladding provided the stone shall be limited to Otago schist only and all pointing/mortar shall be recessed[12].	D

[9, 10, 11, 12] Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

Table 6	Ferry Hill Rural Residential Sub Zone - Refer to Part 22.7.2 for the concept development plan	Non-compliance Status
22.5.37	Landscaping 22.5.37.1 Any application for building consent shall be accompanied by a landscape plan that shows the species, number, and location of all plantings to be established, and shall include details of the proposed timeframes for all such plantings and a maintenance programme. 22.5.37.2 The landscape plan shall ensure: a. that the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone is planted with a predominance of indigenous species in a manner which enhances naturalness; and b. that residential development on sites adjoining Tucker Beach Road is subject to screening. 22.5.37.3 Plantings at the foot of, on, and above the escarpment within lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone shall include indigenous trees, shrubs, and tussock grasses. 22.5.37.4 Plantings on Lots 1 – 17 may include, willow (except Crack Willow), larch, maple as well as indigenous species. 22.5.37.5 The erection of solid or paling fences is not permitted[13].	D

	Table 6: Wynuna Station Rural Lifestyle Zone	Non- compliance Status
22.5.38	The identification of any building platforms or construction of dwellings prior to the granting of subdivision consent that has assessed policies 27.3.5.1, 27.3.6.1 and 27.3.6.2.	PR

22.6 Rules - Non-Notification of Applications

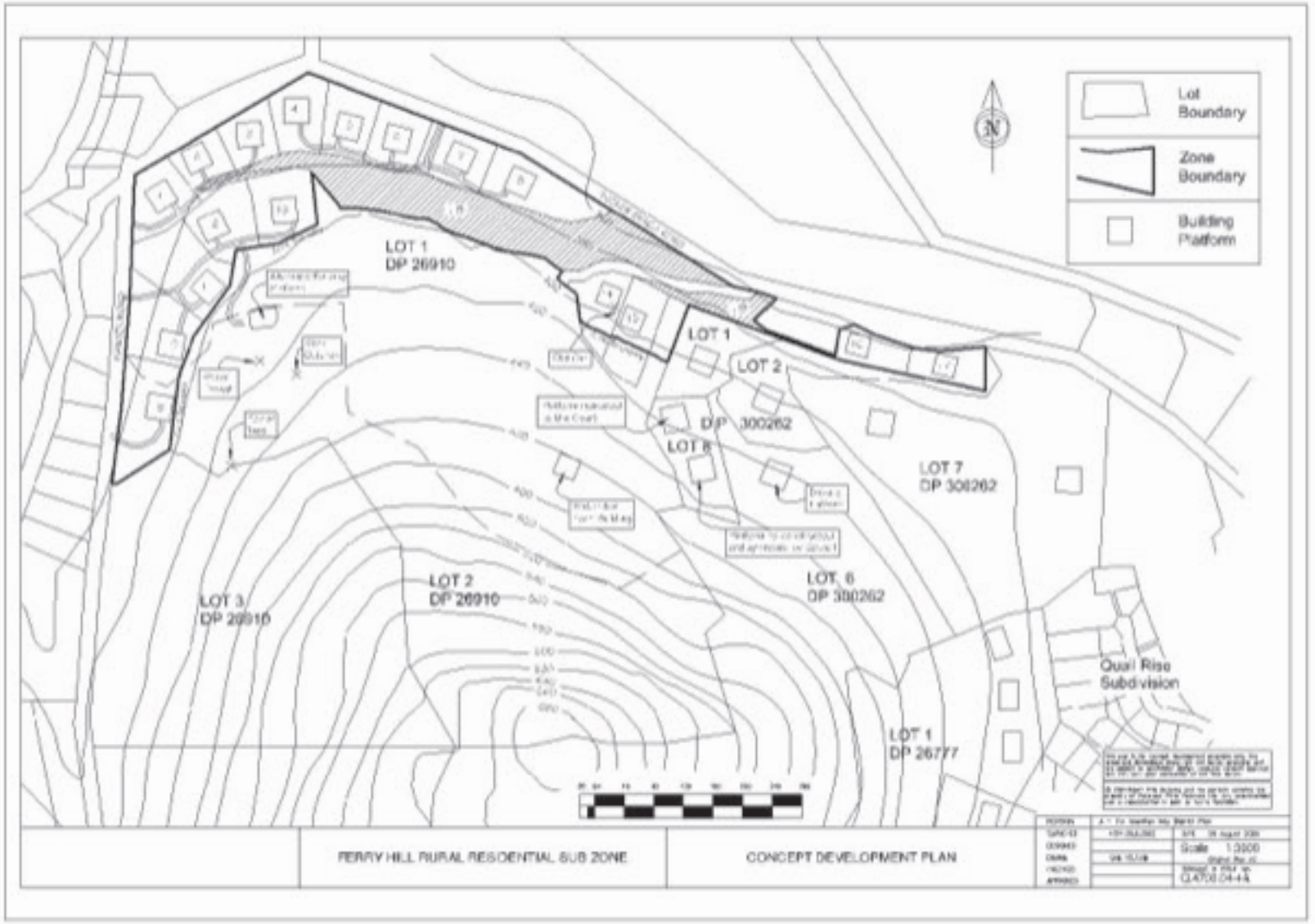
Any application for resource consent for the following matters shall not require the written approval of other persons and shall not be notified or limited-notified:

22.6.1 Controlled activity Home occupation (Rule 22.4.9). Except where the access is onto a State Highway.

22.7.2 Rural Residential Ferry Hill Sub Zone Concept Development Plan[14].

[13, 14] Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

22.7.2 Rural Residential Ferry Hill Sub-Zone Concept Development Plan[15].



[15] Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 4A

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

Commissioners
Denis Nugent (Chair)
Brad Coombs
Mark St Clair

PART C: CHAPTER 22 – RURAL RESIDENTIAL AND LIFESTYLE

22 PRELIMINARY

22.1 Introduction

998. This Chapter contains the objectives, policies and rules for two zones: the Rural Residential Zone and the Rural Lifestyle Zone. There were also several Sub-Zones of each zone.

999. Each zone is distributed through rural parts of the District. Thus submissions seeking changes to one or other of the zones based on reasons relying on the environment in one part of the District could have ramifications in other parts of the District.

1000. During the hearing Commissioner St Clair discovered he had a conflict of interest in relation to the submission and further submission lodged by Matakauri Lodge Limited[904]. This is explained in greater detail in Report 4B prepared by the remaining commissioners, who heard Matakauri Lodge Limited, Ms Byrch[905] and Mr Scaife[906] without Commissioner St Clair present. While Report 4B is directed specifically at the provisions relating to the Visitor Accommodation Sub-Zone and the evidence presented at the hearing, Ms Byrch and Mr Scaife's submissions also related to a number of other provisions in this chapter, and Matakauri Lodge Limited's further submission was in opposition to all of those other submission points. As it transpired, Commissioner St Clair was unable to be involved in the report preparation and the final recommendations on Chapter 22. Thus, we have been able to incorporate our recommendations on Submissions 243 and 811 where they relate to matters other than the Visitor Accommodation Sub-Zone into this report. We note that no evidence was heard in respect of these other amendments sought.

1001. Glentui Heights Limited[907] sought the deletion of the Bob's Cove Rural Residential Sub-Zone, including Objective 22.2.6, Policies 22.2.6.1 and 22.2.6.2 and Rules 22.5.21 to 22.5.32 (Table 5). This was listed in Appendix 2 to the Section 42A Report as being deferred to the Mapping Hearing Stream. Notwithstanding that, Mr Wells appeared in support of this submission and suggested various amendments to the provisions listed above, although not total deletion. These amendments appeared to suggest that the Sub-Zone should not be deleted.

1002. Mr Barr responded to this in his Reply Statement. Mr Barr considered that the emphasis on ecological outcomes in the objectives and rules should be retained.

1003. We understood that these provisions were included in the ODP as the result of an Environment Court consent order, and had been rolled over into the PDP. While we do not consider that background sufficient reason to retain the provisions, we do consider it relevant to the zoning issue, as intended by the deferment. The Hearing Panel considering the zoning issues in the District are in a better position to consider the consequences of removing the provisions sought by this submission.

1004. As it was, no evidence was presented to the Stream 13 Hearing Panel seeking the deletion of these provisions. In the absence of evidence supporting their deletion, we recommend the submission be rejected.

---

904 Submission 595 and Further Submission 1224
905 Submission 243
906 Submission 811
907 Submission 694

22.2 General Submissions

1005. Two submissions[908] supported the chapter generally. One submission[909] supported the Rural Lifestyle Zone. One submission[910] supported the Rural Residential Zone. Given that we are recommending amendments to the chapter, we recommend these submissions be accepted in part.

1006. Submission 117 sought that the chapter make it clear that it applies to rural residential development outside of the urban boundary, and Submission 332 sought that the PDP clearly distinguish between rural residential development and large lot residential development. When looked at in the round, our recommendations would satisfy both of these submitters. We recommend they be accepted in full.

1007. Several submissions[911] supported those parts of the chapter which they did not seek to alter. We recommend those submissions be accepted in part.

22.3 Density in Rural Lifestyle Zone

1008. There was one topic which dominated submissions on this Chapter: the density limits in the Rural Lifestyle Zone. As noted in Section 2.3 above, on 23 November 2017 the Council notified the Stage 2 variations which included replacing all the land in the Wakatipu Basin that was zoned Rural Lifestyle with the Wakatipu Basin Zone, including the Wakatipu Basin Lifestyle Precinct. As we explained in Section 2.3, the consequence of the provisions of Clause 16B of the First Schedule is that the submissions relating to the provisions of the Rural Lifestyle Zone replaced by the Wakatipu Basin Zone are deemed to be submissions on the variation. Thus we may not make recommendations on those.

1009. The removal of those submissions from our consideration left a single submission[912] seeking that notified Rule 22.5.12.3 be removed. This submission was heard in full in Stream 13 and the Hearing Panel for that stream has made recommendations regarding both the zoning of the submitter's land and the reduction in the Rural Lifestyle Zone density provisions on that land. The only other submission not deemed to be a submission on the variation sought that non-compliance with Rule 22.5.12 be a prohibited activity[913].

1010. No evidence was provided to support the submission seeking that non-compliance with the standards in Rule 22.5.12 be a prohibited activity. In the absence of justification for such an onerous provision, we recommend Submission 811 be rejected.

1011. As the matters relating to density were related to evidence we heard on other provisions in the Rural Lifestyle Zone, we will outline the relevant provisions and discuss and make recommendations on the relevant remaining submissions.

1012. As notified, the provisions of the Rural Lifestyle Zone provided for an average density of 1 residential unit per two hectares. This was instituted via a requirement for a building platform to be approved and registered on the computer freehold register (Rule 22.4.3.3); a limitation

908 Submissions 19 and 21
909 Submission 431
910 Submission 771
911 Submissions 360 (supported by FS1206), 514, 546 (supported by FS1065), 554, 594 (supported by FS1322) and 694
912 Submission 328
913 Submission 811

of one (1) residential unit per building platform (Rule 22.5.12.1); a limit of 1 residential unit per site on sites less than 2 ha in area (Rule 22.5.12.2); an average of 1 residential unit per 2 ha on sites larger than 2 ha (Rule 22.5.12.3). Breach of the standards in Rule 22.5.12 would require consent as a non-complying activity.

1013. As the subdivision rules in Chapter 27 (as notified) set a minimum site size of 1 ha, with an average site size of 2 ha, the effective maximum density of residential units in the zone was 1 per hectare, albeit with an average of 1 per 2 ha across the relevant subdivision. This was explained in the Zone Purpose (Section 22.1) as follows:

The Rural Lifestyle zone provides for rural living opportunities, having a development density of one residential unit per hectare with an overall density of one residential unit per two hectares across a subdivision. Building platforms are identified at the time of subdivision to manage the sprawl of buildings, manage adverse effects on landscape values and to manage other identified constraints such as natural hazards and servicing.

1014. One submission[914] sought the retention of Rule 22.4.3.3, while two[915] opposed the rule. Another submission[916] sought that the classification of the activity as Discretionary be changed to Controlled, while three submissions[917] sought that the identification of a building platform be a controlled or permitted activity.

1015. Five submissions[918] sought changes to the Zone Purpose so that the purpose promoted the Rural Lifestyle Zone as a location where further development would accommodate housing demand. As these five submissions also had submission points transferred to the Wakatipu Basin Zone variation we consider them to be directly concerned with the density provisions of the zone.

1016. We heard no evidence solely related to the Zone Purpose or suggesting the building platform regime in this zone be deleted and any evidence related to the activity status of Rule 22.4.3.3 was subsidiary to evidence on the density issue.

1017. In the absence of substantive evidence, we can find no justification for altering the Zone Purpose in the manner sought by the submitters.

1018. With no submissions opposing notified Rule 22.5.12, we recommend the density rules for the Rural Lifestyle Zone be adopted as notified, subject to the word "shall" in Rule 22.5.12.3 being changed to "must".

1019. We also recommend that Rule 22.4.3.3 be adopted as notified.

22.4 Makarora Rural Lifestyle Zone

1020. We will deal with this issue before moving onto the details of the provisions as Submission 585 and the recommendation from the Hearing Stream 12 Panel affect several provisions, including the Zone Purpose, Objective 22.2.3, Policy 22.2.3.1, Rule 22.4.4 and Rule 22.7.1.

914 Submission 761

915 Submissions 248 and 557

916 Submission 820, opposed by FS1034

917 Submissions 546 (supported by FS1065), 554 and 594 (Supported by FS1221, FS1322)

918 Submissions 497, 513, 523 (supported by FS1256), 534 (supported by FS1322), 535 (supported by FS1259, FS1267, FS1322, opposed by FS1068, FS1071)

1021. As notified, the PDP provided for a large area[919] of the valley floor at Makarora to be zoned Rural Lifestyle with additional provisions in Chapter 22 in recognition of the natural hazard risk on that land. In particular, Rule 22.4.4 set the construction of buildings within an approved building platform as a controlled activity with control reserved to the avoidance or mitigation of the effects of natural hazards, and Rule 22.7 set out assessment matters for evaluating such controlled activity applications.

1022. Submission 585 sought the removal of this area of zoning and replacement of it with Rural (dealt with in the Stream 12 Hearing: Upper Clutha Mapping) and the deletion of the relevant provisions from Chapter 22. Submission 669 sought the deletion of Objective 22.2.3 and Policy 22.2.3.1 on the basis that they repeated matters covered by Chapter 28 (Natural Hazards). Two submissions[920] sought the deletion of Rule 22.4.4 and one submission[921] supported Rule 22.7.

1023. Mr Barr did not discuss the Makarora zone in his Section 42A Report other than in justifying the retention of Objective 22.2.3 and its policy on the basis, in part, that Chapter 22 contained detailed methods "*to manage the risk of development and natural hazards in the Makarora Rural Lifestyle Zone*"[922]. He did not discuss the issue in his Reply Statement either.

1024. Ms Pennycook explained to us how the Makarora community was undertaking a project in conjunction with the Department of Conservation and the Forest & Bird to create a protected landscape in the Makarora valley, involving a predator-free environment with restoration of the forests and riverbeds. The area involved is that between Mount Aspiring National Park and Lake Wanaka and the east side of Lake Wanaka to The Neck. Ms Pennycook also provided us with copies of photographs she had taken in 2015 and 2016 of flooding across the land zoned Rural Lifestyle.

1025. In 2017 the Stream 12 Hearing Panel also heard from Ms Pennycook, more specifically on the zoning rather than the rules. That Panel has recommended that Ms Pennycook's submission be accepted and have recommended that we make consequential amendments to Chapter 22 to reflect to removal of this zoning.

1026. We agree with Ms Pennycook that the Rural Lifestyle provisions would be inconsistent with the conservation project the Makarora community was undertaking. We also accept the recommendation of the Stream 12 Hearing Panel. Consequently, we recommend that:

a. The second sentence of the second paragraph in Section 22.1 be deleted;
b. Rule 22.4.4 be deleted;
c. Rule 22.7.1 be deleted; and
d. Section 22.7 be retitled "Rural Residential Ferry Hill Sub-Zone Concept Development Plan"[923] and sub-numbering in the section be deleted.

1027. With respect to Objective 22.2.3 and Policy 22.2.3.1, we have considered this in the light of the recommended objectives and policies in Chapter 28. As notified Objective 22.2.3 and its policy stated:

---

919 The area is quoted in Submission 585 as being 1,292 ha. This was neither verified nor disputed by the Council.

920 Submissions 339 and 706 (opposed by FS1162)

921 Submission 21

922 C Barr, Section 42A Report, paragraph 13.4

923 We note that Variation 2 proposes deleting the Rural Residential Ferry Hill Sub-Zone, including the Concept Development Plan. The result is that Section 22.7 becomes redundant.

Manage new development and natural hazards.

Policy

Parts of the Rural Residential and Rural Lifestyle zones have been, and might be identified in the future as susceptible to natural hazards and some areas may not be appropriate for residential activity if the natural hazard risk cannot be adequately managed.

1028. Mr Barr recommended rewording the objective to read[924]:

New development adequately manages natural hazard risk.

1029. In addition to the submission seeking the deletion of Objective 22.2.3, five submissions[925] sought its amendment. Mr Barr's recommendation reflected the amendment sought.

1030. Three submissions sought the deletion of Policy 22.2.3.1[926].

1031. The relevant recommended objective and policies in Chapter 28 read:

28.3.2 Development on land subject to natural hazards only occurs where the risks to the community and the built environment are appropriately managed.

Policies

28.3.2.2 Not preclude subdivision and development of land subject to natural hazards where the proposed activity does not:

a. accelerate or worsen the natural hazard risk to an intolerable level

b. Expose vulnerable activities to intolerable natural hazard risk

c. Create an intolerable risk to human life

d. Increase the natural hazard risk to other properties to an intolerable level

e. Require additional works and costs, including remedial works, that would be borne by the public.

28.3.2.3 Ensure all proposals to subdivide or develop land that is subject to natural hazard risk provide an assessment that meets the following information requirements, ensuring that the level of detail of the assessment is commensurate with the level of natural hazard risk: … [then follows a list of 8 requirements for information]

1032. Our concern with both the objective and the policy in Chapter 22 is that they suggest a potentially different approach to natural hazards in these two zones than the approach Chapter 28 is establishing for the entire district. In our view, the appropriate course of action is to delete Objective 22.2.3 and Policy 22.2.3.1 and rely on the policies in Chapter 28 that more precisely set out the requirements for dealing with natural hazard risk. Therefore, we recommend the

924 C Barr, Section 42A Report, Appendix 1

925 Submissions 530, 761, 763, 764 and 767

926 Submissions 669, 764 and 767

submissions seeking the deletion of Objective 22.2.3 and Policy 22.2.3.1 be accepted and those provisions be deleted.

23 22.1 – ZONE PURPOSE

1033. As notified, this section explained:
   a. The locational characteristics of the zones;
   b. The potential for them to be affected by natural hazards;
   c. The nature of development expected in the Rural Residential Zone;
   d. The nature of development expected in the Rural Lifestyle Zone;
   e. The rationale behind the Deferred Rural Lifestyle (Buffer) Zone;
   f. The potential for further Rural Lifestyle development in the Wakatipu Basin; and
   g. Justifying the application of controls for landscape reasons.

1034. Submissions on this section sought:
   a. Support[927];
   b. Make clear and concise[928];
   c. Remove reference to the zones providing a buffer edge[929];
   d. Include maintaining nature conservation values in the purpose[930];
   e. Include reference to providing for community facilities[931];
   f. Discourage commercial activities in the Rural Lifestyle zone[932];
   g. Improve references to rural character and amenity values[933]; and
   h. Delete[934].

1035. In his Section 42A Report Mr Barr recommended deleting the reference to these zones being a buffer between urban and rural activities.

1036. Other than in relation to the matters discussed above relating to density in the Rural Lifestyle Zone and natural hazards, we heard no evidence particularly directed to this section.

1037. As we discussed above in relation to Section 21.1 (in Chapter 21), we consider the relationship between the four rural zones can be better understood if an introductory paragraph describes where the relevant chapter sit in relation to the other two. Consequently, we recommend the following be inserted as the first paragraph in this section:

There are four rural zones in the District. The Rural Zone (Chapter 21) is the most extensive of these. The Gibbston Valley is recognised as a special character area for viticulture production and the management of this area is provided for in Chapter 23: Gibbston Character Zone. Opportunities for rural living activities are provided for in the Rural-Residential and Rural Lifestyle Zones.

927 Submissions 236 (opposed by FS1203) and 771
928 Submission 243
929 Submission 238, supported by FS1255, opposed by FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1249
930 Submissions 339 and 706 (opposed by FS1162)
931 Submission 844
932 Submission 286
933 Submission 674, supported by FS1082, FS1089, FS1146, opposed by FS1255
934 Submission 669

1038. We consider this to be a minor non-substantive amendment which can be made under Clause 16(2).

1039. We agree with Mr Barr that, when looked at in the round, these zones do not have the purpose of providing a buffer edge to urban areas. We recommend that Submission 238 be accepted and the reference to "buffer edges" be deleted from the second sentence of what is now the second paragraph.

1040. Of the other amendments sought by submitters, we make the following comments:
   a. The policies in the chapter generally discourage commercial activities, thus the wording of this section appropriate;
   b. The overall purpose of the zones is rural living, not nature conservation; and
   c. Community facilities are not generally appropriate in these zones, which are provided for rural living purposes (Strategic Policy 3.3.22).

1041. Thus, we do not recommend any further changes to the section and recommend those submissions be rejected.

24 22.2 – OBJECTIVES AND POLICIES

24.1 General

1042. Submission 21 supported the objectives and policies. Submission 674 sought that the objectives and policies be generally amended to make the rationale of the zones more explicit.

24.2 Objective 22.2.1 and Policies

1043. As notified, these read:

Objective

Maintain and enhance the district's landscape quality, character and visual amenity values while enabling rural living opportunities in areas that can avoid detracting from those landscapes.

Policies

22.2.1.1 Ensure the visual prominence of buildings is avoided, particularly development and associated earthworks on prominent slopes, ridges and skylines.

22.2.1.2 Set minimum density and building coverage standards so the open space, natural and rural qualities of the District's distinctive landscapes are not reduced.

22.2.1.3 Allow for flexibility of the density provisions, where design-led and innovative patterns of subdivision and residential development, roading and planting would enhance the character of the zone and the District's landscapes.

22.2.1.4 Manage anticipated activities that are located near Outstanding Natural Features and Outstanding Natural Landscapes so that they do not diminish the qualities of these landscapes and their importance as part of the District's landscapes.

22.2.1.5 Maintain and enhance landscape values by controlling the colour, scale, location and height of permitted buildings and in certain locations or circumstances require landscaping and vegetation controls.

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

22.2.1.7 Have regard to fire risk from vegetation and the potential risk to people and buildings, when assessing subdivision, development and any landscaping.

1044. One submission supported this objective[935], and another[936] suggested it be rewritten without providing any suggested wording. Several submissions[937] sought that it be reworded to read:

The District's landscape quality, character and visual amenity values are maintained and enhanced while rural living opportunities in areas that can absorb development within those landscape are enabled.

1045. Submission 669 sought that the objective be replaced with:

Rural living opportunities are enabled in identified appropriate areas.

1046. In his Section 42A Report, Mr Barr largely agreed with the amendments to this objective sought by Arcadian Triangle Ltd and others. Mr Vivian, appearing for J & R Hadley[938], agreed with Mr Barr's recommended amendment, subject to deletion of the word "visual" so that all amenity values became relevant. Mr Barr agreed with this further amendment[939].

1047. We agree that the reformulated objective better expresses the environmental outcome sought: maintenance and enhancement of various environmental qualities while enabling rural living opportunities. We recommend Objective 22.2.1 read:

The district's landscape quality, character and amenity values are maintained and enhanced while enabling rural living opportunities in areas that can absorb development.

1048. The only submissions[940] on Policy 22.2.1.1 sought that it be amended to enable the visual prominence of buildings to be avoided, remedied or mitigated. Mr Barr supported this amendment in his Section 42A Report[941].

1049. We agree that built development should not be unexpected in either of these two zones and the option of remedying or mitigating visual prominence would be appropriate.. We recommend that these submissions be accepted.

---

935 Submission 380

936 Submission 243, opposed by FS1150, FS1325

937 Submissions 497, 513, 515, 522 (supported by FS1292), 523 (supported by FS1256), 530, 532 (supported by FS1322, opposed by FS1071), 534, 535 (supported by FS1259, FS1267, FS1322), 537 (supported by FS1256, FS1286, FS1292), 761, 763, 764 and 767

938 Submission 674

939 C Barr, Reply Statement, Appendix 1

940 Submissions 497, 513, 515, 522, 523 (supported by FS1256), 530 and 537 (supported by FS1256, FS1286, FS1292)

941 C Barr, Section 42A Report, paragraph 8.24

1050. Two submissions questioned whether use of the word "minimum" in Policy 22.2.1.2 was correct[942].. The remaining submissions sought one of two options of rewording of the policy. Option A, sought by four submissions[943], read:

Set density standards in order to achieve and maintain an appropriate density of development and related rural amenity values.

1051. Option B, sought by four submissions[944], read:

Set minimum density and building coverage standards so that adverse effects on the open space, natural and rural qualities of the District's distinctive landscapes are mitigated.

1052. Mr Barr accepted this policy needed rewording and suggested a revised version in his Section 42A Report which read:

Set density and building coverage standards in order to maintain the open space, rural living character and landscape values.

1053. No evidence was specifically directed at this policy.

1054. We have difficulty understanding what the policy is trying to achieve, either as notified or in Mr Barr's version. The objective is that by enabling rural living in areas able to absorb development, the district's landscape quality, character and amenity values will be maintained and enhanced. As we see it, this policy should be directed at setting density and coverage standards that ensure the level of development in the relevant zone is not beyond that which the landscape can absorb.

1055. Option B sought by submissions goes someway to clarifying the policy.. We do not think Option A assists at all. We do agree that the word "minimum" has not been used correctly in the notified version. We agree with Mr Barr's opinion that natural values are not relevant in this policy[945]. We also agree with Submission 674 that the amenity values of rural living areas should be recognised.

1056. Taking all those matters into account, we recommend the policy be reworded as:

Set density and building coverage standards in order to maintain rural living character and amenity values, and the open space and rural qualities of the District's landscapes.

1057. One submission[946] supported Policy 22.2.1.3.. Two submissions[947] sought that the policy provide for review by the urban design panel of developments varying the density provisions. Submission 669 sought that the policy be amended such that flexibility in density provisions be allowed where the effects on amenity values and landscape were no worse than a proposal complying with density.

---

942 Submissions 238 (opposed by FS11.07, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1249) and 368

943 Submissions 497, 522 (supported by FS1292), 523 (supported by FS1256) and 669

944 Submissions 513, 515, 530 and 537 (supported by FS1256, FS1292)

945 C Barr, Section 42A Report, paragraph 8.25

946 Submission 444, supported by FS1089

947 Submissions 238 (opposed by FS11.07, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1249, FS1325) and 238 (opposed by FS1325)

1058. Mr Barr discussed this latter submission in his Section 42A Report[948], recommending it be rejected. In his Reply Statement, Mr Barr recommended that "amenity values" be included as a matter that could be potentially enhanced.

1059. We are not sure of the status of this policy. While on the face of it, as Mr Barr comments, it provides for a degree of flexibility on subdivisions in circumstances where the design characteristics would enhance environmental outcomes, the rules to implement it do not appear to allow for such flexibility. Both Rule 22.5.11 (density in Rural Residential Zone) and Rule 22.5.12 (density in Rural Lifestyle Zone) require a non-complying activity consent if the respective rule is not complied with. We do not see that as providing flexibility, even with this proposed policy in place. We do not agree with Mr Barr that the averaging provisions available in the Rural Lifestyle Zone implement this policy, as those provisions do not require any assessment of design in the way this policy implies.

1060. While we recommend the policy be adopted as per Mr Barr's reply version, we also recommend the Council review whether it should remain, or whether the rules be amended so the policy can be implemented as it appears to intend.

1061. No submissions were received on Policies 22.2.1.4 and 22.2.1.5. Mr Barr recommended an amendment to Policy 22.2.1.5 to include reference to amenity values[949], responding to the general approach of Submission 674 that amenity values within the zones were also important. We agree with that minor amendment.

1062. We recommend Policy 22.2.1.4 be adopted as notified, and Policy 22.2.1.5 be worded as follows:

Maintain and enhance landscape values and amenity values within the zones by controlling the colour, scale, location and height of permitted buildings and in certain locations or circumstances require landscaping and vegetation controls.

1063. The only submission on Policy 22.2.1.6[950] suggested the wording was too weak and that it should require all new and replacement lighting in the District to be downward facing using energy efficient lightbulbs. When this policy is read in the context of Strategic Policy 6.3.4 it is apparent that Policy 22.2.1.6 is expressed weakly. We recommend it be reworded so as to implement the Strategic Policies in line with the submitter's request, as follows:

Lights be located and directed so as to avoid glare to other properties, roads and other public places, and to avoid degradation of views of the night sky.

1064. The only submissions[951] on Policy 22.2.1.7 supported the wording, but sought that it be moved to sit under (notified) Objective 22.2.3. The reasons given in the submissions were that the policy was not directed to matters the objective was directed to (landscape and visual amenity values). We have recommended above that Objective 22.2.3 be deleted so have considered whether the policy would more appropriately be located under any other objective in this chapter.

---

948 C Barr, Section 42A Report, paragraph 8.43

949 C Barr, Reply Statement, Appendix 1

950 Submission 289

951 Submissions 761, 763, 764 and 767

1065. Given that one of the methods people use to mitigate adverse effects on landscape values is to "hide" buildings with landscaping or amongst existing vegetation, the policy is, in our view, best located under Objective 22.2.1. We therefore recommend the policy be adopted as notified.

1066. Two submissions[952] sought the inclusion of a new policy requiring that development and subdivision in this zone avoid SNAs. Mr Barr considered this was better dealt with in Chapter 33 and we agree.

24.3 Objective 22.2.2 and Policies

1067. As notified, these read:

Objective
Ensure the predominant land uses are rural, residential and where appropriate, visitor and community activities.

Policies

22.2.2.1 Provide for residential and farming as permitted activities, and recognise that depending on the location, scale and type, community activities may be compatible with and enhance the Rural Residential and Rural Lifestyle Zones.

22.2.2.2 Any development, including subdivision located on the periphery of residential and township areas, shall avoid undermining the integrity of the urban rural edge and where applicable, the urban growth boundaries.

22.2.2.3 Discourage commercial and non-residential activities, including restaurants, visitor accommodation and industrial activities, so that the amenity, quality and character of the Rural Residential and Rural Lifestyle zones are not diminished and the vitality of the District's commercial zones is not undermined.

22.2.2.4 Encourage visitor accommodation only within the specified visitor accommodation subzone areas and control the scale and intensity of these activities.

22.2.2.5 The bulk, scale and intensity of buildings used for visitor accommodation activities are to be commensurate with the anticipated development of the zone and surrounding residential activities.

1068. Four submissions sought the retention of Objective 22.2.2[953]. Other submissions on this objective sought:
a. Generally oppose objective[954];
b. Delete reference to visitor activities[955];
c. Exclude visitor and community activities from objective[956];
d. Generally broaden objective[957];
e. Amend so as to provide for visitor activities[958];

952 Submissions 339 (opposed by FS1097) and 706 (opposed by FS1150, FS1162)
953 Submissions 380, 524, 600 (supported by FS1209, opposed by FS1034) and 844
954 Submission 248
955 Submissions 243
956 Submission 674, supported by FS1050, FS1082, FS1089, FS1146, opposed by FS1255
957 Submission 294
958 Submission 285, supported by FS1097

f. Amend so as to encourage commercial and non-residential activities, especially near the Queenstown Trail[959];
g. Remove ensure and limit community activities to where appropriate[960];
h. Remove ensure[961];
i. Renumber as a policy[962].

1069. Also relevant to this objective is Submission 497 seeking provision in the Rural Lifestyle Zone for visitor accommodation.

1070. In the Section 42A Report Mr Barr agreed that the objective should commence with "*Within the rural residential and rural lifestyle zones*" deleting the word "*ensure*"[963]. He saw these changes as matters of clarity and grammar. Other than that he suggested no other alterations to the objective.

1071. We see the role of this objective to be setting the range of activities appropriate in the zone. None of the submissions suggested that the combination of residential and rural activities one would expect in a rural living area to be inappropriate. The issue was the extent to which visitor and community activities would be appropriate.

1072. In his evidence for Arcadian Triangle Ltd, Mr Goldsmith clarified that in terms of visitor accommodation, it was the ability of people to use their residential unit or residential flat for visitor accommodation that the submission was directed to, not motels or lodges[964]. Submissions 285 and 423 sought expansion of the objective so as to provide for visitor-related facilities in areas that visitors are presently visiting, such as adjacent to the Queenstown Trails. Submission 243, on the other hand, was more directed to removal of the Visitor Accommodation Subzone which has been dealt with separately.

1073. Mr Vivian, in evidence on behalf of J & R Hadley, explained that while visitor and community activities could be appropriate in some locations, they should not be considered predominant uses in the zones[965]. He suggested the objective should state that visitor and community activities would only be appropriate where it could be demonstrated that those activities were of principal benefit to the adjacent rural living activities[966].

1074. In discussing Section 22.1 we referred to Strategic Policy 3.3.22 as establishing the rationale of the zone as being to provide for rural living opportunities. Strategic Policy 3.3.24 also seeks to ensure that development within the rural living areas does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character. These policies suggest that Mr Vivian is correct in suggesting that visitor and community activities are not to be considered predominant activities in the zones. However, we think the additional wording he proposed for this objective would be better included in the relevant policies.

---

959 Submission 423
960 Submission 497
961 Submissions 513, 515, 522 (supported by FS1292), 523 (supported by FS1256), 530, 532 (supported by FS1322), 534 (supported by FS1322), 535 (supported by FS1259, FS1267, FS1322), 537 (supported by FS1292), 761, 763 (supported by FS1125), 764 and 767
962 Submission 669
963 C Barr, Section 42A Report, paragraph 8.30
964 W Goldsmith, EiC, paragraph 5.2
965 C Vivian, EiC, paragraph 9.15
966 ibid, Appendix B, page 22-3

1075. For those reasons, along with a grammatical change, we recommend that that Objective 22.2.2 be worded as follows:

The predominant land uses within the Rural Residential and Rural Lifestyle Zones are rural and residential activities.

1076. Three submissions[967] sought the retention of Policy 22.2.2.1. One submission[968] sought it be reworded so as to clarify that any community facilities be primarily for the benefit of the local community.

1077. Other than recommend the deletion of the word "*recognise*" from the policy[969], Mr Barr made no comment on it.

1078. To implement Objective 22.2.2 we consider this policy should enable residential and farming activities, rather than provide for them. We also consider this is an appropriate policy to outline the circumstances in which visitor accommodation and community activities would be appropriate in the zones, as discussed above when considering Objective 22.2.2.. In our view, rather than stating that such activities may be "compatible with and enhance" the zones, the nature of the zones mean that such activities should be compatible and would enhance the zones. Such wording would enable the type of accommodation envisaged by Mr Goldsmith and achieve the type of limitation suggested by Mr Vivian.

1079. For those reasons, we recommend Policy 22.2.2.1 read:

Enable residential and farming activities in both zones, and provide for community and visitor accommodation activities which, in terms of location, scale and type, are compatible with and enhance the predominant activities of the relevant zone.

1080. One submission[970] sought the retention of Policy 22.2.2.2, one sought it only apply to the Rural Lifestyle Zone[971], and one sought it be strengthened[972]. On the other hand, five submissions[973] sought the policy be deleted and four submissions[974] sought it be replaced with a policy to encourage efficient and effective use of rural living land.

1081. Mr Barr, in his Section 42A Report, explained that he considered the policy necessary to provide guidance when considering applications to exceed the density and subdivision rules of the two zones. He considered it complementary to (notified) Objective 4.2.3. No other evidence was directed to this policy.

1082. Three Strategic Policies are relevant to this policy:

---

967 Submissions 524, 600 (supported by FS1209, opposed by FS1034) and 844

968 Submission 444, supported by FS1089

969 C Barr, Section 42A Report, Appendix 1

970 Submission 719

971 Submission 844

972 Submission 238, opposed by FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1249

973 Submissions 515, 522 (supported by FS1292), 530, 532 (supported by FS1322) and 537 (supported by FS1256, FS1286, FS1292)

974 Submissions 497, 513, 523 (supported by FS1256) and 534 (supported by FS1322)

4.2.1.3 Ensure that urban development is contained within the defined Urban Growth Boundaries, and that aside from urban development within existing rural settlements, urban development is avoided outside of those boundaries.[975]

4.2.2.12 Ensure that any transition to rural areas is contained within the relevant Urban Growth Boundary.

6.3.4 Avoid urban development and subdivision to urban densities in the rural zones.

1083. We are satisfied that Policy 22.2.2.2 is consistent with these Strategic Policies. We consider the replacement policy sought by Submission 497 and others would be in conflict with the Strategic Policies by encouraging more intense use of rural living land (potentially to urban densities).

1084. Consequently, we recommend that Policy 22.2.2.2 be adopted as notified.

1085. Policy 22.2.2.3, as notified, sought to discourage commercial and non-residential activities in these zones, except in specified circumstances. Two submissions[976] supported this policy.. Submission 844 sought to exclude community activities from the policy. Submission 577 sought to amend the policy so that it was the nature, scale and hours of operation of the non-residential activity that determined whether they be discouraged. Two submissions[977] sought amendments to reduce the negatives in the policy, but with the effect of making the effects on values in the zones conjunctive with effects on urban commercial areas. Two submissions[978] sought deletion of the policy to encourage commercial activities.

1086. Mr Barr, in the Section 42A Report, accepted that some change was necessary so as to reinforce that non-residential activity would be commensurate with the nature and scale of the environment and maintain rural living amenity[979].

1087. We agree with Mr Barr that some amendment to this policy is appropriate and that it should focus on ensuring the amenity values and quality and character of the rural living environment is not diminished. However, we consider the various wording options presented in the submissions, along with Mr Barr's version, failed to properly convey this. We therefore recommend that Policy 22.2.2.3 read:

Discourage commercial and non-residential activities, including restaurants, visitor accommodation and industrial activities, that would diminish the amenity values and quality and character of the rural living environment.

1088. Policy 22.2.2.4 has been the subject of separate consideration due to Commissioner St Clair's conflict of interest. The remaining Commissioners, after hearing from the submitter and further submitter have recommended this policy be deleted.

1089. There were no submissions on Policy 22.2.2.5. With the deletion of Policy 22.2.2.4 and the amendments made to Policies 22.2.2.1 and 22.2.2.3 we consider it to be potentially superfluous but accept that it could assist in guiding the scale and intensity of any visitor accommodation activity in the two zones. Therefore, we recommend it be adopted as notified.

---

975 See also Policy 3.3.14 to the same effect.

976 Submissions 674 (supported by FS1050, FS1082, FS1089, FS1146, opposed by FS1255) and 719

977 Submissions 763 and 764 (opposed by FS1015)

978 Submissions 221 and 265

979 C Barr, Section 42A Report, paragraph 9.2

24.4 Objective 22.2.4 and Policies

1090. As notified, these read:

Objective
Ensure new development does not exceed available capacities for servicing and infrastructure.

Policies
22.2.4.1 Discourage new development that requires servicing and infrastructure at an adverse cost to the community.

22.2.4.2 Ensure traffic generated by new development does not compromise road safety or efficiency.

1091. The only submissions on this objective supported its retention[980]. The only amendment recommended by Mr Barr, so as to make it clearly an objective, was to delete the word "ensure" from the commencement of the objective[981].

1092. We agree with Mr Barr's recommendation and consider the change to be a non-substantive grammatical change under Clause 16(2). We therefore recommend the objective read:

New development does not exceed available capacities for servicing and infrastructure.

1093. The only submission on the two policies sought their retention[982]. Mr Barr did not recommend any changes to these policies.

1094. We consider a minor amendment is needed to Policy 22.2.4.1 to replace "an adverse cost" with "a cost" as, in the context of the policy, adverse is an unnecessary adjective. We consider this to be a minor amendment within the realm of Clause 16(2).

1095. With those minor amendments, and renumbering, we recommend that Objective 22.2.4 and the two ensuing policies be adopted as notified.

24.5 Objective 22.2.5 and Policy

1096. As notified, these read:

Objective
Manage situations where sensitive activities conflict with existing and anticipated rural activities.

Policies
22.2.5.1 Recognise existing and permitted activities, including activities within the surrounding Rural Zone might result in effects such as odour, noise, dust and traffic generation that are established, or reasonably expected to occur and will be noticeable to residents and visitors in rural areas.

980 Submissions 217, 380, 438 and 719
981 C Barr, Section 42A Report, Appendix 1
982 Submission 719

1097. The only submissions on this objective sought is be revised to be clearer[983] or retained[984]. Mr Barr recommended a grammatical change to the objective so that it was focussed on an environmental outcome[985]. We agree that Mr Barr's wording more clearly expresses the appropriate outcome to minimise potential reverse sensitivity issues. We therefore recommend Objective 22.2.5 read (and be renumbered):

Sensitive activities conflicting with existing and anticipated rural activities are managed.

1098. The only submissions on Policy 22.2.5.1 supported its retention[986]. Mr Barr did not recommend any changes to the wording of this policy. Other than renumbering, we recommend it be adopted as notified.

24.6 Objective 22.2.6 and Policies & Objective 22.2.7 and Policies

1099. As notified, these read:

Objective 22.2.6
Bob's Cove Rural Residential sub-zone – To create comprehensively-planned residential development with ample open space and a predominance of indigenous vegetation throughout the zone.

22.2.6.1 Ensure at least 75% of the zone is retained as undomesticated area and at least 50% of this area is established and maintained in indigenous species such that total indigenous vegetation cover is maintained over that area.

22.2.6.2 Ensure there is open space in front of buildings that remains generally free of vegetation to avoid disrupting the open pastoral character of the area and the lake and mountain views.

Objective 22.2.7
Bob's Cove Rural Residential Zone - To maintain and enhance the ecological and amenity values of the Bob's Cove Rural Residential zone.

22.2.7.1 To ensure views of Lake Wakatipu and the surrounding landforms from the Glenorchy-Queenstown Road are retained through appropriate landscaping and the retention of view shafts.

22.2.7.2 To ensure the ecological and amenity values of Bob's Cove are retained and, where possible, enhanced through:
- *a. appropriate landscaping using native plants*
- *b. restricting the use of exotic plants*
- *c. removing wilding species*
- *d. providing guidance on the design and colour of buildings*
- *e. maintaining view shafts from the Queenstown-Glenorchy Road.*

983 Submission 243, opposed by FS1224
984 Submissions 600 (supported by FS1209, opposed by FS1034), 719 and 811 (opposed by FS1224)
985 C Barr, Section 42A Report, Appendix 1
986 Submissions 600 (supported by FS1209, FS1034) and 719

1100. The only submissions on these provisions related to Objective 22.2.6. One submission[987] supported the objective, the other[988] sought it be revised to be clearer. Other submissions[989] relating to these provisions were deferred by the staff to the Mapping Hearing (Stream 13) as discussed in Section 22.1 above.

1101. No amendments to these provisions were recommended by Mr Barr. The only change we recommend (apart from renumbering) is that the bullet points in Policy 22.2.7.2 be changed to an alphabetic list. Other than that, we recommend the objectives and policies be adopted as notified.

24.7 Additional Policy

1102. We have discussed above[990], in relation to Chapter 21, the evidence of the NZFS and its requests for additional policies and rules in the rural chapters. In relation to this Chapter, Mr Barr recommended the insertion of an additional policy under Objective 22.2.1 to satisfy the NZFS's concerns in part.

1103. For the same reasons we gave for our recommendations in Chapter 21, we recommend that a new Policy 2.2.1.8 be inserted worded as follows:

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

25 SUMMARY

1104. We have set out in Appendix 2 the recommended objectives and policies. In summary, we regard the combination of objectives recommended as being the most appropriate to achieve the purpose of the Act in the context of this zone, while giving effect to, and taking into account, the relevant higher order documents, the Strategic directions chapters and the alternatives open to us. The recommended new or amended policies are, in our view, the most appropriate way to achieve those objectives.

26 SECTION 22.3: OTHER PROVISIONS AND RULES

26.1 Section 22.3.1 – District Wide

1105. The only submissions on this section
   a. supported the entire section[991]
   b. queried the need for a separate floor area calculation in this chapter[992].

1106. We understand the purpose of Rule 22.3.2.7 is to define what is the ground floor of a building for the purposes of applying rules in this chapter. We have recommended that the equivalent provision in Chapter 21 be replaced by the inclusion of the definition in Chapter 2. We make the same recommendation in respect of this provision.

---

987 Submission 380
988 Submission 243, opposed by FS1224
989 Submissions 694 and 712
990 Sections 5.4 and 17
991 Submission 21
992 Submission 243, opposed by FS1224

1107. Mr Barr recommended an additional matter be listed in the exemptions as a point of clarification that internal alterations were permitted. While we are not sure it is necessary, we see no reason not to include that clarification.

1108. Apart from the inclusion of the additional exemption (Rule 22.3.3.2), the only amendments we recommend to this section are minor formatting changes under Clause 16(2) to make the terminology and format consistent with that we have recommended in other chapters and the inclusion of reference to Table 5: Rural Residential at Camp Hill in Rule 22.3.2.9 as a consequential amendment arising from the Stream 13 Panel recommendation to include new provisions relating to Camp Hill (discussed below).

27 SECTION 22.4: RULES – ACTIVITIES

27.1 General

1109. One submission[993] supported this section, and a second sought that all buildings have an activity status[994]. A third submission[995] sought that the rules, particularly as they related to the north Lake Hayes area, be strengthened.

1110. Our understanding of the rules in this section is that all buildings do have an activity status. If they are not individually listed as an activity, then they fall to be considered under notified Rule 22.4.1 as a non-complying activity.

1111. The evidence received on Submission 674 was focussed on individual rules within this section. We will deal with that evidence in the context of the relevant rules.

27.2 Rule 22.4.1

1112. As notified, this rule classified as a non-complying activity "*Any other activity not listed in Tables 1-7*".

1113. Submissions on this rule sought:
   a. Change activity status to permitted[996]
   b. Change visitor accommodation (outside Visitor Accommodation Sub Zone) to restricted discretionary[997] and
   c. Remove non-complying status for buildings erected outside of building platforms[998].

1114. We heard no evidence in support of the submissions seeking to change the default status to permitted. We consider such an approach would undermine the management regime the Chapter establishes for the two zones and recommend those submissions be rejected.

1115. In terms of the change sought to the activity status of visitor accommodation (which was individually listed in notified Rule 22.4.11 as non-complying), Mr Barr recommended in his Section 42A Report that this be changed to full discretionary rather than restricted discretionary[999]. Mr Ferguson presented evidence for Mount Christina Limited supporting the restricted discretionary status. He suggested the matters of discretion proposed by the

993 Submission 21
994 Submission 243, opposed by FS1224
995 Submission 674, supported by FS1050, FS1082, FS1089, FS1146, opposed by FS1255
996 Submissions 669, 694 and 712
997 Submission 764
998 Submission 248
999 C Barr, Section 42A Report, paragraphs 9.3-9.4

submitter were very broad and that visitor accommodation was not an unexpected activity in the Rural Lifestyle Zone. He further suggested that if we considered the list of matters of discretion were inadequate we could add further matters.

1116. We note first that the purpose of these two zones is rural living. Any visitor accommodation in the zones needs to be subsidiary to that purpose. To this end, the objectives and policies we are recommending discourage visitor accommodation that is not compatible with the rural living activities, the amenity values and rural character of the area, or are in buildings of a scale or form not anticipated in the zones. We consider the list of matters proposed for discretion in the submission does not cover all the matters that could be relevant in any particular application. We agree with Mr Barr, for the reasons he gave, that a full discretionary activity consent, within the terms of the policy regime, is a more appropriate activity status. We discuss this further in the context of Rule 22.4.11.

1117. Building platforms are required in the Rural Lifestyle Zone to ensure the policies of this chapter are met. We consider Policies 22.2.1.1 and 22.2.1.4 as being particularly pertinent. We also note that where a building platform is not located on a property, notified Rule 22.4.3.3 provides for the identification of such a platform as a discretionary activity. As the erection of a dwelling on a building platform, meeting the relevant standards, is a permitted activity, the management regime is such that a non-complying activity consent is not required where it is proposed to erect a dwelling outside of a building platform, unless the applicant is proposing to do so on a site that already contains a defined building platform. In the latter circumstance we are satisfied that it is appropriate for the management regime to discourage buildings outside of consented building platforms. Such discouragement would be consistent with the objectives and policies for this chapter. We recommend that Submission 669 be rejected.

1118. We do, however, consider some minor amendments are required with this rule. It is stated as applying to all activities not listed in Tables 1 to 7. However, Tables 2 to 7 list standards, not activities. In addition, Tables 2 to 7 also list, in each case, an activity status that applies if a standard is not met. We consider the reference to Tables 2 to 7 is superfluous and potentially confusing, and should be deleted as a minor amendment under Clause 16(2). In addition, we consider this rule should be located near the end of Table 1 with other non-complying activities. We therefore recommend it be renumbered as 22.4.14.

27.3 Rule 22.4.2

1119. As notified, this rule provided for the construction and exterior alteration of buildings in the Rural Residential Zone as a permitted activity. The only submissions on this rule sought its retention[1000].

1120. We recommend the rule be adopted as notified, renumbered as 22.4.1.

27.4 Rule 22.4.3

1121. As notified, this rule read as follows:

[1000] Submissions 219, 229, 231, 232, 669, 694, 712, 763, 764, 767, 844

Rural Lifestyle Zone:	
22.4.3.1 The construction and exterior alteration of buildings located within a building platform approved by resource consent, or registered on the applicable computer freehold register.	P
22.4.3.2 The exterior alteration of buildings located outside of a building platform not exceeding 30% of the ground floor area of the existing building in any ten year period. Non-compliance with rule 22.4.3.2 is a restricted discretionary activity. Discretion is restricted to all of the following: a. External appearance b. Visibility from public places c. Landscape character d. Visual amenity.	P
22.4.3.3 The identification of a building platform for the purposes of a residential unit.	D

1122. Submissions sought the following:
   a. Support rule[1001];
   b. Agree with the permitted activity status for buildings but there should standards covering location, appearance, earthworks and landscaping[1002];
   c. Clarify the status of non-residential buildings[1003];
   d. Retain Rule 22.4.3.1[1004];
   e. Support Rule 22.4.3.2[1005];
   f. Make Rule 22.4.3.2 a discretionary activity[1006];
   g. Include "Nature conservation values" in the matters of discretion[1007];
   h. Delete "Visibility from public places" from the matters of discretion[1008];
   i. Retain Rule 22.4.3.3[1009];
   j. Oppose discretionary activity status of Rule 22.4.3.3[1010]; and
   k. Change activity status of Rule 22.4.3.3 to controlled[1011].

1001 Submission 231
1002 Submission 811, opposed by FS1224
1003 Submission 811, opposed by FS1224
1004 Submissions 384 and 761
1005 Submissions 350 and 384
1006 Submission 238, opposed by FS1107, FS1150, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1249, FS1255, FS1256, FS1258, FS1273, FS1325
1007 Submissions 339 and 706 (opposed by FS1015, FS1162)
1008 Submission 350
1009 Submission 761
1010 Submission 2248
1011 Submission 820, opposed by FS1034

1123. Mr Barr discussed Rule 22.4.3.2 in the Section 42A Report and clarified that it was intended to apply in situations where buildings had been erected prior to the building platform regime being introduced, and that it was applicable to existing buildings[1012].

1124. In terms of Rule 22.4.3.3, Mr Barr advised that the inclusion of the ability to obtain consent for a building platform as a land use consent was an improvement on the ODP situation, where only a subdivision consent was available[1013]. Mr Barr considered that the wide range of issues that could be relevant to the location of a building platform and any conditions that were imposed with it, meant that a discretionary activity status was appropriate, rather than controlled[1014]. Mr Barr did recommend a minor alteration to clarify that this rule enabled an alternative to the subdivision process, rather than additional to.

1125. Mr Brown supported the rule, but considered the matter of discretion "*visibility from public places*" should be deleted[1015]. He considered the visibility of a 30% expansion to a building, subject to meeting other development controls, would not have adverse effects on views from a public place. We note that this matter of discretion would only apply when the extension exceeded 30% of the ground floor area of the building, which, we consider, could give rise to adverse effects on views from public places.

1126. In his Reply Statement Mr Barr recommended further clarification to Rule 22.4.3.2 and Rule 22.4.3.3[1016].

1127. Before discussing the changes sought, some re-arrangement of this rule is necessary. Although it lists three sub-rules, it actually contains four. We consider the rule defining the activity status where Rule 22.4.3.2 is not complied with should be explicitly stated as a separate rule with its own activity status in the right-hand column. This would assist in avoiding the confusion as to when the activity became restricted discretionary.

1128. We agree with Mr Barr that where there is an existing building on a property that pre-dates the building platform regime, and there is no building platform consented for the property, it would be onerous to require a discretionary activity consent for alterations. We consider the regime proposed, where it is permitted where the extension is small, and restricted discretionary, is a reasonable approach. This is consistent with the restricted discretionary activity status of applications for consents for building platforms in the Rural Lifestyle Zone under recommended Rule 27.5.8.

1129. We received no evidence as to why "nature conservation values" should be included in the matters of discretion for the extension of an existing building in the Rural Lifestyle Zone, and have difficulty understanding how it would be relevant given the circumstances in which this particular consent process would be used. We recommend Submissions 339 and 706 be rejected.

1130. Given the objectives and policies seek to maintain the rural character of this zone, including its openness, we are satisfied that "visibility from public places" is a relevant matter of discretion, and recommend that part of Submission 350 be rejected.

1012 C Barr, Section 42A Report, paragraphs 12.1-12.4

1013 ibid, paragraphs 8.11-8.13

1014 ibid, paragraph 8.14

1015 J Brown, EiC, paragraphs 3.3-3.4

1016 C Barr, Reply Statement, Appendix 1

1131. We agree with Mr Barr that providing the option of obtaining a building platform via a land use consent is a benefit. We note that when read in conjunction with the density rules of the Rural Lifestyle Zone, Rule 22.4.3.3 would enable the identification of more than one building platform on a site, subject to compliance with the density limits. Given that possibility, we do not consider a controlled activity status would be appropriate as it would not allow refusal of consent in circumstances where density would potentially be breached. Without any evidence from submitters as to what could be appropriate matters of discretion if the status were changed to restricted discretionary, we recommend that it remain full discretionary as notified. We consider Mr Barr's recommended amendments to this rule make it more understandable.

1132. Finally, we consider the combination the rules relating to building platforms, building materials and colours, and the non-complying activity status of activities not listed covers the points raised by Mr Scaife. A building is to be either erected within a building platform, and be subject to the colour and material standard, or it is non-complying.. The approval of the building platform allows consideration of its location and whether conditions should be applied to it in respect of landscaping and earthworks.

1133. For the reasons set out above, we recommend Rule 22.4.3 be renumbered 22.4.2 and be worded as follows:

Rural Lifestyle Zone:		
22.4.2.1	The construction and exterior alteration of buildings located within a building platform approved by resource consent, or registered on the applicable computer freehold register.	P
22.4.2.2	Where there is not an approved building platform on the site, the exterior alteration of existing buildings located outside of a building platform not exceeding 30% of the ground floor area of the existing building in any ten year period.	P
22.4.2.3	Where there is not an approved building platform on the site, the exterior alteration of existing buildings located outside of a building platform that do not comply with Rule 22.4.2.2. Discretion is restricted to all of the following: a. External appearance. b. Visibility from public places. c. Landscape character. d. Visual amenity.	RD
22.4.2.4	The identification of a building platform not less than 70m^2 and not greater than 1000m^2 for the purposes of a residential unit except where identified by Rule 27.7.8.	D

27.5 Rule 22.4.5

1134. As notified, this rule provided for residential activity as a permitted activity. The only submissions[1017] on the rule supported its retention.

[1017] Submissions 229, 291, 763, 764 and 767

1135. Other than renumbering as Rule 22.4.3, we recommend this rule be adopted as notified.

27.6 Rule 22.4.6

1136. As notified, this rule provided for the activity of residential flat as a permitted activity. The only submissions[1018] on the rule supported its retention.

1137. We therefore recommend this rule be adopted as notified, other than renumbering as 22.4.4. However, we do note that this rule is inconsistent with the approach recommended to the Hearing Panel by the council officers in Stream 6..

27.7 Rules 22.4.7 and 22.4.8

1138. As notified, these rules provided for farming and home occupations (respectively) as permitted activities. No submissions were received on these rules.

1139. Other than renumbering as 22.4.5 and 22.4.6 respectively, we recommend these rules be adopted as notified.

27.8 Rule 22.4.9

1140. As notified this rule provided, as a controlled activity, for a home occupation involving retail sales limited to handicrafts or items grown or produced on site.

1141. One submission[1019] sought the retention of this rule, and one[1020] sought it be classified as a permitted activity.

1142. We heard no evidence on this rule, and it was not referred to by Mr Barr. Other than renumbering, we recommend it be adopted as notified.

27.9 Rule 22.4.10

1143. As notified, this rule provided for visitor accommodation within a Visitor Accommodation Sub-Zone as a controlled activity.

1144. This rule has been dealt with in Report 4B. The recommendation of the Commissioners who heard submissions on this rule is to delete the rule.

27.10 Rule 22.4.11

1145. As notified, this rule classified visitor accommodation outside of a visitor accommodation Sub-Zone as a non-complying activity.

1146. One submission [1021] supported this rule, the second submission sought that visitor accommodation be generally non-complying[1022]. Also relevant in considering this rule is Submission 497 which sought provision be made for visitor accommodation in the Rural Lifestyle Zone, and our discussion in Section 27.2 above concerning Rule 22.4.1.

1147. In discussing Rule 22.4.1 we traversed the issues relevant to this rule and concluded that visitor accommodation should be a discretionary activity. That conclusion, allied with our

---

1018 Submissions 219, 350, 761, 764 and 767

1019 Submission 716

1020 Submission 238, opposed by FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1249

1021 Submission 674, supported by FS1050, FS1082, FS1089, FS1146, opposed by FS1255

1022 Submission 236, opposed by FS1203

recommendation on Rule 22.4.10 above, leads us to recommend that Rule 22.4.11 be renumbered and read as follows:

Visitor accommodation, including the construction or use of buildings for visitor accommodation.	D

27.11 Rule 22.4.12

1148. As notified, this rule provided for community activities as a discretionary activity.

1149. One submission[1023] sought they be classified as controlled activities, one[1024] sought they be non-complying, and one[1025] sought they be either non-complying or prohibited.

1150. Mr Barr discussed this rule in the context of Submission 844 and concluded that no change should be made to the rule[1026]. Mr Vivian, in evidence in support of submission 674, agreed with Mr Barr that the term "community activity" covered a broad range of activities, but considered that the activities were fundamentally urban activities that would not be appropriate in a rural living area[1027].

1151. Community activity is defined as (recommended definition):

… the use of land and buildings for the primary purpose of health, welfare, care, safety, education, culture and/or spiritual well being. Excludes recreational activities. A community activity includes day care facilities, education activities, hospitals, doctors surgeries and other health professionals, churches, halls, libraries, community centres, police purposes, fire stations, courthouses, probation and detention centres, government and local government offices.

1152. We agree with Mr Vivian that these are essentially urban activities and we note Policy 4.2.1.3 which states:

Ensure that urban development is contained within the defined Urban Growth Boundaries, and that aside from urban development within existing rural settlements, urban development is avoided outside of those boundaries.

1153. We agree with Mr Barr that Policies 22.2.2.1 states that community activities could be appropriate where the location, scale and type is compatible with and enhances the rural and rural living activities of the zones. Policy 22.2.2.3 also seeks to discourage community activities that would diminish amenity values and the quality and character of the rural living environment.

1154. While we agree with Mr Barr that controlled activity status would be inappropriate, and not give effect to the policies of the PDP, we are not satisfied that discretionary activity provides the balance as he suggests. We note that Mr Barr did not consider the two submissions seeking non-complying activity status; nor did he respond to Mr Vivian's evidence in his reply.

1155. In our view, the policy regime of the PDP is opposed to community activities occurring in these zones except in limited circumstances. We consider that ensuring that policy direction is met

1023 Submission 844
1024 Submission 674, supported by FS1050, FS1082, FS1089, FS1146
1025 Submission 236, opposed by FS1203
1026 C Barr, Section 42A Report, paragraphs 9.7 to 9.111
1027 C Vivian, EiC, paragraphs 9.29 to 9.35

requires that applications for such activities be assessed against the thresholds of section 104D. Therefore, we conclude that the activity status be changed to non-complying. That means this rule can be deleted as the activity will fall within the catch-all Rule 22.4.13.

1156. For those reasons, we recommend that Rule 22.4.12 be deleted.

27.12 Rules 22.4.13 and 22.4.14

1157. As notified, Rule 22.4.13 provided for informal airports to be a discretionary activity, and Rule 22.4.14 provided for informal airports for emergency landings, rescues, fire-fighting and activities ancillary to farming as permitted activities.

1158. Two submissions[1028] sought that informal airports under Rule 22.4.13 be a prohibited activity, one[1029] sought that they be a non-complying activity, and one submission[1030] sought that strong assessment standards be applied under both rules.

1159. Mr Barr considered discretionary activity status under Rule 22.4.13 appropriate as informal airports could be acceptable depending upon the location, scale and intensity of the activity[1031]. Mr Vivian, in evidence presented on behalf of J and R Hadley, disagreed with Mr Barr's assessment in respect of the Rural Residential Zone. It was Mr Vivian's opinion that anticipated size of allotments in the Rural Residential Zone (4,000m^2) meant that informal airports would have a significant potential to affect character and amenity due to noise and privacy effects[1032].

1160. We note that in the Rural Zone informal airports are permitted subject to standards that require them to be located a minimum distance of 500 metres from any other zone or the notional boundary of any residential unit or building platform not located on the same site. As we have discussed earlier in this report when considering informal airports in the Rural Zone, this limitation combined with the low frequency of flights, is designed to ensure the noise impact of such airports was acceptable on adjacent sites. We would not expect a lesser standard to be applied in these zones.

1161. In our view, Mr Vivian was correct to point out the relatively small site sizes of sites in the Rural Residential Zone. We doubt the practicality of informal airports complying with setbacks similar to those applied in the Rural Zone in the Rural Residential Zone. We do not have the same concern with the Rural Lifestyle Zone. Consequently, we recommend that the discretionary activity for informal airports only apply to the Rural Lifestyle Zone.

1162. There was no evidence in relation to Rule 22.4.14. We agree that it is appropriate that the exceptional circumstances provided for in this rule be allowed as permitted activities. We do, however, consider the rule should be moved up the table to sit with other permitted activities making it Rule 22.4.8.

1163. We also consider that Rule 22.4.13 should exclude those informal airports permitted by Rule 22.4.8. Therefore, we recommend that Rule 22.4.13 be renumbered and reworded to read:

Informal airports in the Rural Lifestyle Zone, except as provided for by Rule 22.4.8.

1028 Submissions 243 (opposed by FS1224) and 811 (opposed by FS1150, FS1224, FS1325)

1029 Submission 126

1030 Submission 674, supported by FS1050, FS1082, FS1089, FS1146

1031 C Barr, Section 42A Report, paragraph 10.1

1032 C Vivian, EiC, paragraphs 9.36 to 9.39

27.13 Rule 22.4.15

1164. As notified, this rule made any building within a Building Restriction Area a non-complying activity.

1165. The sole submission[1033] on this rule sought that it be changed to prohibited. No evidence was presented by the submitter on this rule, and Mr Barr did not deal with in his Section 42A Report.

1166. With no evidence to justify changing this rule, we recommend the Council renumber it and otherwise retain it as notified.

27.14 Rule 22.4.16

1167. As notified, this rule stated that "Any other commercial or industrial activity" was a non-complying activity.

1168. Two submissions supported this rule[1034] and one sought that the activity status be changed from non-complying to discretionary[1035]. Mr Barr did not discuss this rule in his Section 42A Report and no evidence was presented on it.

1169. We do not think this rule is necessary. Rule 22.4.13 (notified as Rule 22.4.1) makes any activity not otherwise listed in this Table a non-complying activity. Thus, deleting the rule would have no substantive effect. We recommend that it be deleted as a minor change under Clause 16(2).

27.15 Rule 22.4.17

1170. As notified, this rule listed the following as prohibited activities:

Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, commercial fish or meat processing, or any activity requiring an Offensive Trade Licence under the Health Act 1956.

1171. The submissions on this rule sought:
   a. Provide for commercial secondary meat processing as a discretionary activity[1036]
   b. Delete the words "motor vehicle repair"[1037].

1172. Mr Barr considered these submissions in his Section 42A Report[1038] and accepted that each would be appropriate if satisfying the home occupation provisions or being ancillary to residential activities. He recommended the following wording be added:

Except commercial fish or meat processing where undertaken as part of a permitted home occupation in terms of Rule 22.5.7.

1173. Mr Vivian, presenting evidence in support of Submission 486, explained that his client's farm was partly zoned Rural, and partly Rural Lifestyle, and the portion where they normally repaired the farm vehicles was in the Rural Lifestyle Zone. Thus, while the activity was part of normal farming activities, it would be prohibited on part of the farm. Mr Vivian considered that motor

---

1033 Submission 243, opposed by FS1224

1034 Submissions 236 (opposed by FS1203) and 674 (supported by FS1050, FS1082, FS1089, FS1146)

1035 Submission 577

1036 Submission 127

1037 Submission 486

1038 C Barr, Section 42A Report, paragraphs 9.17 to 9.20

vehicle repair could be deleted from the rule as commercial motor vehicle repair would be a non-complying activity in any event.

1174. In his Reply Statement, after our questioning and further consideration, Mr Barr concluded that it should be clarified that activities that are undertaken as part of a farming or residential activity or home occupation would not fall within the prohibited activity status. He recommended that his earlier recommendation be replaced with:

Excluding activities undertaken as part of a Farming Activity, Residential Activity or a permitted Home Occupation.

1175. We agree with Mr Vivian and Mr Barr's Reply conclusions for the reasons they have given. However, we consider the rule can be better expressed. We recommend that Rule 22.4.17 be renumbered, remain a prohibited activity and be adopted with the following wording:

Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, commercial fish or meat processing, or any activity requiring an Offensive Trade Licence under the Health Act 1956, except where such activities are undertaken as part of a Farming Activity, Residential Activity or a permitted Home Occupation.

28 RULE 22.5 – STANDARDS

28.1 General

1176. Section 22.5 contained Tables 2 to 7 inclusive, which contained the standards that applied to the activities in Table 1. Submissions generally on the whole section sought:
   a. retain the provisions[1039];
   b. correct the misspelling of Wyuna[1040];
   c. correct a reference to Table 4 to Table 7[1041];
   d. change each non-complying classification to prohibited[1042];
   e. add standards on landscaping, location and earthworks for all permitted buildings[1043].

1177. Items (b) and (c) are minor corrections that we recommend be made.

1178. No evidence was presented on items (d) or (e). We would expect any submitter seeking the application of prohibited activity status to provide compelling evidence in support of such a position, including a thorough Section 32AA assessment. In the absence of such material we recommend that Submission 243 be rejected.

1179. While the threshold may not be so high for applying standards to permitted activities, we would expect some evidence as to why that was necessary in these zones. Again, in the absence of evidence, we recommend Submission 811 be rejected.

28.2 Rule 22.5.1

1180. This rule set material and colour standards for permitted buildings. As notified, it read:

1039 Submission 21
1040 Submission 383
1041 Submission 481
1042 Submission 243, opposed by FS1224
1043 Submission 811, opposed by FS1224

Building Materials and Colours All buildings, including any structure larger than 5m², new, relocated, altered, reclad or repainted, are subject to the following in order to ensure they are visually recessive within the surrounding landscape: Exterior colours of buildings: 22.5.1.1 All exterior surfaces shall be coloured in the range of black, browns, greens or greys; 22.5.1.2 Pre-painted steel, and all roofs shall have a reflectance value not greater than 20%; 22.5.2.3 Surface finishes shall have a reflectance value of not greater than 30%. Discretion is restricted to all of the following: • Whether the building would be visually prominent, especially in the context of the wider landscape, rural environment and as viewed from neighbouring properties • Whether the proposed colour is appropriate given the existence of established screening or in the case of alterations, if the proposed colour is already present on a long established building • The size and height of the building where the subject colours would be applied.	RD

1181. Submissions sought:

a. Consider concentrated versus diffused light reflection[1044];
b. Change the building threshold size to 10m²[1045];
c. Distinguish residential and non-residential buildings[1046];
d. Amend "Exterior colours of buildings:"[1047];
e. Change list of colours in 22.5.1.1 to be less restrictive[1048];
f. Exclude windows from 22.5.1.1[1049];
g. Limit 22.5.1.2 to roofs[1050];
h. Exempt locally sourced stone from 22.5.1.3[1051];
i. Include natural materials[1052];

1044 Submission 29, supported by FS1157
1045 Submissions 238 (opposed by FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248, FS1249) and 368 (supported by FS1157)
1046 Submission 243, opposed by FS1224
1047 Submissions 497, 515, 522, 523 (supported by FS1256, FS1292), 530, 532 (supported by FS1322), 537 (supported by FS1256, FS1286), 761, 763, 764
1048 Submissions 146 (supported by FS1157) and 368
1049 Submissions 443, 452
1050 Submissions 497, 515, 522, 523 (supported by FS1256, FS1292), 530, 532 (supported by FS1322), 537 (supported by FS1256, FS1286), 761, 763, 764
1051 Submissions 497, 515, 522, 523 (supported by FS1256, FS1292), 530, 532 (supported by FS1322), 537 (supported by FS1256, FS1286), 761, 763, 764
1052 Submissions 443, 452

j. Exclude interior surfaces[1053];
k. Exclude solar panels and other renewable energy building materials[1054];
l. Change the non-compliance from restricted discretionary to controlled[1055].

1182. In his Section 42A Report, Mr Barr only recommended minor changes to the standard to exclude soffits, windows and skylights and to include a means of assessing cladding that cannot be measured by way of light reflectance values. These were similar to changes he recommended to the similar rule in the Rural Zone (notified Rule 21.5.15). Mr Farrell supported Mr Barr's recommended amendments[1056].

1183. The only other evidence we received on this rule was from Mr Brown[1057] and Mr Ferguson[1058]. While Mr Ferguson suggested amendments to do with exterior finishes[1059], the body of his evidence did not expand on this. Mr Brown recommended the exclusion of windows from 22.5.1.1 and the addition of a note that the rules did not apply if natural materials were used. He noted that natural materials such as schist may have reflective values that cannot be readily quantified, and that such material should be able to be used without triggering a resource consent.

1184. Other than the matters discretion was restricted to for non-compliance, this rule as notified was essentially the same as notified Rule 21.5.15 with respect colour and exterior surface finishes. In Section 9.2 above we have dealt with Rule 21.5.15 where essentially the same issue were raised by submitters. In our view, the standards should be the same, even if the matters of discretion for non-compliance differ. No evidence suggested there should be no standard for exterior finishes in the Rural Residential and Rural Lifestyle Zones and applying them would be consistent with the objectives and policies concerning landscape values in and around these zones.

1185. Consequently, for those reasons, we recommend this rule read:

1053 Submissions 497, 515, 522, 523 (supported by FS1256, FS1292), 530, 532 (supported by FS1322), 537 (supported by FS1256, FS1286), 761, 763, 764

1054 Submissions 497, 515, 522, 523 (supported by FS1256, FS1292), 530, 532 (supported by FS1322), 537 (supported by FS1256, FS1286)

1055 Submission 844

1056 B Farrell, EiC, paragraph 148

10571057 In support of Submission 443 and 452

1058 In support of submissions 763 and 764

1059 C Ferguson, EiC, page 89

Building Materials and Colours All buildings, including any structure larger than 5m², new, relocated, altered, reclad or repainted, are subject to the following in order to ensure they are visually recessive within the surrounding landscape. All exterior surfaces* must be coloured in the range of browns, greens or greys, including; 22.5.1.1 Pre-painted steel and all roofs must have a light reflectance value not greater than 20%; and, 22.5.1.2 All other surface** finishes, except for schist, must have a light reflectance value of not greater than 30%. * Excludes soffits, windows and skylights (but not glass balustrades). ** Includes cladding and built landscaping that cannot be measured by way of light reflectance value but is deemed by the Council to be suitably recessive and have the same effect as achieving a light reflectance value of 30%.	RD Discretion is restricted to: a. Whether the building would be visually prominent, especially in the context of the wider landscape, rural environment and as viewed from neighbouring properties b. Whether the proposed colour is appropriate given the existence of established screening or in the case of alterations, if the proposed colour is already present on a long established building c. The size and height of the building where the subject colours would be applied.

28.3 Rule 22.5.2

1186. As notified, this rule set the maximum ground floor area of any building in the Rural Residential Zone at 15% of the net site area. Non-compliance required consent as a restricted discretionary activity.

1187. Submissions on this rule sought:
   a. Retain[1060];
   b. Delete and apply a building platform requirement[1061];
   c. Change to apply limit to all buildings on site[1062];
   d. Add fourth matter of discretion concerning visual prominence[1063];
   e. Change non-compliance to non-complying or prohibited[1064].

1188. Mr Barr did not discuss this rule or recommend any amendments in either his Section 42A Report or his Reply Statement. The only evidence we received on this rule was from Mr Ferguson[1065]. He considered this rule to be worded confusingly (consistent with Submission 243) and recommended it be amended so that the limit applied to the ground floor area of all buildings on a site, rather than any.

1060 Submission 764
1061 Submission 243, opposed by FS1224
1062 Submission 243, opposed by FS1224
1063 Submission 243, opposed by FS1224
1064 Submission 811, opposed by FS1150, FS1224, FS1325
1065 C Ferguson, EiC, at page 60

1189. We agree with Mr Ferguson and Submission 243 that the wording is potentially ambiguous, and accept that the rule should refer to the ground floor area of all buildings on a site. We recommend slightly different wording from that proposed by Mr Ferguson. Other than that, we do not consider any other amendments to this rule are required.

1190. We recommend that this rule read:

Building Coverage (Rural Residential Zone only) The total ground floor area of all buildings shall not exceed 15% of the net site area.	RD Discretion is restricted to: a. The effect on open space, character and amenity b. Effects on views and outlook from neighbouring properties c. Ability of stormwater and effluent to be disposed of on-site.

28.4 Rule 22.5.3

1191. As notified, this read:

Building Size The maximum size of any building shall be 500m². Discretion is restricted to all of the following: a. Visual dominance b. The effect on open space, rural character and amenity c. Effects on views and outlook from neighbouring properties d. Building design and reasons for the size.	RD

1192. Submissions sought:
- a. Change maximum to 400m²[1066];
- b. Change maximum to be consistent with Rule 22.5.2[1067];
- c. Either delete or change non-compliance to controlled activity[1068];
- d. Delete matter of discretion "Building design and reason for the size"[1069];
- e. Clarify whether size is gross or ground floor area[1070];
- f. Delete rule[1071].

1193. In his Section 42A Report, Mr Barr explained that the purpose of the rule is to provide the ability to assess and control buildings where their bulk has the ability to have adverse effects on amenity, and in some cases, potential adverse effects on the landscape values in the wider rural areas. He pointed out that in the ODP all buildings are a controlled activity and the intention via making buildings permitted but subject to standards such as this is to reduce the consenting

1066 Submission 367
1067 Submission 166
1068 Submission 444, supported by FS1157
1069 Submissions 243 (opposed by FS1224) and 444 (supported by FS1157)
1070 Submission 811, opposed by FS1224
1071 Submissions 368 (supported by FS1157), 443, 452, 497, 513, 515, 522 (supported by FS1292), 523 (supported by FS1256), 530, 532 (supported by FS1322, opposed by FS1071), 534 (supported by FS1157, FS1322), 535 (supported by FS1157, FS1322), 537 (supported by FS1256, FS1292), 764 and 767

requirements. While he conceded the 500m^2 was arbitrary, he noted that Dr Read considered 300m^2 would be more appropriate.

1194. Mr Barr recommended the rule be amended to clarify that it applied to the ground floor area of each individual building. He also recommended the second matter of discretion be amended to refer to rural living character, rather than rural character, and that "*and reasons for the size*" be deleted from the fourth matter[1072].

1195. The only evidence that we received on behalf of submitters which opposed the rule was from Mr Farrell. He considered the rule to be onerous, unnecessary and not satisfactorily justified. He also considered it would create unnecessary costs and consenting risks. It was his view that buildings between 500m^2 and 1,000m^2 within a building platform should be a controlled activity[1073]. Ms Pflüger supported the 500m^2 limit[1074].

1196. When looked at in the context of the overall zone provisions we consider this rule to be reasonable. What it does, in combination with Rule 22.5.1, is allow individual buildings not exceeding 500m^2 in ground floor area as a permitted activity in each zone. As it applies to individual buildings, it is not in conflict with the building coverage rule in the Rural Residential Zone. It also allows for multiple buildings as a permitted activity within a building platform of up to 1,000m^2 in the Rural Lifestyle Zone. When looked at in that context, we consider Mr Farrell has overstated the potential consenting costs and risks. While, as Mr Barr said, the limit is arbitrary, we consider it is set at a level that would be breached infrequently, rather than regularly, which would likely be the case with a lower limit. We heard no evidence to support the contention that all effects could be dealt with by conditions. Thus, we also consider the restricted discretionary status for non-compliance to be appropriate.

1197. For those reasons, we recommend Rule 22.5.3 read as follows:

Building Size The maximum ground floor area of any individual building must not exceed 500m².	RD Discretion is restricted to: a. Visual dominance b. The effect on open space, rural living character and amenity c. Effects on views and outlook from neighbouring properties. d. Building design.

28.5 Rule 22.5.4

1198. As notified, this read:

1072 C Barr, Section 42A Report, Appendix 1

1073 B Farrell, EiC, page 35

1074 Y Pflüger, EiC, paragraphs 7.14 to 17.16

Setback from internal boundaries The minimum setback of any building from internal boundaries shall be: 22.5.4.1 Rural Residential zone - 6m 22.5.4.2 Rural Lifestyle zone - 10m 22.5.4.3 Rural Residential zone at the north of Lake Hayes - 15m Discretion is restricted to all of the following: a. Visual dominance b. The effect on open space, rural character and amenity c. Effects on privacy, views and outlook from neighbouring properties d. Reverse sensitivity effects on adjacent properties e. Landscaping.	RD

1199. The only submissions on this rule supported Rule 22.5.4.3[1075] or sought that non-compliance was classified non-complying or prohibited[1076].

1200. Mr Barr did not comment on this rule in his Section 42A Report, but recommended that the second matter of discretion refer to rural living character, rather than rural character. No evidence was presented on the rule.

1201. We agree with Mr Barr that as a matter of clarification it is rural living character that is of concern in these zones and it is appropriate for the matters of discretion refer to them.

1202. We note that the Stage 2 Variations propose deleting Rule 22.5.4.3 so make no recommendation in respect of that rule, and show it as light grey in our recommended version of the Chapter to reflect that fact.

1203. Otherwise, apart from reformatting to have the matters of discretion as an alphabetic list in the right-hand column and making the amendment recommended by Mr Barr, we recommend the rule be adopted as notified.

28.6 Rule 22.5.5

1204. As notified this read:

Setback from roads The minimum setback of any building from a road boundary shall be 10m, except in the Rural Residential zone at the north of Lake Hayes, the minimum setback from Speargrass Flat Road shall be 15m.	NC

1205. Submissions on this rule sought:
   a. In Rural Lifestyle Zone setback should be 15m[1077];
   b. In Rural Lifestyle Zone setback should be 30m[1078];
   c. Setback from State Highways should be 20m[1079].

1206. Mr Barr reviewed these submissions in his Section 42A Report and concluded that the setback from roads in the Rural Lifestyle Zone should be set at 20m, and in the Rural Residential zone,

1075 Submission 219
1076 Submission 811, opposed by FS1150, FS1224, FS1325
1077 Submission 350, opposed by FS1150, FS1325
1078 Submission 367, opposed by FS1150, FS1325
1079 Submission 716

it be increased to 15m where the site fronted a State Highway. Mr Barr also recommended reformatting the rule.

1207. No evidence was presented in support of the submissions.

1208. We agree with Mr Barr's reasoning and recommend the rule read as follows:

Setback from roads The minimum setback of any building from a road boundary shall be: 22.5.5.1 Rural Lifestyle Zone: 20m 22.5.5.2 Rural Residential Zone: 10m 22.5.5.3 Rural Residential Zone where the road is a State Highway: 15m	NC

1209. We note that the effect of the Stage 2 Variations would be to make Mr Barr's recommended Rule 22.5.5.4 (which related to the setback from Speargrass Flat Road) redundant, although the variations do not specifically propose its deletion. We recommend it be deleted under Clause 16(2).

28.7 Rule 22.5.6

1210. As notified, this rule read:

Setback of buildings from water bodies The minimum setback of any building from the bed of a river, lake or wetland shall be 20m. Discretion is restricted to all of the following: a. Any indigenous biodiversity values b. Visual amenity values c. Landscape character d. Open space e. Whether the waterbody is subject to flooding or natural hazards and any mitigation to manage the location of the building f. Except this rule does not apply to the visitor accommodation sub zones.	RD

1211. Two submissions supported this rule [1080], and two sought the exemption for visitor accommodation subzones be deleted[1081].

1212. There was no discussion of this rule by Mr Barr, nor any evidence received in support of the submissions.

1213. Given the recommendation of Commissioners Nugent and Coombs that the Visitor Accommodation Sub-Zone be deleted, a consequential amendment is to accept Submissions 243 and 350. Apart from that change and reformatting of the matters of discretion, we recommend the rule be adopted as notified.

1080 Submissions 339 and 706 (opposed by FS1162)

1081 Submissions 243 (opposed by FS1224) and 350

28.8 Rule 22.5.7

1214. As notified this read:

Home Occupation Home occupation activities shall comply with the following: 22.5.7.1 No more than one full time equivalent person from outside the household shall be employed in the home occupation activity. 22.5.7.2 The maximum number of vehicle trips* shall be: a. Heavy Vehicles: 2 per week b. other vehicles: 10 per day 22.5.7.3 Maximum net floor area: a. Rural Residential Zone: 60m² b. Rural Lifestyle Zone: 150m² 22.5.7.4 Activities and the storage of materials shall be indoors *A vehicle trip is two movements, generally to and from a site.	D

1215. The only submission on this rule sought that the maximum floor areas be changed to 80m^2 in the Rural Residential Zone and 180m^2 in the Rural Lifestyle Zone.

1216. We received no evidence supporting an increase in the floor area limits. While we have doubts that Rule 22.5.7.3 is able to be monitored or enforced, in the absence of evidence we are not prepared to recommend any changes. We recommend the rule be adopted as notified subject to minor word changes to make the rule clearer under Clause 16(2).

28.9 Rule 22.5.8

1217. As notified, this rule set the maximum height limit in both zones at 8m. Non-compliance required consent as a non-complying activity.

1218. The sole submission[1082] on this rule sought the limit be dropped to 7m.

1219. While Dr Read commented [1083] on the development potential provided by this rule in combination with Rule 22.5.3 (Building Size), she did not assess Submission 367. Ms Pflüger provided the only evidence on this submission. While she concluded that an 8m height limit was reasonably permissive, she considered it did allow for a number of creative solutions and the ability to follow landform variation on undulating sites[1084].

1220. We accept Ms Pflüger's evidence and recommend this rule be adopted as notified.

28.10 Rule 22.5.9

1221. This rule provided standards for exterior light. No submissions were received on it. Subject to minor grammatical changes under Clause 16(2), we recommend this rule be adopted as notified.

28.11 Rule 22.5.10

1222. As notified this rule limited outdoor, overnight parking of heavy vehicles to 1 per site.

1082 Submission 367, opposed by FS1150, FS1325

1083 Dr M Read, EiC, paragraphs 5.7 to 5.14

1084 Y Pflüger, EiC, paragraphs 7.17 & 7.18

1223. The sole submission on this rule sought that it be amended to exclude private heavy vehicles parked close to the main buildings on the site[1085].

1224. We heard no evidence on this rule. In the absence of evidence supporting the change sought, we recommend it be adopted as notified.

28.12 Rule 22.5.11

1225. As notified, this rule set a residential density limit of one residential unit per 4,000m^2 of net site area in the Rural Residential Zone.

1226. Submissions on this rule sought:
   a. Retain[1086]
   b. The standard should explicitly give effect to Policy 22.2.1.3[1087]
   c. Retain ODP North Lake Hayes averaging rules[1088]
   d. Make non-compliance a prohibited activity[1089].

1227. Mr Barr considered the rules affecting the area north of Lake Hayes in his Section 42A Report and recommended the rule be amended to incorporate the flexibility allowed for in the ODP[1090].

1228. No evidence was presented in support of the submissions.

1229. Since the hearing, the Council has notified the Stage 2 Variations, among other things rezoning the area north of Lake Hayes as Wakatipu Basin Lifestyle Precinct. Our understanding of Clause 16B(2) of the First Schedule is that Mr Clarke's submission has become a submission on the variation. We therefore do not make a recommendation on that submission.

1230. In the absence of evidence in respect of the other submissions, we recommend the rule be adopted as notified.

28.13 Rule 22.5.12

1231. See Sections 7.7 and 22.3 of this report.

28.14 New Standard in Table 2

1232. The NZFS lodged a submission[1091] seeking inclusion of a standard requiring compliance with the NZFS Code of Practice SNZ PAS 4509:2003 in relation to water supply and access. We were not able to find any further submissions opposing the relief sought.

1233. Mr Barr discussed this submission in his Section 42A Report and recommended an additional standard be included to apply in the Rural Residential Zone[1092].

1234. We have discussed this submission above in relation to Chapter 21.. For the same reasoning we expressed there, we agree that a standard be included in Chapter 22, but additionally consider

---

1085 Submission 126
1086 Submissions 219 and 229
1087 Submission 444, supported by FS1082, FS1089
1088 Submission 26
1089 Submission 811, opposed by FS1224
1090 C Barr, Section 42A Report, paragraphs 8.17 – 8.19
1091 Submission 438
1092 C Barr, Section 42A Report, Section 16

it should apply to the Rural Lifestyle Zone. Accordingly, we recommend a new Rule 22.5.13 be inserted that reads:

Fire Fighting water and access New buildings where there is no reticulated water supply or it is not sufficient for fire-fighting water supply must provide the following provision for firefighting: 22.5.13.1 A water supply of 20,000 litres and any necessary couplings. 22.5.13.2 A hardstand area adjacent to the firefighting water supply capable of supporting fire service vehicles. 22.5.13.3 Firefighting water connection point within 6m of the hardstand, and 90m of the dwelling. 22.5.13.4 Access from the property boundary to the firefighting water connection capable of accommodating and supporting fire service vehicles.	RD Discretion is restricted to: a. The extent to which SNZ PAS 4509: 2008 can be met including the adequacy of the water supply b. The accessibility of the firefighting water connection point for fire service vehicles c. Whether and the extent to which the building is assessed as a low fire risk.

29 TABLE 3: RURAL LIFESTYLE DEFERRED AND BUFFER ZONES

1235. As notified this table contained Rules 22.5.14 to 22.5.18 inclusive setting particular standards in the Deferred Rural Lifestyle Zone and the Deferred Rural Lifestyle (Buffer) Zone.

1236. No submissions were received on these rules.

1237. On 23 November 2017 the Council notified the Stage 2 Variations which propose deleting this Table. We therefore make no recommendation on it.

30 TABLE 4: RURAL RESIDENTIAL FOREST HILL

1238. This table contained two rules (22.5.19 and 22.5.20) setting standards specifically for the Rural Residential Zone at Forest Hill. One submission[1093] was lodged on Rule 22.5.20 seeking that non-compliance be a prohibited activity.

1239. We heard no evidence in support of this submission. In the absence of supporting evidence we do not consider it appropriate to impose such a rigid control.. We recommend that Rules 22.5.19 and 22.5.20 be adopted as notified.

31 TABLE 5: RURAL RESIDENTIAL BOB'S COVE AND SUB-ZONE

1240. As notified, this contained Rules 22.5.21 to 22.5.32 inclusive setting specific standards for the Rural Residential Zone at Bob's Cove and the Bob's Cove Rural Residential Sub-Zone.

[1093] Submission 811, opposed by FS1224

1241. The Stream 13 Panel has not recommended the deletion of the Bob's Cove Rural Residential Sub-Zone or the specific provisions relating to the Rural Residential Zone at Bob's Cove. Thus, we can consider the submissions on this table.

1242. The only submissions on this table for our consideration were:
   a. Delete the averaging in Rule 22.5.24[1094]; and
   b. Delete Rule 22.5.25.1[1095].

1243. Appendix 2 to the Section 42A Report contained the following comment with regard to Submission 166:

   These rules are well established and the removal of them could have adverse effects on landscape values and rural living amenity.

1244. We consider Mr McLeod may have a point that averaging density over entire zone, as Rule 22.5.24 does, encourages a "first in first served" approach to development, with the potential that property owners developing later may find their develop rights already used.

1245. Without adequate evidence we are not prepared to recommend the rule be changed, but we recommend the Council review the rule and consider its appropriateness today in the light of the development that has occurred in the Bob's Cove area.

1246. We heard no evidence in respect of Rule 22.5.25.1. We recommend Submission 146 be rejected.

1247. Subject to reformatting and the correction of an incorrect reference to another rule, we recommend this table be adopted as notified. We have renumbered it Table 4 in anticipation of the deletion of the notified Table 4.

32 TABLE 6: FERRY HILL RURAL RESIDENTIAL SUB-ZONE

1248. This Table provided specific standards to apply to the Ferry Hill Rural Residential Sub-Zone. No submissions were received on any of the rules within the Table.

1249. On 23 November 2017 the Council notified the Stage 2 Variations which propose deleting this Table. We therefore make no recommendation on it.

33 TABLE 5: RURAL RESIDENTIAL CAMP HILL

1250. The Stream 13 Panel, after hearing submissions relating to the application of the Rural Residential zone at Camp Hill, has recommended to additional specific standards to apply to that location. These are:
   a. Setting a minimum setback of 20m from the zone boundary or the top of the escarpment where it is located within the zone boundary;
   b. Limiting the building height to 5.5m;
   c. Setting the maximum number of residential units at 36.

1251. Non-compliance with any of these standards would require consent as a non-complying activity.

1094 Submission 166

1095 Submission 146

1252. We have included this table as Table 5 in anticipation of the deletion of notified Table 4 by the Stage 2 Variations.

34 TABLE 7: WYUNA STATION RURAL LIFESTYLE ZONE

1253. As notified, this Table contained a single rule (Rule 22.5.37) limiting the identification of building platforms or construction of dwellings within the Wyuna Station Rural Lifestyle Zone. It also contained two typographical errors: it was called Table 4 and referred to Wynuna rather than Wyuna.

1254. No submissions were received on this Table. Subject to amending the policy number references to Chapter 27, we recommend this Table be adopted as notified subject to correction of the typographical errors under Clause 16(2). We have renumbered it Table 6 in anticipation of the deletion of the notified Table 6 by the Stage 2 Variations.

35 RULE 22.6 – NON-NOTIFICATION OF APPLICATIONS

1255. As notified, this rule stated:

> *Any application for resource consent for the following matters shall not require the written consent of other persons and shall not be notified or limited-notified:*
>
> *22.6.1 Controlled activity Home occupation (Rule 22.4.9).*
>
> *22.6.2 Controlled activity Visitor Accommodation within a Visitor Accommodation subzone (Rule 22.4.10).*

1256. As Commissioners Nugent and Coombs have recommended that Rule 22.4.10 be deleted, we recommend Rule 22.6.2 be deleted as a consequential amendment.

1257. The only submissions relating to the remainder of the rule sought:
a. Retain[1096]
b. Add an exception to Rule 22.6.1 where the activity had access from a State Highway[1097]
c. Add new rules for community activities as controlled activities[1098].

1258. As we have recommended above that Submission 844 seeking that community activities be a controlled activity be rejected, we recommend this submission on this rule be rejected also.

1259. In the Section 42A Report Mr Barr agreed that NZTA's submission was valid and recommended it be accepted[1099]. We agree with Mr Barr's reasons and recommend the rule be appropriately amended.

1260. We note that two minor amendments under Clause 16(2) of the First Schedule are also required. First, Rule 22.6 talks of the "*written consent of other persons*". It is only the Council that provides consent. The term used in the Act is "*approval*" and we recommend that word be used in this rule. The second amendment is the rule number referred to in 22.6.1. That has changed to 22.4.7 and we recommend the text be amended to reflect that.

1096 Submissions 21 and 197
1097 Submission 719
1098 Submission 844
1099 C Barr, Section 42A Report, paragraph 14.3

36 SUMMARY OF CONCLUSIONS ON RULES

1261. We have set out in full in Appendix 2 the rules we recommend the Council adopt. For all the reasons set out above, we are satisfied that these rules are the most effective and efficient means of implementing the policies so as to achieve the objectives of Chapter 22, and those in the Strategic Directions chapters. Where we have recommended rules not be included, that is because, as our reasons above show, we do not consider them to be efficient or effective.

37 22.7 – ASSESSMENT MATTERS

1262. As notified, this section contained assessment matters related to natural hazards in the Makarora Rural Lifestyle Zone (Section 22.7.1) and the Rural Residential Ferry Hill Sub-Zone Concept Development Plan Section 22.7.2).

1263. We have recommended the deletion of Section 22.7.1 in Section 22.4 above. It follows that the assessment criteria should likewise be deleted.

1264. As we noted above, the Stage 2 Variations propose the deletion of the Rural Residential Ferry Hill Sub-Zone. This includes the deletion of the plan in Section 22.7.2. As any submissions on that section are deemed to be submissions on the variation, we make no recommendations on this section[1100].

1265. Two submissions sought additional assessment criteria be included.. Submission 444[1101] sought that assessment criteria be included for assessing community activities. As we are recommending that community activities be a non-complying activity, there is no need for such assessment criteria.. We recommend Submission 444 be rejected.

1266. Submission 674[1102] sought that the operative assessment criteria be included, and that strong assessment matters be included so that rural character and amenity values of Rural Residential Zone are maintained.

1267. In his Section 42A Report Mr Barr[1103] opined that assessment matters were unnecessary in the PDP as the objectives and policies in Chapters 3, 4, 5, 6 and 22 covered the matters the Hadleys' submission related to. He considered the policy framework on its own provided appropriate guidance as to the likely nature and scale of the adverse effects of activities.

1268. Mr Vivian, giving evidence for the Hadleys, suggested a set of assessment matters to apply only to the Rural Residential zone at the north of Lake Hayes, and his evidence set out his opinion as to why the various matters should be included. As the Stage 2 Variations propose the rezoning of this land at the north end of Lake Hayes, this evidence has been overtaken by the variations and we make no recommendation on the submission.

1100 The only submission was Submission 21 which supported Section 22.7

1101 Supported by FS1082

1102 Supported by FS1050, FS1082, FS1089, FS1146, opposed by FS1255

1103 Section 15

27 SUBDIVISION & DEVELOPMENT

QUEENSTOWN LAKES DISTRICT COUNCIL

27.1 Purpose

Subdivision and the resultant development enables the creation of new housing and land use opportunities, and is a key driver of the District's economy. The council will support subdivision that is well designed, is located in the appropriate locations anticipated by the District Plan with the appropriate capacity for servicing and integrated transportation.

All subdivision requires resource consent unless specified as a permitted activity. It is recognised that subdivisions will have a variable nature and scale with different issues to address. Good subdivision design, servicing and the appropriate management of natural hazards are underpinned by a shared objective to create healthy, attractive and safe places.

Good subdivision can help to create neighbourhoods and places that people want to live or work within, and should also result in more environmentally responsive development that reduces car use, encourages walking and cycling, and maximises access to sunlight.

Good subdivision design will be encouraged by the use of the QLDC Subdivision Design Guidelines 2015. The QLDC Subdivision Design Guidelines includes subdivision and urban design principles and outcomes that give effect to the objectives and policies of the Subdivision and Strategic Directions Chapters, in both designing and assessing subdivision proposals in urban areas. Proposals at odds with this document are not likely to be consistent with the policies of the Subdivision and Strategic Directions chapters, and therefore, may not achieve the purpose of the Act. Some aspects of the Subdivision Design Guidelines may be relevant to rural subdivisions.

The QLDC Land Development and Subdivision Code of Practice provides assistance in the design of subdivision and development infrastructure in the District and should also be considered by subdivision applicants.

The Council uses its Development Contributions Policy set out in its 10 Year Plan to fix the contributions payable by subdividers for infrastructure upgrades. That policy operates in parallel with the provisions of this chapter and should also be referred to by subdivision consent applicants.

The subdivision chapter is the primary method to ensure that the District's neighbourhoods are quality environments that take into account the character of local places and communities.

27.2 Objectives and Policies - District Wide

27.2.1 Objective - Subdivision that will enable quality environments to ensure the District is a desirable place to live, visit, work and play.

Policies

27.2.1.1 Require subdivision infrastructure to be constructed and designed so that it is fit for purpose, while recognising opportunities for innovative design.

27.2.1.2 Enable urban subdivision that is consistent with the QLDC Subdivision Design Guidelines 2015, recognising that good subdivision design responds to the neighbourhood context and the opportunities and constraints of the application site.

27.2.1.3 Require that allotments are a suitable size and shape, and are able to be serviced and developed for the anticipated land use under the applicable zone provisions.

27.2.1.4 Discourage non-compliance with minimum allotment sizes. However, where minimum allotment sizes are not achieved in urban areas, consideration will be given to whether any adverse effects are mitigated or compensated by providing:

a. desirable urban design outcomes;

b. greater efficiency in the development and use of the land resource;

c. affordable or community housing.

27.2.1.5 Recognise that there is an expectation by future landowners that the key effects of and resources required by anticipated land uses will have been resolved through the subdivision approval process.

27.2.1.6 Ensure the requirements of other relevant agencies are fully integrated into the subdivision development process.

27.2.1.7 Recognise there will be certain subdivision activities, such as boundary adjustments, that will not require the provision of services.

27.2.2 Objective - Subdivision design achieves benefits for the subdivider, future residents and the community.

Policies

27.2.2.1 Ensure subdivision design provides a high level of amenity for future residents by aligning roads and allotments to maximise sunlight access.

27.2.2.2 Ensure subdivision design maximises the opportunity for buildings in urban areas to front the road.

27.2.2.3 Locate open spaces and reserves in appropriate locations having regard to topography, accessibility, use and ease of maintenance, while ensuring these areas are a practicable size for their intended use.

27.2.2.4 Urban subdivision shall seek to provide for good and integrated connections and accessibility to:

a. existing and planned areas of employment;

b. community facilities;

c. services;

d. trails;

e. public transport; and

f. existing and planned adjoining neighbourhoods, both within and adjoining the subdivision area.

27.2.2.5 Urban subdivision design will integrate neighbourhoods by creating and utilising connections that are easy and safe to use for pedestrians and cyclists and that reduce vehicle dependence within the subdivision.

27.2.2.6 Encourage innovative subdivision design that responds to the local context, climate, landforms and opportunities for views or shelter.

27.2.2.7 Promote informal surveillance for safety in urban areas through overlooking of open spaces and transport corridors from adjacent sites and dwellings and by effective lighting.

27.2.2.8 Manage subdivision within the National Grid Corridor or near to electricity distribution lines to facilitate good amenity and urban design outcomes, while minimising potential adverse effects (including reverse sensitivity effects) on the National Grid and avoiding, remedying or mitigating potential adverse effects (including reverse sensitivity effects) on electricity distribution lines.

27.2.3 Objective - The potential of small scale and infill subdivision in urban areas is recognised and provided for while acknowledging their design limitations.

Policies

27.2.3.1 Accept that small scale subdivision in urban areas, (for example subdivision involving the creation of fewer than four allotments), and infill subdivision where the subdivision involves established buildings, might have limited opportunities to give effect to policies 27.2.2.4, 27.2.2.5 and 27.2.2.7.

27.2.3.2 While acknowledging potential limitations, encourage small scale and infill subdivision in urban areas to:

a. ensure lots are shaped and sized to allow adequate sunlight to living and outdoor spaces, and provide adequate on-site amenity and privacy;

b. where possible, locate lots so that they over-look and front road and open spaces;

c. avoid the creation of multiple rear sites, except where avoidance is not practicable;

d. where buildings are constructed with the intent of a future subdivision, encourage site and development design to maintain, create and enhance positive visual coherence of the development with the surrounding neighbourhood;

e. identify and create opportunities for connections to services and facilities in the neighbourhood.

27.2.4 Objective - Natural features, indigenous biodiversity and heritage values are identified, incorporated and enhanced within subdivision design.

Policies

27.2.4.1 Incorporate existing and planned waterways and vegetation into the design of subdivision, transport corridors and open spaces where that will maintain or enhance biodiversity, riparian and amenity values.

27.2.4.2 Ensure that subdivision and changes to the use of land that result from subdivision do not reduce the values of heritage features and other protected items scheduled or identified in the District Plan.

27.2.4.3 Encourage subdivision design to protect and incorporate archaeological sites or cultural features, recognising these features can contribute to and create a sense of place. Where applicable, have regard to Maori culture and traditions in relation to ancestral lands, water, sites, wāhi tapu and other taonga.

27.2.4.4 Encourage initiatives to protect and enhance landscape, vegetation and indigenous biodiversity by having regard to:

a. whether any landscape features or vegetation are of a sufficient value that they should be retained and the proposed means of protection;

b. where a reserve is to be set aside to provide protection to vegetation and landscape features, whether the value of the land so reserved should be off-set against the development contribution to be paid for open space and recreation purposes.

27.2.5 Objective - Infrastructure and services are provided to new subdivisions and developments.

Transport, Access and Roads

Policies

27.2.5.1 Integrate subdivision roading with the existing road networks in a safe and efficient manner that reflects expected traffic levels and the provision for safe and convenient walking and cycling.

For the purposes of this policy, reference to 'expected traffic levels' refers to those traffic levels anticipated as a result of the zoning of the area in the District Plan.

27.2.5.2 Ensure safe and efficient pedestrian, cycle and vehicular access is provided to all lots created by subdivision and to all developments.

27.2.5.3 Provide linkages to public transport networks, and to trail, walking and cycling networks, where useful linkages can be developed.

27.2.5.4 Ensure the physical and visual effects of subdivision and roading are minimised by utilising existing topographical features.

27.2.5.5 Ensure appropriate design and amenity associated with roading, vehicle access ways, trails and trail connections, walkways and cycle ways are provided for within subdivisions by having regard to:

a. the location, alignment, gradients and pattern of roading, vehicle parking, service lanes, access to lots, trails, walkways and cycle ways, and their safety and efficiency;

b. the number, location, provision and gradients of access ways and crossings from roads to lots for vehicles, cycles and pedestrians, and their safety and efficiency;

c. the standard of construction and formation of roads, private access ways, vehicle crossings, service lanes, walkways, cycle ways and trails;

d. the provision and vesting of corner splays or rounding at road intersections;

e. the provision for and standard of street lighting, having particular regard to siting and location, the provision for public safety and the avoidance of upward light spill adversely affecting views of the night sky;

f. the provision of appropriate tree planting within roads;

g. any requirements for widening, formation or upgrading of existing roads;

h. any provisions relating to access for future subdivision on adjoining land;

i. the provision and location of public transport routes and bus shelters.

Water supply, stormwater, wastewater

27.2.5.6 All new lots shall be provided with connections to a reticulated water supply, stormwater disposal and/or sewage treatment and disposal system, where such systems are available or should be provided for.

Water

27.2.5.7 Ensure water supplies are of a sufficient capacity, including fire fighting requirements, and of a potable standard, for the anticipated land uses on each lot or development.

27.2.5.8 Encourage the efficient and sustainable use of potable water by acknowledging that the Council's reticulated potable water supply may be restricted to provide primarily for households' living and sanitation needs and that water supply for activities such as irrigation and gardening may be expected to be obtained from other sources.

27.2.5.9 Encourage initiatives to reduce water demand and water use, such as roof rain water capture and use and greywater recycling.

27.2.5.10 Ensure appropriate water supply, design and installation by having regard to:

a. the availability, quantity, quality and security of the supply of water to the lots being created;

b. water supplies for fire fighting purposes;

c. the standard of water supply systems installed in subdivisions, and the adequacy of existing supply systems outside the subdivision;

d. any initiatives proposed to reduce water demand and water use.

Stormwater

27.2.5.11 Ensure appropriate stormwater design and management by having regard to:

a. any viable alternative designs for stormwater management that minimise run-off and recognises stormwater as a resource through re-use in open space and landscape areas;

b. the capacity of existing and proposed stormwater systems;

c. the method, design and construction of the stormwater collection, reticulation and disposal systems, including connections to public reticulated stormwater systems;

d. the location, scale and construction of stormwater infrastructure;

e. the effectiveness of any methods proposed for the collection, reticulation and disposal of stormwater run-off, including opportunities to maintain and enhance water quality through the control of water-borne contaminants, litter and sediments, and the control of peak flow.

27.2.5.12 Encourage subdivision design that includes the joint use of stormwater and flood management networks with open spaces and pedestrian/cycling transport corridors and recreational opportunities where these opportunities arise and will maintain the natural character and ecological values of wetlands and waterways.

Wastewater

27.2.5.13 Treat and dispose of sewage in a manner that:

a. maintain public health;

b. avoids adverse effects on the environment in the first instance; and

c. where adverse effects on the environment cannot be reasonably avoided, mitigates those effects to the extent practicable.

27.2.5.14 Ensure appropriate sewage treatment and disposal by having regard to:

a. the method of sewage treatment and disposal;

b. the capacity of, and impacts on, the existing reticulated sewage treatment and disposal system;

c. the location, capacity, construction and environmental effects of the proposed sewage treatment and disposal system.

27.2.5.15 Ensure that the design and provision of any necessary infrastructure at the time of subdivision takes into account the requirements of future development on land in the vicinity.

Energy Supply and Telecommunications

27.2.5.16 Ensure adequate provision is made for the supply and installation of reticulated energy, including street lighting, and communication facilities for the anticipated land uses while:

a. providing flexibility to cater for advances in telecommunication and computer media technology, particularly in remote locations;

b. ensure the method of reticulation is appropriate for the visual amenity and landscape values of the area by generally requiring services are underground, and in the context of rural environments where this may not be practicable, infrastructure is sited in a manner that minimises visual effects on the receiving environment;

c. generally require connections to electricity supply and telecommunications systems to the boundary of the net area of the lot, other than lots for access, roads, utilities and reserves.

Easements

27.2.5.17 Ensure that services, shared access and public access is identified and managed by the appropriate easement provisions.

27.2.5.18 Ensure that easements are of an appropriate size, location and length for the intended use of both the land and easement.

27.2.6 Objective - Esplanades created where opportunities arise.

Policies

27.2.6.1 Create esplanade reserves or strips where they would provide nature conservation, natural character, natural hazard mitigation, infrastructural or recreational benefits. In particular, Council will encourage esplanades where they:

a. are important for public access or recreation, would link with existing or planned trails, walkways or cycleways, or would create an opportunity for public access;

b. have high actual or potential value with regard to the maintenance of indigenous biodiversity;

c. comprise significant indigenous vegetation or significant habitats of indigenous fauna;

d. are considered to comprise an integral part of an outstanding natural feature or outstanding natural landscape;

e. would benefit from protection, in order to safeguard the life supporting capacity of the adjacent lake and river;

f. would not put an inappropriate burden on Council, in terms of future maintenance costs or issues relating to natural hazards affecting the land.

27.2.6.2 Use opportunities through the subdivision process to improve the level of protection for the natural character and nature conservation values of lakes and rivers, as provided for in Section 230 of the Act.

27.2.7 Objective - Boundary adjustments, cross-lease and unit title subdivision are provided for.

Policies

27.2.7.1 Enable cross-lease and unit title subdivision of existing units in urban areas without the need to obtain resource consent where there is no potential for adverse effects associated with the change in boundary location.

27.2.7.2 Ensure boundary adjustment, cross-lease and unit title subdivisions are appropriate with regard to:

a. the location of the proposed boundaries;

b. in rural areas, the location of boundaries with regard to approved residential building platforms, existing buildings, and vegetation patterns and existing or proposed accesses;

c. boundary treatment;

d. the location and terms of existing or proposed easements or other arrangements for access and services.

27.3 Location-specific objectives and policies

In addition to the district wide objectives and policies in Part 27.2, the following objectives and policies relate to subdivision in specific locations.

Peninsula Bay

27.3.1 Objective - Ensure effective public access is provided throughout the Peninsula Bay land.

Policies

27.3.1.1 Ensure that before any subdivision or development occurs within the Peninsula Bay Lower Density Suburban Residential Zone, a subdivision consent has been approved confirming easements for the purposes of public access through the Open Space Zone.

27.3.1.2 Within the Peninsula Bay site, to ensure that public access is established through the vesting of reserves and establishment of easements prior to any further subdivision.

27.3.1.3 Ensure that easements for the purposes of public access are of an appropriate size, location and length to provide a high quality, recreational resource, with excellent linkages, and opportunities for different community groups.

Kirimoko

27.3.2 Objective - A liveable urban environment that achieves best practice in urban design; the protection and incorporation of landscape and environmental features into the design of the area; and high quality built form.

Policies

27.3.2.1 Protect the landscape quality and visual amenity of the Kirimoko Block and preserve sightlines to local natural landforms.

27.3.2.2 Protect the natural topography of the Kirimoko Block and incorporate existing environmental features into the design of the site.

27.3.2.3 Ensure that urban development of the site is restricted to lower areas and areas of concealed topography, such as gullies and that visually sensitive areas such as the spurs are left undeveloped.

27.3.2.4 Ensure the provision of open space and community facilities that are suitable for the whole community and that are located in safe and accessible areas.

27.3.2.5 Develop an interconnected network of streets, footpaths, walkways and open space linkages that facilitate a safe, attractive and pleasant walking, cycling and driving environment.

27.3.2.6 Provide for road and walkway linkages to neighbouring developments.

27.3.2.7 Ensure that all roads are designed and located to minimise the need for extensive cut and fill and to protect the natural topographical layout and features of the site.

27.3.2.8 Minimise disturbance of existing native plant remnants and enhance areas of native vegetation by providing linkages to other open space areas and to areas of ecological value.

27.3.2.9 Design for stormwater management that minimises run-off and recognises stormwater as a resource through re-use in open space and landscape areas.

27.3.2.10 Require the roading network within the Kirimoko Block to be planted with appropriate trees to create a green living environment appropriate to the areas.

Large Lot Residential A Zone between Studholme Road and Meadowstone Drive.

27.3.3 Objective - Landscape and amenity values of the zone's low density character and transition with rural areas be recognised and protected.

Policies

27.3.3.1 Have regard to the impact of development on landscape values of the neighbouring rural areas and features of these areas, with regard to minimising the prominence of housing on ridgelines overlooking the Wanaka township.

27.3.3.2 Subdivision and development within land located on the northern side of Studholme Road shall have regard to the adverse effects of development and associated earthworks on slopes, ridges and skylines.

Bob's Cove Rural Residential Zone (excluding sub-zone)

27.3.4 Objective - The special character of the Bob's Cove Rural Residential Zone is recognised and provided for.

Policies

27.3.4.1 In order to maintain the rural character of the zone, any required street lighting shall be low in height from the ground, of reduced lux spill and directed downwards to avoid adverse effects on views of the night sky.

Ferry Hill Rural Residential Sub-Zone

27.7.6 Objective - Maintain and enhance visual amenity values and landscape character within and around the Ferry Hill Rural Residential Sub-Zone.

Policies

27.7.6.1 At the time of considering a subdivision application, the following matters shall be had particular regard to:

a. The subdivision design has had regard to minimising the number of accesses to roads;

b. the location and design of on-site vehicular access avoids or mitigates adverse effects on the landscape and visual amenity values by following the natural form of the land to minimise earthworks, providing common driveways and by ensuring that appropriate landscape treatment is an integral component when constructing such access;

c. the extent to which plantings with a predominance of indigenous species enhances the naturalness of the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone;

d. The extent to which the species, location, density, and maturity of the planting is such that residential development in the Ferry Hill Rural Residential sub-zone will be successfully screened from views obtained when travelling along Tucker Beach Road[1].

Wyuna Station Rural Lifestyle Zone

27.3.5 Objective - Provision for a deferred rural lifestyle zone on the terrace to the east of, and immediately adjoining, the Glenorchy Township.

Policies

27.3.5.1 Prohibit or defer development of the zone until such a time that:

a. the zone can be serviced by a reticulated wastewater disposal scheme within the property that services both the township and proposed zone. This may include the provision of land within the zone for such purpose; or

b. the zone can be serviced by a reticulated wastewater disposal scheme located outside of the zone that has capacity to service both the township and proposed zone; or

c. the zone can be serviced by an on-site (individual or communal) wastewater disposal scheme no sooner than two years from the zone becoming operative on the condition that should a reticulated scheme referred to above become available and have capacity within the next three years then all lots within the zone shall be required to connect to that reticulated scheme.

27.3.6 Objective - Subject to Objective 27.3.5, rural living development is enabled in a way that maintains the visual amenity values that are experienced from the Glenorchy Township, Oban Street and the Glenorchy-Paradise Road.

Policies

27.3.6.1 The subdivision design, identification of building platforms and associated mitigation measures shall ensure that built form and associated activities within the zone are reasonably inconspicuous when viewed from Glenorchy Township, Oban Street or the Glenorchy-Paradise Road. Measures to achieve this include:

a. prohibiting development over the sensitive areas of the zone via building restriction areas;

b. appropriately locating buildings within the zone, including restrictions on future building bulk;

c. using excavation of the eastern part of the terrace to form appropriate building platforms;

d. using naturalistic mounding of the western part of the terrace to assist visual screening of development;

[1]. Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

e. using native vegetation to assist visual screening of development;

f. the maximum height of buildings shall be 4.5m above ground level prior to any subdivision development.

27.3.6.2 Maintain and enhance the indigenous vegetation and ecosystems within the building restriction areas of the zone and to suitably and comprehensively maintain these areas into the future. As a minimum, this shall include:

a. methods to remove or kill existing wilding exotic trees and weed species from the lower banks of the zone area and to conduct this eradication annually;

b. methods to exclude and/or suitably manage pests within the zone in order to foster growth of indigenous vegetation within the zone, on an ongoing basis;

c. a programme or list of maintenance work to be carried out on a year to year basis on order to bring about the goals set out above.

Jacks Point Zone

27.3.7 Objective - Subdivision occurs consistent with the Jacks Point Structure Plan.

Policies

27.3.7.1 Ensure that subdivision and development achieves the objectives and policies located within Chapter 41.

27.3.7.2 Within the R(HD) Activity Areas, subdivision design shall provide for the following matters:

a. the development and suitability of public transport routes, pedestrian and cycle trail connections within and beyond the Activity Area;

b. mitigation measures to ensure that no building will be highly visible from State Highway 6 or Lake Wakatipu;

c. road and street designs;

d. the location and suitability of proposed open spaces;

e. commitments to remove wilding trees.

27.3.7.3 Within the R(HD-SH) Activity Areas, minimise the visual effects of subdivision and future development on landscape and amenity values as viewed from State Highway 6.

27.3.7.4 Within the R(HD) Activity Area, in the consideration of the creation of sites sized less than 550m^2, particular regard shall be given to the following matters and whether they should be given effect to by imposing appropriate legal mechanism of controls over:

a. building setbacks from boundaries;

b. location and heights of garages and other accessory buildings;

c. height limitations for parts of buildings, including recession plane requirements;

d. window locations;

e. building coverage;

f. roadside fence heights.

27.3.7.5 Within the OS Activity Areas shown on the Jacks Point Zone Structure Plan, implement measures to provide for the establishment and management of open space, including native vegetation.

27.3.7.6 Within the R(HD) A - E Activity Areas, ensure cul-de-sacs are straight (+/- 15 degrees).

27.3.7.7 In the Hanley Downs areas where subdivision of land within any Residential Activity Area results in allotments less than 550m2 in area:

a. such sites are to be configured:

i. with good street frontage;

ii. to enable sunlight to existing and future residential units;

iii. to achieve an appropriate level of privacy between homes;

b. parking, access and landscaping are to be configured in a manner which:

i. minimises the dominance of driveways at the street edge;

ii. provides for efficient use of the land;

iii. maximises pedestrian and vehicular safety; and.

iv. addresses nuisance effects such as from vehicle lights.

c. subdivision design should ensure:

i. public and private spaces are clearly demarcated, and ownership and management arrangements are proposed to appropriately manage spaces in common ownership.

d. consideration is to be given as to whether design parameters are required to be secured through an appropriate legal mechanism. These are height, building mass, window sizes and locations, building setbacks, fence heights, locations and transparency, building materials and landscaping.

Waterfall Park

27.3.8 Objective – Subdivision that provides for a range of visitor, residential and recreational facilities, sympathetic to the natural setting and has regard to location specific opportunities and constraints identified within the Waterfall Park Structure Plan.

Policies **27.3.8.1** Enable subdivision which provides for appropriate, integrated and orderly development in accordance with the Waterfall Park Structure Plan located within Section 27.13.

Millbrook

27.3.9 Objective – Subdivision that provides for resort development while having particular regard to landscape, heritage, ecological, water and air quality values.

Policies **27.3.9.1** Enable subdivision which provides for appropriate, integrated and orderly development in accordance with the Millbrook Structure Plan located within Section 27.13.

Coneburn Industrial

27.3.10 Objective - Subdivision that creates opportunities for industrial activities and Service activities to occur.

Policies **27.3.10.1** Enable subdivision which provides for a combination of lot sizes and low building coverage to ensure that this area is retained for yard based industrial and service activities as well as smaller scale industrial and service activities.

27.1.10.2 Require the establishment, restoration and ongoing maintenance of the open space areas (shown on the Coneburn Structure Plan located in Section 27.13) to:

a. visually screen development using the planting of native species;

b. retain existing native garden species unless they are wilding;

c. give effect to the Ecological Management Plan required by Rule 44.4.12 so its implementation occurs at the rate of development within the Zone.

27.10.4.3 Ensure subdivision works and earthworks results in future industrial and service development (buildings) being difficult to see from State Highway 6.

27.10.4.4 At the time of subdivision ensure that there is adequate provision for road access, onsite parking (staff and visitors) and loading and manoeuvring for all types of vehicle so as to cater for the intended use of the site.

27.10.4.5 Ensure subdivision creates lots and sites that are capable of accommodating development that meets the relevant zone standards for the Coneburn Industrial Zone.

27.10.4.6 Ensure that shared infrastructure (water, wastewater and stormwater) is provided, managed, and maintained if development cannot connect to Council services.

27.10.4.7 Require safe accesses to be provided from the State Highway into the Zone at the rate the Zone is developed.

West Meadows Drive

27.3.11 Objective - The integration of road connections between West Meadows Drive and Meadowstone Drive.

Policies

27.3.11.1 Enable subdivision at the western end of West Meadows Drive which has a roading layout that is consistent with the West Meadows Drive Structure Plan.

27.3.11.2 Enable variances to the West Meadows Drive Structure Plan on the basis that the roading layout results in the western end of West Meadows Drive being extended to connect with the roading network and results in West Meadows Drive becoming a through-road.

Frankton North

27.3.12 Objective - Subdivision of the Medium Density Residential and Business Mixed Use Zones on the north side of State Highway 6 between Hansen Road and Quail Rise enables development integrated into the adjacent urban areas while minimising traffic impacts on the State Highway.

Policies

27.3.12.1 Limit the roading access to Frankton North to Hansen Road, Ferry Hill Drive or the Hawthorne Drive/SH6 roundabout.

27.3.12.2 Ensure subdivision and development enables access to the roading network from all sites in the Frankton North Medium Density Residential and Business Mixed Use Zones and is of a form that accounts for long-term traffic demands without the need for subsequent retrofitting or upgrade.

27.3.12.3 Ensure subdivision and development in the Frankton North Medium Density Residential and Business Mixed Use Zones provides, or has access to, a safe and legible walking and cycling environment adjacent to and across the State Highway linking to other pedestrian and cycling networks.

27.4 Other Provisions and Rules

27.4.1 District Wide

The rules of the zone the proposed subdivision is located within are applicable. Attention is drawn to the following District Wide chapters.

1	Introduction	2	Definitions	3	Strategic Direction
4	Urban Development	5	Tangata Whenua	6	Landscapes and Rural Character
25	*Earthworks*	26	Historic Heritage	28	Natural Hazards
29	*Transport*	30	Energy and Utilities	*31*	*Signs*
32	Protected Trees	33	Indigenous Vegetation	34	Wilding Exotic Trees
35	Temporary Activities and Relocated Buildings	36	Noise	37	Designations
	Planning Maps				

27.4.2 Earthworks associated with subdivision

27.4.2.1 Earthworks undertaken for the development of land associated with any subdivision shall not require a separate resource consent under the rules of the District Wide Earthworks Chapter, but shall be considered against the matters of control or discretion of the District Wide Earthworks Chapter as part of any subdivision activity[2].

27.4.3 Natural Hazards

27.4.3.1 The Natural Hazards Chapter of the District Plan sets a policy framework to address land uses and natural hazards throughout the District. All subdivision is able to be assessed against a natural hazard through the provisions of section 106 of the RMA. In addition, in some locations natural hazards have been identified and specific provisions apply.

[2]. Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

27.5 Rules - Subdivision

27.5.1 All subdivision requires resource consent unless specified as a permitted activity. The abbreviations set out below are used in the following tables. Any activity which is not permitted (P) or prohibited. (PR) requires resource consent.

P	Permitted	C	Controlled	RD	Restricted Discretionary
D	Discretionary	NC	Non-Complying	PR	Prohibited

Where an activity falls within more than one rule, unless stated otherwise, its status shall be determined by the most restrictive rule.

	Boundary Adjustments	Activity Status
27.5.2	**An adjustment to existing cross-lease or unit title due to:** a. an alteration to the size of the lot by alterations to the building outline; b. the conversion from cross-lease to unit title; or c. the addition or relocation of an accessory building; providing the activity complies with all other provisions of the District Plan or has obtained a land use consent. Advice Note: In order to undertake such a subdivision a certificate of compliance (s139 of the Act) will need to be obtained (see s223(1)(b)).	P

	Boundary Adjustments	Activity Status
27.5.3	For boundary adjustment subdivision activities where there are two or more existing lots which each have separate Certificates of Title, new lots may be created by subdivision for the purpose of an adjustment of the boundaries between the existing lots, provided: a. in the case of the Rural, Gibbston Character and Rural Lifestyle Zones the building platform is retained in its approved location; b. no additional or relocated residential building platform is identified and approved as part of a boundary adjustment within Rural, Gibbston Character and Rural Lifestyle Zones; c. no additional separately saleable lots are created; d. the areas of the resultant lots either comply with the minimum lot size requirement for the zone (where applicable) or where any lot does not comply with an applicable minimum lot size requirement for the zone, the extent of such non-compliance is not increased; and e. lots must be immediately adjoining each other. Control is reserved to: a. the location of the proposed boundaries; b. boundary treatment; c. easements for existing and proposed access and services.	C
27.5.4	For boundary adjustments that either: a. involve any site that contains a heritage or any other protected item identified on the District Plan maps; or b. are within the urban growth boundary of Arrowtown; where there are two or more existing lots which each have separate Certificates of Title, new lots may be created by subdivision for the purpose of an adjustment of the boundaries between the existing lots, provided: a. no additional separately saleable lots are created; b. the areas of the resultant lots comply with the minimum lot size requirement for the zone; c. lots must be immediately adjoining each other; Discretion is restricted to: a. the impact on the heritage values of the protected item; b. the maintenance of the historic character of the Arrowtown Residential Historic Management Zone; c. the location of the proposed boundaries; d. boundary treatment; e. easements for access and services.	RD

	Unit Title or Leasehold Subdivision	Activity Status
27.5.5	Where land use consent is approved for a multi unit commercial or residential development, including visitor accommodation development, and a unit title or leasehold (including cross lease) subdivision is subsequently undertaken in accordance with the approved land use consent, provided: a. all buildings must be in accordance with an approved land use resource consent; b. all areas to be set aside for the exclusive use of each building or unit must be shown on the survey plan, in addition to any areas to be used for common access or parking or other such purpose; c. all service connections and on-site infrastructure must be located within the boundary of the site they serve or have access provided by an appropriate legal mechanism. Control is reserved to: a. the effect of the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces; b. the effects of and on infrastructure provision. This rule does not apply a subdivision of land creating a separate fee simple title. The intent is that it applies to subdivision of a lot containing an approved land use consent, in order to create titles in accordance with that consent.	C

	Subdivision Activities - District Wide	Activity Status
27.5.6	Any subdivision that does not fall within any rule in this section 27.5.	D

	Subdivision Activities - District Wide	Activity Status
27.5.7	All urban subdivision activities, unless otherwise provided for, within the following zones: 1. Lower Density Suburban Residential Zone; 2. Medium Density Residential Zone; 3. High Density Residential Zone; 4. Town Centre Zones; 5. Arrowtown Residential Historic Management Zone; 6. Large Lot Residential Zone; 7. Local Shopping Centre; 8. Business Mixed Use Zone; 9. Airport Zone - Queenstown. Discretion is restricted to: a. subdivision design and any consequential effects on the layout of lots and on lot sizes and dimensions; b. Internal roading design and provision, relating to access to and service easements for future subdivision on adjoining land, and any consequential effects on the layout of lots, and on lot sizes and dimensions; c. property access and roading; d. esplanade provision; e. the adequacy of on site measures to address the risk of natural and other hazards on land within the subdivision; f. fire fighting water supply; g. water supply; h. stormwater design and disposal; i. sewage treatment and disposal; j. energy supply and telecommunications, including adverse effects on energy supply and telecommunication networks; k. open space and recreation; l. ecological and natural values; m. historic heritage; n. easements. For the avoidance of doubt, where a site is governed by a Structure Plan, that is included in the District Plan, subdivision activities shall be assessed in accordance with Rule 27.7.1.	RD

	Subdivision Activities - District Wide	Activity Status
27.5.8	All subdivision activities, unless otherwise provided for, in the District's Rural Residential and Rural Lifestyle Zones Discretion is restricted to: a. in the Rural Lifestyle Zone, the location and size of building platforms and in respect of any buildings within those building platforms: i. external appearance; ii. visibility from public places; iii. landscape character; and iv. visual amenity. b. subdivision design and any consequential effects on the layout of lots and on lot sizes and dimensions; c. internal roading design and provision, relating to access and service easements for future subdivision on adjoining land, and any consequential effects on the layout of lots and on lot sizes and dimensions; d. property access and roading; e. esplanade provision; f. the adequacy of on site measures to address the risk of natural and other hazards on land within the subdivision; g. fire fighting water supply; h. water supply; i. stormwater disposal; j. sewage treatment and disposal; k. energy supply and telecommunications including adverse effects on energy supply and telecommunication networks; l. open space and recreation; m. ecological and natural values; n. historic heritage; o. easements.	RD
27.5.9		
27.5.10	Subdivision of land in any zone within the National Grid Corridor except where any allotment identifies a building platform to be located within the National Grid Yard. Discretion is restricted to: a. impacts on the operation, maintenance, upgrade and development of the National Grid; b. the ability of future development to comply with NZECP34:2001; c. the location, design and use of any proposed building platform as it relates to the National Grid transmission line.	RD
27.5.11	All subdivision activities in the Rural and Gibbston Character Zones and Airport Zone - Wanaka, unless otherwise provided for.	D

	Subdivision Activities - District Wide	Activity Status
27.5.12	The subdivision of land containing a heritage or any other protected item scheduled in the District Plan. This rule does not apply to boundary adjustments under Rule 27.5.4.	D
27.5.13	The subdivision of land identified on the planning maps as a Heritage Area.	D
27.5.14	The subdivision of a site containing a known archaeological site.	D
27.5.15	Subdivision that would alter, or create a new boundary within a Significant Natural Area scheduled in the District Plan.	D
27.5.16	A Unit Titles Act subdivision lodged concurrently with an application for building consent, or land use consent.	D
27.5.17	Within the Jacks Point Zone, subdivision that does not comply with the minimum lot areas specified in Part 27.6 and the zone and location specific rules in Part 27.7, excluding: a. in the R(HD) activity area, where the creation of lots less than 380m^2 shall be assessed under Rule 27.7.5.2 (as a restricted discretionary activity).	D
27.5.18	Within the Coneburn Industrial Zone Activity Area 2a, subdivision which does not comply with the minimum lot areas specified in Part 27.6.	D
27.5.19	Subdivision that does not comply with the minimum lot areas specified in Part 27.6 with the exception of the Jacks Point Zone which is assessed pursuant to Rule 27.5.17 and Coneburn Industrial Zone Activity Area 2a which is assessed pursuant to Rule 27.5.18.	NC
27.5.20	A subdivision under the Unit Titles Act not falling within Rules 27.5.5 or 27.5.16 where the building is not completed (meaning the applicable code of compliance certificate has not been issued), or building consent or land use consent has not been granted for the buildings.	NC
27.5.21	The further subdivision of an allotment that if undertaken as part of a previous subdivision would have caused that previous subdivision to exceed the minimum average density requirements for subdivision in the Rural Lifestyle Zone or the Rural Residential Zone.	NC
27.5.22	The subdivision of land resulting in the division of a building platform.	NC
27.5.23	The subdivision of a residential flat from a residential unit.	NC
27.5.24	Any subdivision of land in any zone within the National Grid Corridor, which does not comply with Rule 27.5.10.	NC
27.5.25	Subdivision that does not comply with the standards related to servicing and infrastructure under Rule 27.7.15.	NC

27.6 Rules - Standards for Minimum Lot Areas

27.6.1 No lots to be created by subdivision, including balance lots, shall have a net site area or where specified, an average net site area less than the minimum specified.

Zone		Minimum Lot Area
Town Centres		No minimum
Local Shopping Centre		No minimum
Business Mixed Use		200m²
Airport		No minimum
Coneburn Industrial	Activity Area 1a	3000m²
	Activity Area 2a	1000m²
Residential	High Density	450m²
	Medium Density	250m²
	Lower Density Suburban	450m² Within the Queenstown Airport Air Noise Boundary and Outer Control Boundary: 600m²
	Arrowtown Residential Historic Management	800m²
	Large Lot Residential A	2000m²
	Large Lot Residential B	4000m²
Rural	Rural Gibbston Character	No minimum
Rural Lifestyle	Rural Lifestyle	One hectare providing the average lot size is not less than 2 hectares. For the purpose of calculating any average, any allotment greater than 4 hectares, including the balance, is deemed to be 4 hectares.
	Rural Lifestyle Deferred A and B[3]	No minimum, but each of the two parts of the zone identified on the planning map shall contain no more than two allotments.
	Rural Lifestyle Buffer[4]	The land in this zone shall be held in a single allotment.
Rural Residential	Rural Residential	4000m²
	Rural Residential Bob's Cove sub-zone	No minimum, providing the total lots to be created, inclusive of the entire area within the zone shall have an average of 4000m².
	Rural Residential Ferry Hill Subzone[5]	4000m² with no more than 17 lots created for residential activity.

[3, 4, 5] Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

Zone		Minimum Lot Area
	Rural Residential Camp Hill	4000m^2 with no more than 36 lots created for residential activity
Jacks Point	Residential Activity Areas	380m^2 In addition, subdivision shall comply with the average density requirements set out in Rule 41.5.8.
Millbrook		No minimum
Waterfall Park		No minimum

Advice Note:

Non-compliance with the minimum lot areas specified above means that a subdivision will fall under one of Rules 27.5.17-19, depending on its location.

27.6.2 Lots created for access, utilities, roads and reserves shall have no minimum size.

27.7 Zone - Location Specific Rules

	Zone and Location Specific Rules	Activity Status
27.7.1	Subdivision consistent with a Structure Plan that is included in the District Plan. Control is reserved to: a. subdivision design and any consequential effects on the layout of lots and on lot sizes and dimensions; b. internal roading design and provision, and any consequential effects on the layout of lots, and on lot sizes and dimensions; c. property access and roading; d. esplanade provision; e. the adequacy of on site measures to address the risk of natural and other hazards on land within the subdivision; f. fire fighting water supply; g. water supply; h. stormwater design and disposal; i. sewage treatment and disposal; j. energy supply and telecommunications, including adverse effects on energy supply and telecommunication networks; k. open space and recreation; and l. ecological and natural values; m. historic heritage; n. easements; o. any additional matters relevant to achievement of the objectives and policies in part 27.3 of this Chapter.	C
27.7.2	**Kirimoko** **27.7.2.1** In addition to those matters of control listed under Rule 27.7.1 when assessing any subdivision consistent with the principal roading layout depicted in the Kirimoko Structure Plan shown in part 27.13, the following shall be additional matters of control: a. roading layout; b. the provision and location of walkways and the green network; c. the protection of native species as identified on the structure plan as green network.	C

	Zone and Location Specific Rules	Activity Status
	27.7.2.2 Any subdivision that does not comply with the principal roading layout and reserve net-work depicted in the Kirimoko Structure Plan included in Part 27.13 (including the creation of additional roads, and/or the creation of access ways for more than 2 properties).	NC
	27.7.2.3 Any subdivision of land zoned Rural proposed to create a lot entirely within the Rural Zone, to be held in a separate certificate of title.	NC
	27.7.2.4 Any subdivision of land described as Lots 3 to 7 and Lot 9 DP300734, and Lot 1 DP 304817 (and any title derived therefrom) that creates more than one lot that has included in its legal boundary land zoned Rural.	NC
27.7.3	**Bob's Cove Rural Residential Sub-Zone** **27.7.3.1** Activities that do not meet the following standards: a. boundary planting – Rural Residential sub-zone at Bobs Cove: i. within the Rural Residential sub-zone at Bobs Cove, where the 15 metre building Restriction Area adjoins a development area, it shall be planted in indigenous tree and shrub species common to the area, at a density of one plant per square metre; and ii. where a building is proposed within 50 metres of the Glenorchy-Queenstown Road, such indigenous planting shall be established to a height of 2 metres and shall have survived for at least 18 months prior to any residential buildings being erected. b. development areas and undomesticated areas within the Rural Residential sub-zone at Bob's Cove: i. within the Rural Residential sub-zone at Bob's Cove, at least 75% of the zone shall be set aside as undomesticated area, and shown on the Subdivision Plan as such, and given effect to by consent notice registered against the title of the lots created, to the benefit of all lot holders and the Council; ii. at least 50% of the 'undomesticated area' shall be retained, established, and maintained in indigenous vegetation with a closed canopy such that this area has total indigenous litter cover. This rule shall be given effect to by consent notice registered against the title of the lot created, to the benefit of the lot holder and the Council; iii. the remainder of the area shall be deemed to be the 'development area' and shall be shown on the Subdivision Plan as such, and given effect to by consent notice registered against the title of the lots created, to the benefit of all holders and the Council; iv. the landscaping and maintenance of the undomesticated area shall be detailed in a landscaping plan that is provided as part of any subdivision application. This Landscaping Plan shall identify the proposed species and shall provide details of the proposed maintenance programme to ensure a survival rate of at least 90% within the first 5 years; and v. this area shall be established and maintained in indigenous vegetation by the subdividing owner and subsequent owners of any individual allotment on a continuing basis. Such areas shall be shown on the Subdivision Plan and given effect to by consent notice registered against the title of the lots; vi. any lot created that adjoins the boundary with the Queenstown-Glenorchy Road shall include a 15 metre wide building restriction area, and such building restriction area shall be given effect to by consent notice registered against the title of the lot created, to the benefit of the lot holder and the Council.	NC

	Zone and Location Specific Rules	Activity Status
27.7.4	**Ladies Mile** **27.7.4.1** Subdivision of land situated south of State Highway 6 ("Ladies Mile") and southwest of Lake Hayes that is zoned Lower Density Suburban Residential or Rural Residential as shown on the Planning Maps and that does not meet the following standards: a. the landscaping of roads and public places is an important aspect of property access and subdivision design. No subdivision consent shall be granted without consideration of appropriate landscaping of roads and public places shown on the plan of subdivision. b. no separate residential lot shall be created unless provision is made for pedestrian access from that lot to public open spaces and recreation areas within the land subject to the application for subdivision consent and to public open spaces and rural areas ad-joining the land subject to the application for subdivision consent.	NC
27.7.5	**Jacks Point** **27.7.5.1** Subdivision Activity failing to comply with the Jacks Point Structure Plan located within Section 27.13. For the purposes of interpreting this rule, the following shall apply: a. a variance of up to 120m from the location and alignment shown on the Structure Plan of the Primary Road, and their intersection with State Highway 6, shall be acceptable; b. Public Access Routes and Secondary Roads may be otherwise located and follow different alignments provided that any such alignment enables a similar journey; c. subdivision shall facilitate a road connection at each Key Road Connection shown on the Structure Plan to enable vehicular access to roads which connect with the Primary Roads, provided that a variance of up to 50m from the location of the connection shown on the Structure Plan shall be acceptable; d. Open Spaces are shown indicatively, with their exact location and parameters to be established through the subdivision process.	D

	Zone and Location Specific Rules	Activity Status
	27.7.5.2 Subdivision failing to comply with the 380m2 minimum lot size for subdivision within the Hanley Downs part of the Jacks Point Zone. Discretion is restricted to: a. subdivision design and any consequential effects on the layout of lots and on lot sizes and dimensions; b. internal roading design and provision, and any consequential effects on the layout of lots, and on lot sizes and dimensions; c. property access and roading; d. esplanade provision; e. the adequacy of on site measures to address the risk of natural and other hazards on land within the subdivision; f. fire fighting water supply; g. water supply; h. stormwater design and disposal; i. sewage treatment and disposal; j. energy supply and telecommunications, including adverse effects on energy supply and telecommunication networks; k. open space and recreation; and l. ecological and natural values; m. historic heritage; n. easements; o. location and height of buildings, or parts of buildings, including windows; p. configuration of parking, access and landscaping.	RD
	27.7.5.3 Subdivision within the OSR-North Activity Area of the Jacks Point Zone that does not, prior to application for subdivision consent being made: a. provide to the Council noise modelling data that identifies the 55dB Ldn noise contour measured, predicted and assessed in accordance with NZS 6805:1992 Airport Noise Management and Land Use Planning and NZS 6801:2008 Acoustics – Measurement of Environmental Sound, by a person suitably qualified in acoustics, based on any consented operations from the airstrip on Lot 8 DP443832; and b. register a consent notice on any title the subject of subdivision that includes land that is located between the 55 dB Ldn contour and the airstrip preventing any ASAN from locating on that land.	NC
27.7.6	**Millbrook Resort Zone** **27.7.6.1** Any subdivision of the Millbrook Resort Zone that is inconsistent with the Millbrook Resort Zone Structure Plan contained in Section 27.13.	D

	Zone and Location Specific Rules	Activity Status
27.7.7	**Coneburn Industrial**	
	27.7.7.1 Subdivision not in general accordance with the Coneburn Industrial Structure Plan located in Section 27.13. For the purposes of this rule: a. any fixed connections (road intersections) shown on the Structure Plan may be moved no more than 20 metres; b. any fixed roads shown on the Structure Plan may be moved no more than 50 metres in any direction; c. the boundaries of any fixed open spaces shown on the Structure Plan may be moved up to 5 metres.	NC
	27.7.7.2 Subdivision failing to comply with any of the following: a. consent must have been granted under Rule 44.4.10 for landscaping of the Open Space Area shown on the Structure Plan in accordance with an Ecological Management Plan prior to lodgement of the subdivision application; b. subdivision of more than 10%, in area, of the Activity Areas shown on the Structure Plan shall not occur unless the work required under the Ecological Management Plan consented under Rule 44.4.10 has been completed on not less than 25% of the Open Space Area shown on the Structure Plan; c. subdivision of more than 25%, in area, of the Activity Areas shown on the Structure Plan shall not occur unless the work required under the Ecological Management Plan consented under Rule 44.4.10 has been completed on not less than 50% of the Open Space Area shown on the Structure Plan; d. subdivision of more than 50%, in area, of the Activity Areas shown on the Structure Plan shall not occur unless the work required under the Ecological Management Plan consented under Rule 44.4.10 has been completed on not less than 100% of the Open Space Area shown on the Structure Plan.	NC
	27.7.7.3 Subdivision whereby prior to the issue of a s224(c) certification under the Act for any subdivision of any land within the zone: a. prior to the Northern Access Point being constructed as a Priority T Intersection (Austroads Guide to Road Design (Part 4A)) and being available for public use every subdivision of any land within the zone must contain a condition requiring that the Northern Access Point be constructed as a Priority T Intersection (Austroads Guide to Road Design (Part 4A)) and be available for public use prior to issue of a s.224(c) certificate; b. any subdivision of land within the Activity Areas 1a and 2a which, by itself or in combination with prior subdivisions of land within the zone, involves subdivision of more than 25% of the land area of Activity Areas 1a and 2a must include a condition requiring the construction of the Southern Access Point as a Priority T intersection (Austroads Guide to Road Design (Part 4A)) and that it be available for public use prior to issue of a s.224(c) certificate, unless the Southern Access Point has been constructed and is available for public use at the time the consent is granted.	NC

	Zone and Location Specific Rules	Activity Status
27.7.8	**West Meadows Drive** **27.7.8.1** Subdivision of lots zoned Lower Density Suburban Residential at the western end of West Meadows Drive identified in Section 27.13.6 which is consistent with the West Meadows Drive Structure Plan in Section 27.13. Control is reserved to: a. the matters of control listed under Rule 27.7.1; and b. roading layout.	C
	27.7.8.2 Subdivision of lots zoned Lower Density Suburban Residential at the western end of West Meadows Drive identified in Section 27.13.6 that is inconsistent with the West Meadows Drive Structure Plan in Section 27.13.	D
27.7.9	**Frankton North** **27.7.9.1** All subdivision activity in the Business Mixed Use Zone and Medium Density Residential Zone located north of State Highway 6 between Hansen Road and Ferry Hill Drive that complies with the following standards in addition to the requirements of Rule 27.5.7: a. access to the wider roading network shall only be via one or more of: i. Hansen Road; ii. Ferry Hill Drive; and/or iii. Hawthorne Drive/State Highway 6 roundabout. b. no subdivision shall be designed so as to preclude an adjacent site complying with clause a. Discretion is restricted to: a. safe and effective functioning of the State Highway network; b. integration with other access points through the zones to link up to Hansen Road, Ferry Hill Drive or the Hawthorne Drive/State Highway 6 roundabout; c. integration with pedestrian and cycling networks, including those across the State Highway.	RD
	27.7.9.2 Any subdivision activity in the Business Mixed Use Zone and Medium Density Residential Zone located north of State Highway 6 between Hansen Road and Ferry Hill Drive that does not comply with Rule 27.7.9.1.	NC

Ferry Hill Rural Residential sub-zone

27.8.6.1 Notwithstanding any other rules, any subdivision of the Ferry Hill Rural Residential sub-zone shall be in accordance with the subdivision design as identified in the Concept Development Plan for the Ferry Hill Rural Residential sub-zone.

27.8.6.2 Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone shall be retained for Landscape Amenity Purposes and shall be held in undivided shares by the owners of Lots 1-8 and Lots 11-15 as shown on the Concept Development Plan.

27.8.6.3 Any application for subdivision consent shall:

a. provide for the creation of the landscape allotments(s) referred to in rule 27.8.6.2 above;

b. be accompanied by details of the legal entity responsible for the future maintenance and administration of the allotments referred to in rule 27.8.6.2 above;

c. be accompanied by a Landscape Plan that shows the species, number, and location of all plantings to be established, and shall include details of the proposed timeframes for all such plantings and a maintenance programme. The landscape Plan shall ensure:

i. that the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone is planted with a predominance of indigenous species in a manner that enhances naturalness; and

ii. that residential development is subject to screening along Tucker Beach Road.

27.8.6.4 Plantings at the foot of, on, and above the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone shall include indigenous trees, shrubs, and tussock grasses.

27.8.6.5 Plantings elsewhere may include maple as well as indigenous species.

27.8.6.6 The on-going maintenance of plantings established in terms of rule 27.8.6.3 above shall be subject to a condition of resource consent, and given effect to by way of consent notice that is to be registered on the title and deemed to be a covenant pursuant to section 221(4) of the Act.

27.8.6.7 Any subdivision shall be subject to a condition of resource consent that no buildings shall be located outside the building platforms shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone. The condition shall be subject to a consent notice that is registered on the title and deemed to be a covenant pursuant to section 221(4) of the Act.

27.8.6.8 Any subdivision of Lots 1 and 2DP 26910 shall be subject to a condition of resource consent that no residential units shall be located and no subdivision shall occur on those parts of Lots 1 and 2 DP 26910 zoned Rural General and identified on the planning maps as a building restriction area. The condition shall be subject to a consent notice that is to be registered and deemed to be a covenant pursuant to section 221(4) of the Act[6].

[6] Greyed out text indicates the provision is subject to variation and is therefore not part of the Hearing Panel's recommendations.

27.7.10 In the following zones, every allotment created for the purposes of containing residential activity shall identify one building platform of not less than 70m² in area and not greater than 1000m² in area.

a. Rural Zone;

b. Gibbston Character Zone;

c. Rural Lifestyle Zone;

27.7.11 The dimensions of lots in the following zones, other than for access, utilities, reserves or roads, shall be able to accommodate a square of the following dimensions:

Zone		Minimum Dimensions (m = Metres)
Residential	Medium Density	12m x 12m
	Large Lot	30m x 30m
	All others	15m x 15m
Rural Residential	Rural Residential (inclusive of sub-zones)	30m x 30m

27.7.12 Subdivision applications not complying with either Rule 27.7.10 or Rule 27.7.11 shall be non-complying activities.

27.7.13 Subdivision associated with infill development

The specified minimum allotment size in Rule 27.6.1, and minimum dimensions in Rule 27.11 shall not apply in the High Density Residential Zone, Medium Density Residential Zone and Lower Density Suburban Residential Zone where each allotment to be created, and the original allotment, all contain at least one established residential unit (established meaning a Building Code of Compliance Certificate has been issued or alternatively where a Building Code of Compliance Certificate has not been issued, construction shall be completed to not less than the installation of the roof).

27.7.14 Subdivision associated with residential development on sites less than 450m² in the Lower Density Suburban Residential Zone

27.7.14.1 In the Lower Density Suburban Residential Zone, the specified minimum allotment size in Rule 27.6.1 shall not apply in cases where the residential units are not established, providing;

a. a certificate of compliance is issued for a residential unit(s); or

b. a resource consent has been granted for a residential unit(s).

In addition to any other relevant matters pursuant to s221 of the Act, the consent holder shall register on the Computer Freehold Register of the applicable allotments:

a. that the construction of any residential unit shall be undertaken in accordance with the applicable certificate of compliance or resource consent (applies to the additional undeveloped lot to be created);

b. the maximum building height shall be 5.5m (applies to the additional undeveloped lot to be created).

c. there shall be not more than one residential unit per lot (applies to all lots).

27.7.14.2 Rule 27.7.14.1 shall not apply to the Lower Density Suburban Residential Zone within the Queenstown Airport Air Noise Boundary and Outer Control Boundary as shown on the planning maps.

27.7.15 Standards related to servicing and infrastructure

Water

27.7.15.1 Subject to Rule 27.15.3, all lots, other than lots for access, roads, utilities and reserves except where irrigation is required, shall be provided with a connection to a reticulated water supply laid to the boundary of the net area of the lot, as follows:

To a Council or community owned and operated reticulated water supply:

a. all Residential, Business, Town Centre, Local Shopping Centre Zones, and Airport Zone - Queenstown;

b. Rural Residential Zones at Wanaka, Lake Hawea, Albert Town, Luggate and Lake Hayes;

c. Millbrook Resort Zone and Waterfall Park Zone.

27.7.15.2 Where any reticulation for any of the above water supplies crosses private land, it shall be accessible by way of easement to the nearest point of supply.

27.7.15.3 Where no communal owned and operated water supply exists, all lots other than lots for access, roads, utilities and reserves, shall be provided with a potable water supply of at least 1000 litres per day per lot.

Telecommunications/Electricity

27.7.15.4 Electricity reticulation must be provided to all allotments in new subdivisions (other than lots for access, roads, utilities and reserves).

27.7.15.5 Telecommunication services must be available to all allotments in new subdivisions in the Rural Zone, Gibbston Character Zone and Rural Lifestyle Zone (other than lots for access, roads, utilities and reserves).

27.7.15.6 Telecommunication reticulation must be provided to all allotments in new subdivisions in zones other than the Rural Zone, Gibbston Character Zone and Rural Lifestyle Zone (other than lots for access, roads, utilities and reserves).

27.8 Rules - Esplanade Reserve Exemptions

27.8.1 Esplanade reserves or strips shall not be required where a proposed subdivision arises solely due to land being acquired or a lot being created for a road designation, utility or reserve or in the case of activities authorised by Rule 27.5.2.

27.9 Assessment Matters for Resource Consents

27.9.1 Boundary Adjustments

In considering whether or not to impose conditions in respect to boundary adjustments under Rule 27.5.3 and in considering whether or not to grant consent or impose conditions in respect to boundary adjustments under 27.5.4, the Council shall have regard to, but not be limited by, the following assessment criteria:

27.9.1.1 Assessment Matters in relation to Rule 27.5.3 (Boundary Adjustments)

a. whether the location of the proposed boundaries is appropriate, including in relation to their relationship to approved residential building platforms, existing buildings and vegetation patterns and existing or proposed accesses;

b. whether the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces:

   i. is able to accommodate development in accordance with the relevant district-wide and zone rules; and

   ii. the potential effects on the safety of pedestrians and cyclists and other users of the space or access;

c. whether any landscape features or vegetation, including mature forest, on the site are of a sufficient amenity value that they should be retained and if so, the proposed means for their protection;

d. the extent to which Policies 27.2.1.7, 27.2.3.2, 27.2.5.10, 27.2.5.11, 27.2.5.14 and 27.2.7.2 are achieved.

27.9.1.2 Assessment Matters in relation to Rule 27.5.4 (Boundary Adjustments involving Heritage Items and within Arrowtown's urban growth boundary)

a. whether the location of the proposed boundaries is appropriate, including in relation to their relationship to existing buildings and vegetation patterns and existing or proposed accesses;

b. whether the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces:

    i. is able to accommodate development in accordance with the relevant district-wide and zone rules; and

    ii. the potential effects on the safety of pedestrians and cyclists and other users of the space or access;

c. whether any landscape features or vegetation, including mature trees, on the site are of a sufficient amenity value that they should be retained and, if so, the proposed means for their protection;

d. the effect of subdivision on any places of heritage value including existing buildings, archaeological sites and any areas of cultural significance.

e. where lots are being amalgamated within the Medium Density Residential Zone and Lower Density Suburban Residential Zone, the extent to which future development will affect the historic character of the Arrowtown Residential Historic Management Zone;

f. the extent to which Policies 27.2.1.7, 27.2.3.2, 27.2.4.2, 27.2.4.4, 27.2.5.10, 27.2.5.11, 27.2.5.14 and 27.2.7.2 are achieved.

27.9.2 Controlled Unit Title and Leasehold Subdivision Activities

In considering whether or not to impose conditions in respect to unit title or leasehold subdivision under Rule 27.5.5, the Council shall have regard to, but not be limited by, the following assessment criteria:

27.9.2.1 Assessment Matters in relation to Rule 27.5.5 (Unit Title or Leasehold Subdivision)

a. whether all buildings comply with an approved resource consent;

b. whether the location of the proposed boundaries is appropriate, including in relation to their relationship to existing buildings and existing or proposed accesses;

c. whether the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces:

    i. is able to accommodate development in accordance with the relevant district-wide and zone rules; and

    ii. the potential effects the safety of pedestrians and cyclists and other users of the space or access;

d. the effects of and on infrastructure provision;

e. The extent to which Policies 27.2.1.7, 27.2.3.1, 27.2.3.2, 27.2.5.10, 27.2.5.11 and 27.2.5.14 are achieved.

27.9.3 Restricted Discretionary Activity Subdivision Activities

In considering whether or not to grant consent or impose conditions under Rules 27.5.7 and 27.5.8, the Council shall have regard to, but not be limited by, the following assessment criteria:

27.9.3.1 Assessment Matters in relation to Rule 27.5.7 (Urban Subdivision Activities)

a. whether lot sizes and dimensions are appropriate in respect of widening, formation or upgrading of existing and proposed roads and any provisions required for access for future subdivision on adjoining land;

b. consistency with the principles and outcomes of the QLDC Subdivision Design Guidelines;

c. whether any landscape features or vegetation, including mature forest, on the site are of a sufficient amenity value that they should be retained and the proposed means for their protection;

d. the effect of subdivision on any places of heritage value including existing buildings, archaeological sites and any areas of cultural significance;

e. whether the location, alignment, gradients and pattern of roading, service lanes, pedestrian accessways and cycle ways is appropriate, including as regards their safety and efficiency;

f. the extent to which the provision for open space and recreation is consistent with the objectives and policies of the District Plan relating to the provision, diversity and environmental effects of open spaces and recreational facilities;

g. whether the purposes for the creation of esplanade reserves or strips set out in section 229 of the Act are achieved;

h. whether services are to be provided in accordance with Council's Code of Practice for Subdivision

i. whether effects on electricity and telecommunication networks are appropriately managed;

j. whether appropriate easements are provided for existing and proposed access and services.

k. the extent to which Policies 27.2.1.1, 27.2.1.2, 27.2.1.3, 27.2.3.2, 27.2.4.4, 27.2.5.5, 27.2.5.6, 27.2.5.10, 27.2.5.11, 27.2.5.14, 27.2.5.16 and 27.2.6.1 are achieved.

27.9.3.2 Assessment Matters in relation to Rule 27.5.8 (Rural Residential and Rural Lifestyle Subdivision Activities)

a. the extent to which the design maintains and enhances rural living character, landscape values and visual amenity;

b. the extent to which the location and size of building platforms could adversely affect adjoining non residential land uses;

c. whether and what controls are required on buildings within building platforms to manage their external appearance or visibility from public places, or their effects on landscape character and visual amenity;

d. the extent to which lots have been orientated to optimise solar gain for buildings and developments;

e. whether lot sizes and dimensions are appropriate in respect of widening, formation or upgrading of existing and proposed roads and any provision required for access for future subdivision on adjoining land.

f. whether any landscape features or vegetation, including mature forest, on the site are of a sufficient amenity value that they should be retained and the proposed means for their protection;

g. the effect of subdivision on any places of heritage value including existing buildings, archaeological sites and any areas of cultural significance;

h. whether the location, alignment, gradients and pattern of roading, service lanes, pedestrian accessways and cycle ways is appropriate, including as regards their safety and efficiency;

i. the extent to which the provision for open space and recreation is consistent with the objectives and policies of the District Plan relating to the provision, diversity and environmental effects of open spaces and recreational facilities;

j. whether the purposes for the creation of esplanade reserves or strips set out in section 229 of the Act are achieved;

k. whether services are to be provided in accordance with Council's Code of Practice for Subdivision;

l. whether effects on electricity and telecommunication networks are appropriately managed;

m. whether appropriate easements are provided for existing and proposed access and services;

n. where no reticulated water supply is available, whether sufficient water supply and access to water supplies for firefighting purposes in accordance with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 is provided.

o. the extent to which Policies 27.2.1.2, 27.2.4.4, 27.2.5.4, 27.2.5.5, 27.2.5.10, 27.2.5.11, 27.2.5.14, 27.2.5.16 and 27.2.6.1 are achieved.

27.9.5 Restricted Discretionary Activity - Subdivision Activities within National Grid Corridor

In considering whether or not to grant consent or impose conditions in respect to subdivision activities under Rules 27.5.10, the Council shall have regard to, but not be limited by, the following assessment criteria:

27.9.5.1 Assessment Matters in relation to Rule 27.5.10. (National Grid Corridor)

a. whether the allotments are intended to be used for residential or commercial activity;

b. the need to identify a building platform to ensure future buildings are located outside the National Grid Yard;

c. the ability of future development to comply with NZECP34:2001;

d. potential effects of the location and planting of vegetation on the National Grid;

e. whether the operation, maintenance and upgrade of the National Grid is restricted;

f. the extent to which Policy 27.2.2.8 is achieved.

27.9.6 Controlled Subdivision Activities – Structure Plan

In considering whether or not to impose conditions in respect to subdivision activities undertaken in accordance with a structure plan under Rules 27.7.1 and 27.7.2.1, the Council shall have regard to, but not be limited by, the following assessment criteria:

27.9.6.1 Assessment Matters in relation to Rule 27.7.1

a. consistency with the relevant location specific objectives and policies in part 27.3;

b. the extent and effect of any minor inconsistency or variation from the relevant structure plan.

29.9.6.2 Assessment Matters in relation to Rule 27.7.2.1 (Kirimoko)

a. the assessment criteria identified under Rule 27.7.1;

b. the appropriateness of any earthworks required to create any road, vehicle accesses, of building platforms or modify the natural landform;

c. the appropriateness of the design of the subdivision including lot configuration and roading patterns and design (including footpaths and walkways);

d. whether provision is made for creation and planting of road reserves

e. whether walkways and the green network are provided and located as illustrated on the Structure Plan for the Kirimoko Block in part 27.13;

f. whether native species are protected as identified on the Structure Plan as green network;

g. The extent to which Policies 27.3.2.1 to 27.3.2.10 are achieved.

27.9.7 Restricted Discretionary Activity-Subdivision Activities within the Jacks Point Zone

In considering whether or not to grant consent or impose conditions in respect to subdivision activities under Rule 27.7.5.2, the Council shall have regard to, but not be limited by, the following assessment criteria:

27.9.7.1 Assessment Matters in relation to Rule 27.7.5.2 (Jacks Point)

a. the assessment criteria identified under Rule 27.7.1 as it applies to the Jacks Point Zone;

b. the visibility of future development from State Highway 6 and Lake Wakatipu;

c. the appropriateness of the number, location and design of access points;

d. the extent to which nature conservation values are maintained or enhanced;

e. the adequacy of provision for creation of open space and infrastructure;

f. the extent to which Policy 27.3.7.1 is achieved;

g. the extent to which sites are configured:

i. with good street frontage;

ii. to enable sunlight to existing and future residential units;

iii. to achieve an appropriate level of privacy between homes.

h. the extent to which parking, access and landscaping are configured in a manner which:

i. minimises the dominance of driveways at the street edge;

ii. provides for efficient use of the land;

iii. maximises pedestrian and vehicular safety;

iv. addresses nuisance effects such as from vehicle lights.

i. the extent to which subdivision design satisfies:

i. public and private spaces are clearly demarcated, and ownership and management arrangements are proposed to appropriately manage spaces in common ownership.

j. whether design parameters are required to be secured through an appropriate legal mechanism. These are height, building mass, window sizes and locations, building setbacks, fence heights, locations and transparency, building materials and landscaping.

27.9.8 Controlled Activity-Subdivision Activities on West Meadows Drive

In considering whether or not to impose conditions in respect to subdivision activities under Rule 2**7.7.8.1,** the Council shall have regard to, but not be limited by, the following assessment criteria:

27.9.8.1 Assessment Matters in relation to Rule 27.7.8.1

a. the assessment criteria identified under Rule 27.7.1 as they apply to the West Meadows Drive area.

b. the extent to which the roading layout integrates with the operation of West Meadows Drive as a through-road.

27.10 Rules - Non-Notification of Applications

Applications for all controlled and restricted discretionary activities shall not require the written approval of other persons and shall not be notified or limited notified except:

a. where the site adjoins or has access onto a State Highway;

b. where the Council is required to undertake statutory consultation with iwi;

c. where the application falls within the ambit of Rule 27.5.4;

d. where the application falls within the ambit of Rule 27.5.10 and the written approval of Transpower New Zealand Limited has not been obtained to the application.

27.11 Advice Notes

27.11.1 State Highways

27.11.1.1 Attention is drawn to the need to obtain a Section 93 notice from the New Zealand Transport Agency for all subdivisions with access onto state highways that are declared Limited Access Roads (LAR). Refer to the Designations Chapter of the District Plan for sections of state highways that are LAR as at August 2015. Where a subdivision will change the use, intensity or location of the access onto the state highway, subdividers should consult with the New Zealand Transport Agency.

27.11.2 Esplanades

27.11.2.1 The opportunities for the creation of esplanades are outlined in objective and policies 27.2.7. Unless otherwise stated, section 230 of the Act applies to the standards and process for creation of esplanade reserves and strips.

27.11.3 New Zealand Electrical Code of Practice for Electrical Safe Distances

27.11.3.1 Compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distances ("NZECP34:2001") is mandatory under the Electricity Act 1992. All activities regulated by NZECP34, including any activities that are otherwise permitted by the District Plan must comply with this legislation.

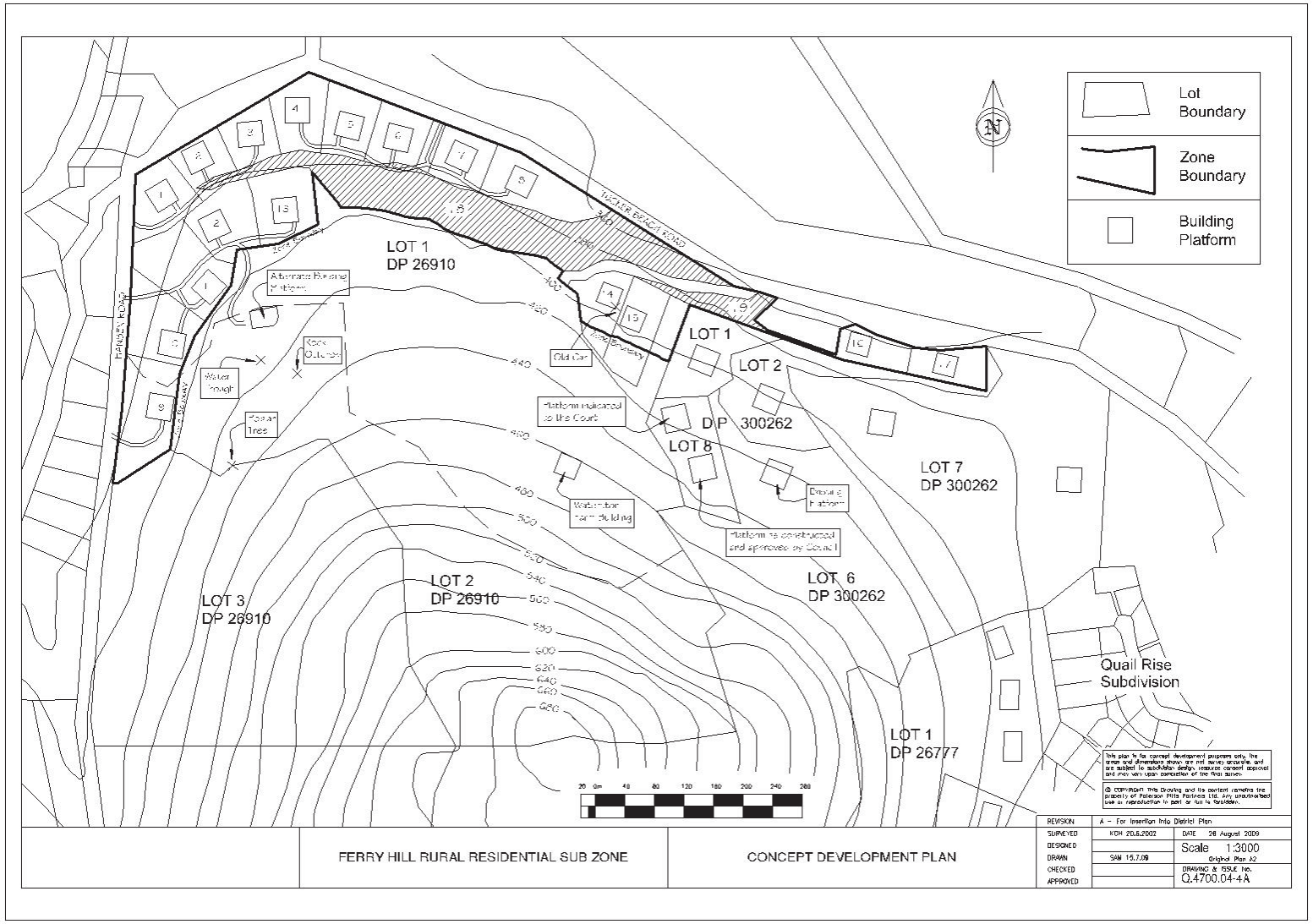
27.12 Financial Contributions

The Local Government Act 2002 provides the Council with an avenue to recover growth related capital expenditure from subdivision and development through development contributions. The Council forms a development contribution policy as part of its 10 Year Plan and actively imposes development contributions via this process.

The Council acknowledges that Millbrook Country Club has already paid financial contributions for water and sewerage for demand up to a peak of 5000 people. The 5000 people is made up of hotel guests, day staff, visitors and residents. Should demand exceed this then further development contributions will be levied under the Local Government Act 2002.

27.13 Structure Plans

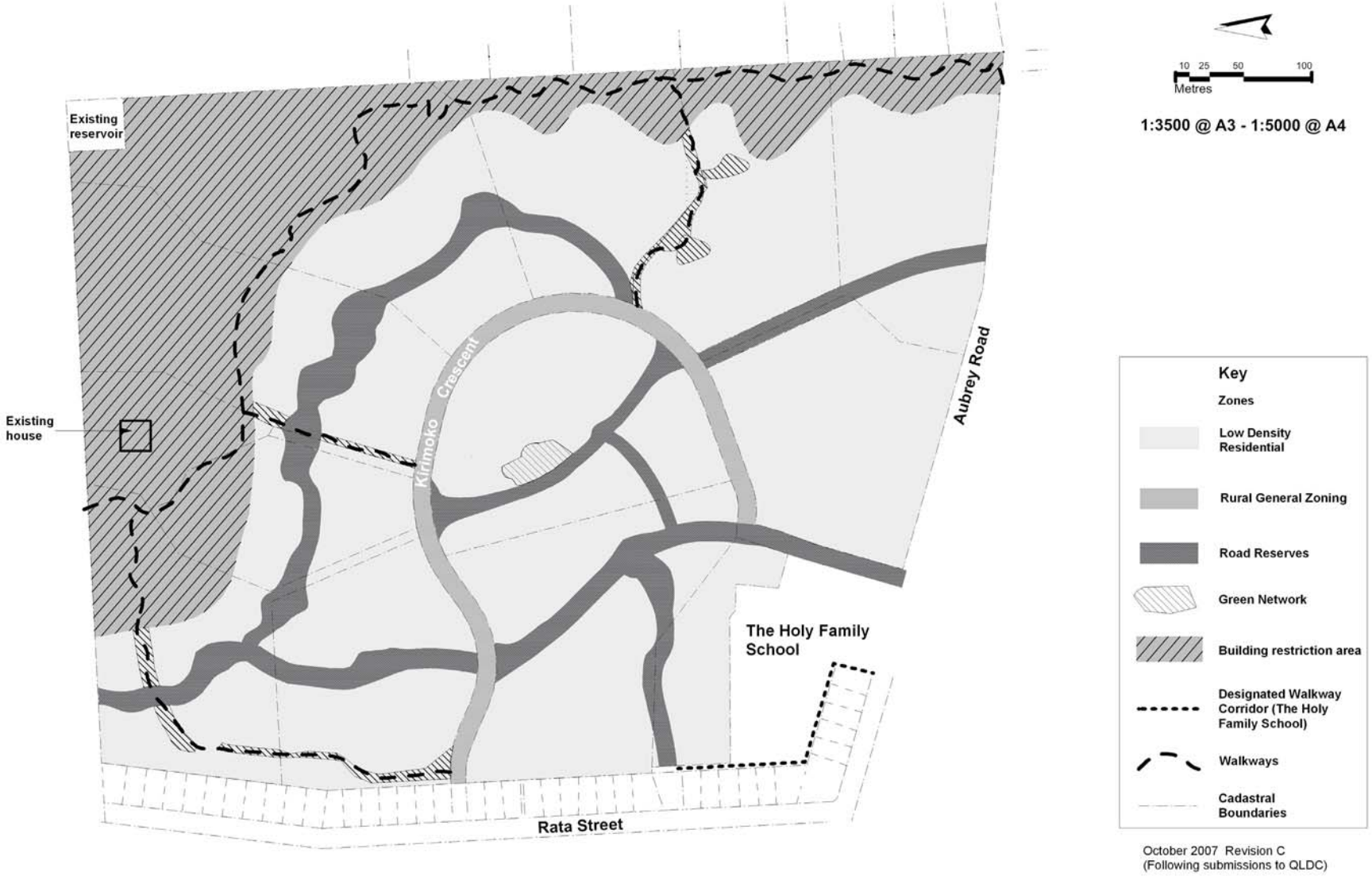
Ferry Hill Rural Residential Subzone[6]



[6] Greyed out text indicates the provision is subject to variation and is therefore is not part of the Hearing Panel's recommendations.

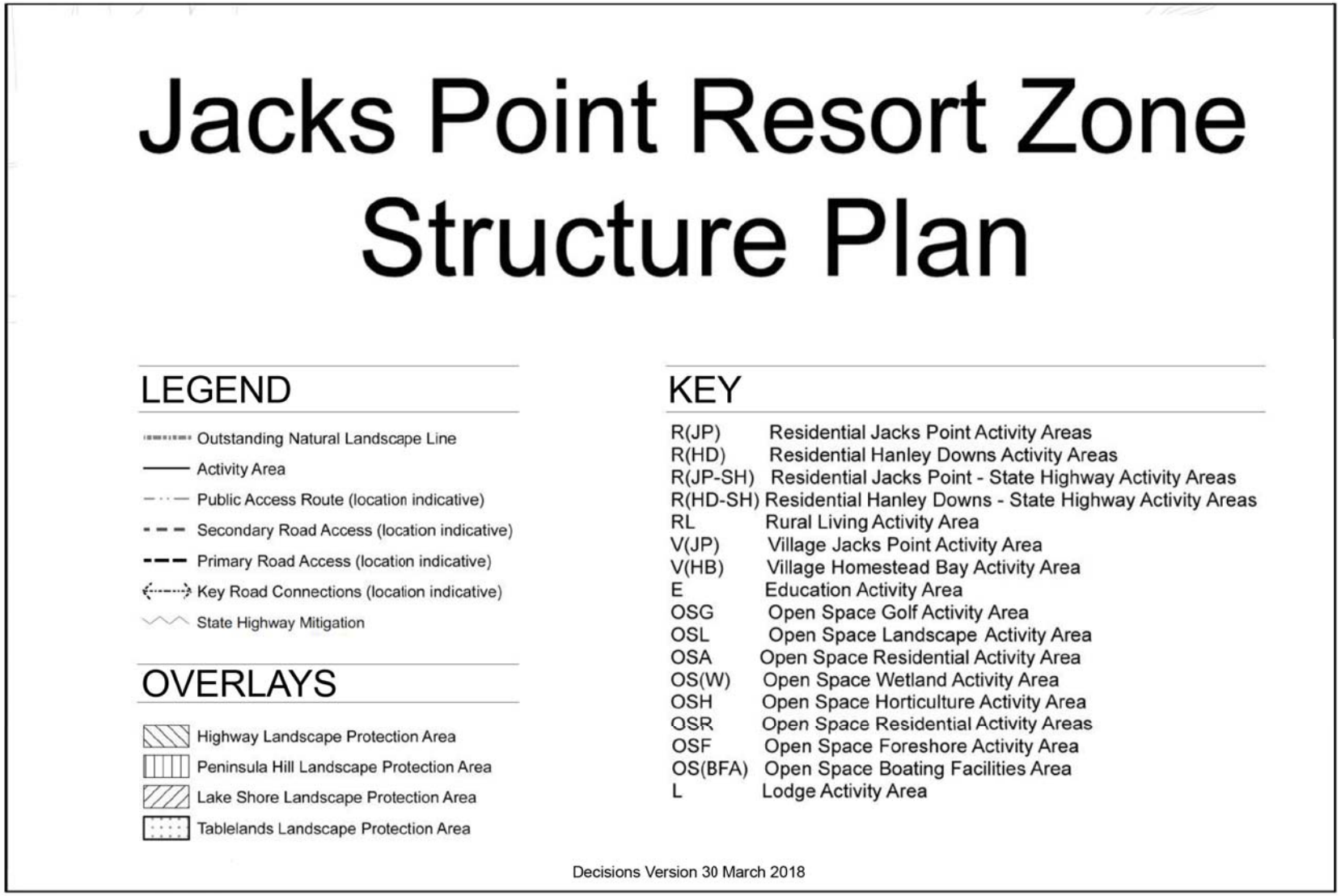
27.13.1 Kirimoko Structure Plan

Kirimoko Block - Wanaka - Structure Plan

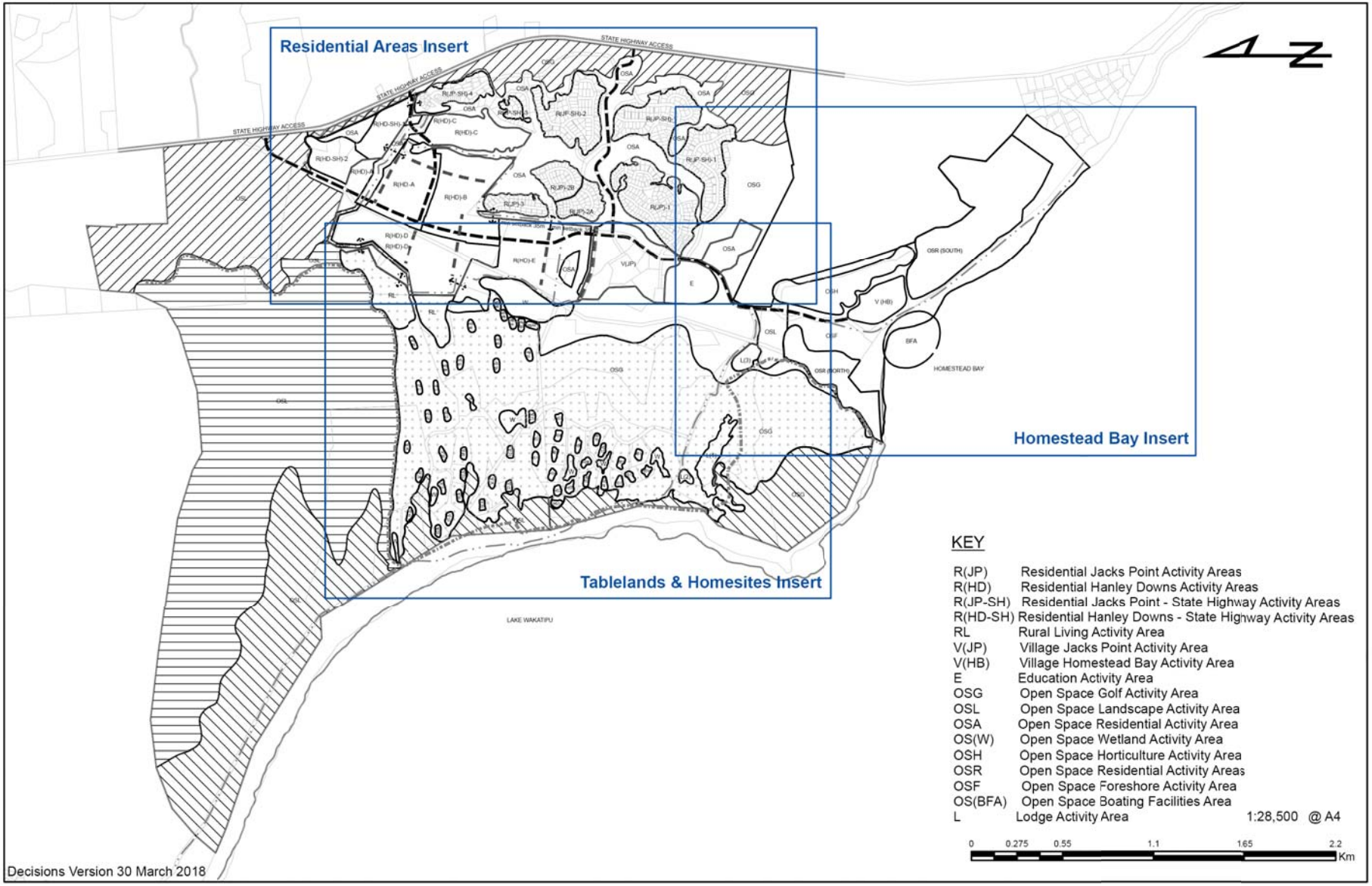


October 2007 Revision C
(Following submissions to QLDC)

27.13.2 Jacks Point Structure Plan

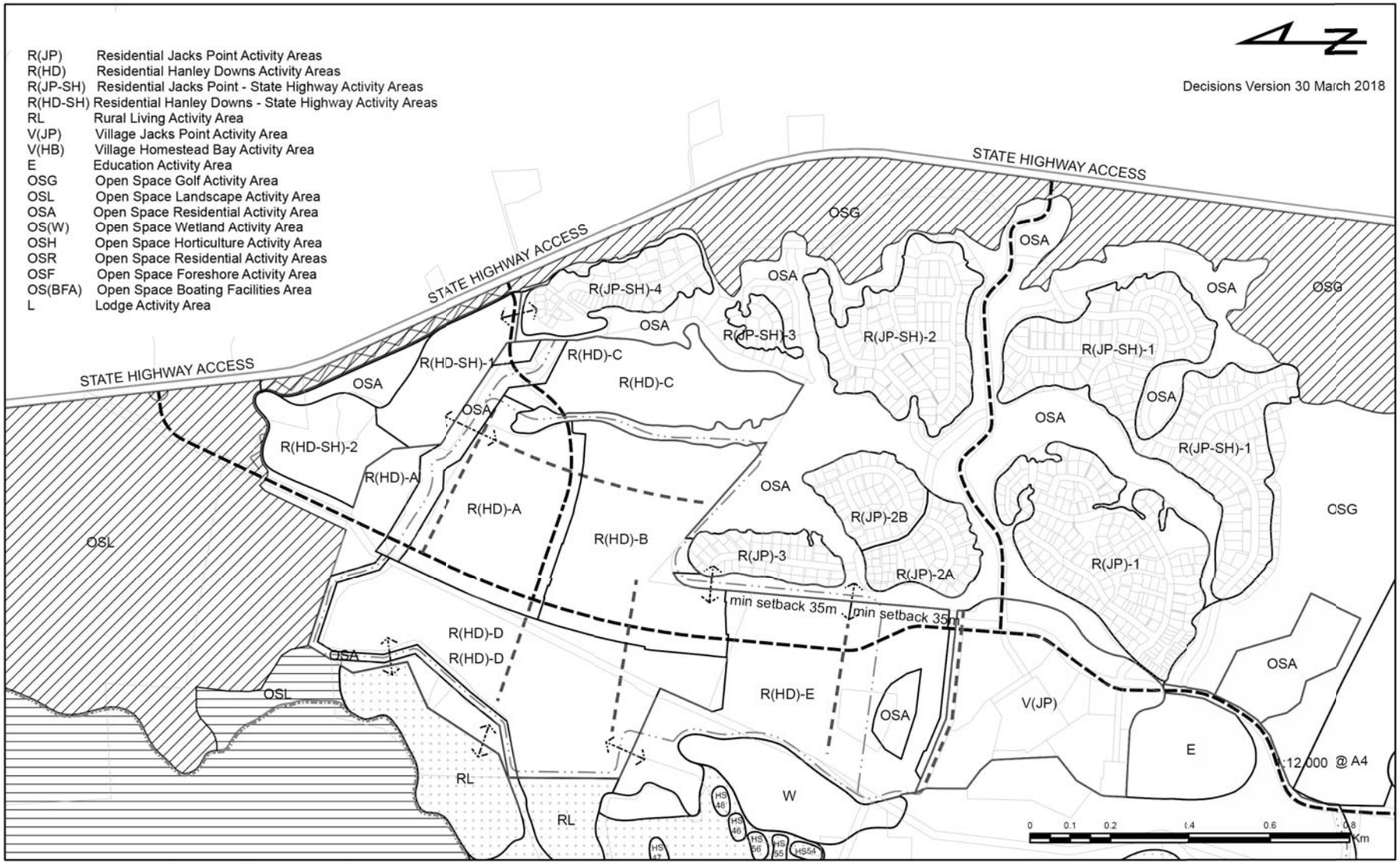


Jacks Point Resort Zone Structure Plan



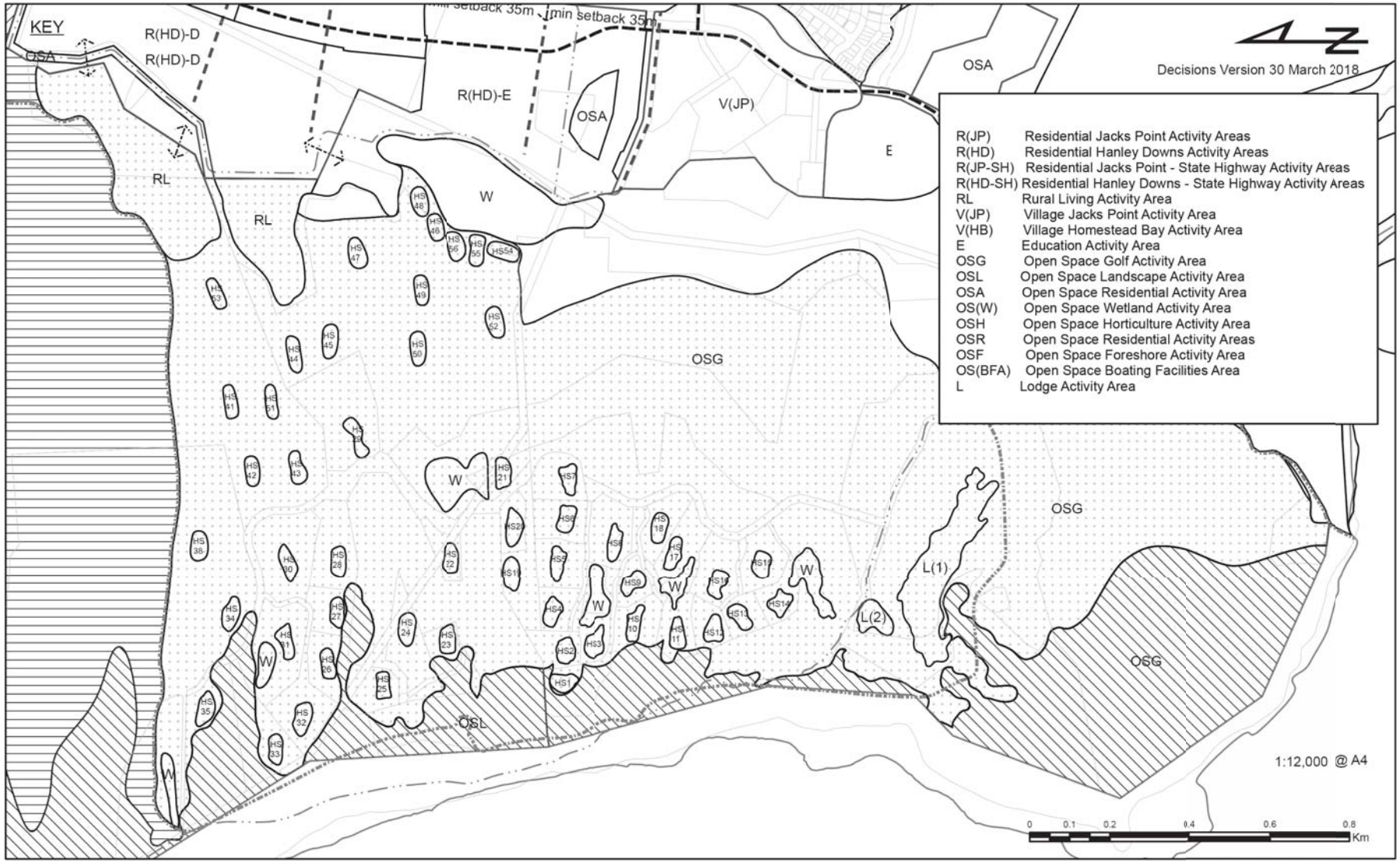
Jacks Point Resort Zone Structure Plan

Residential Areas Insert



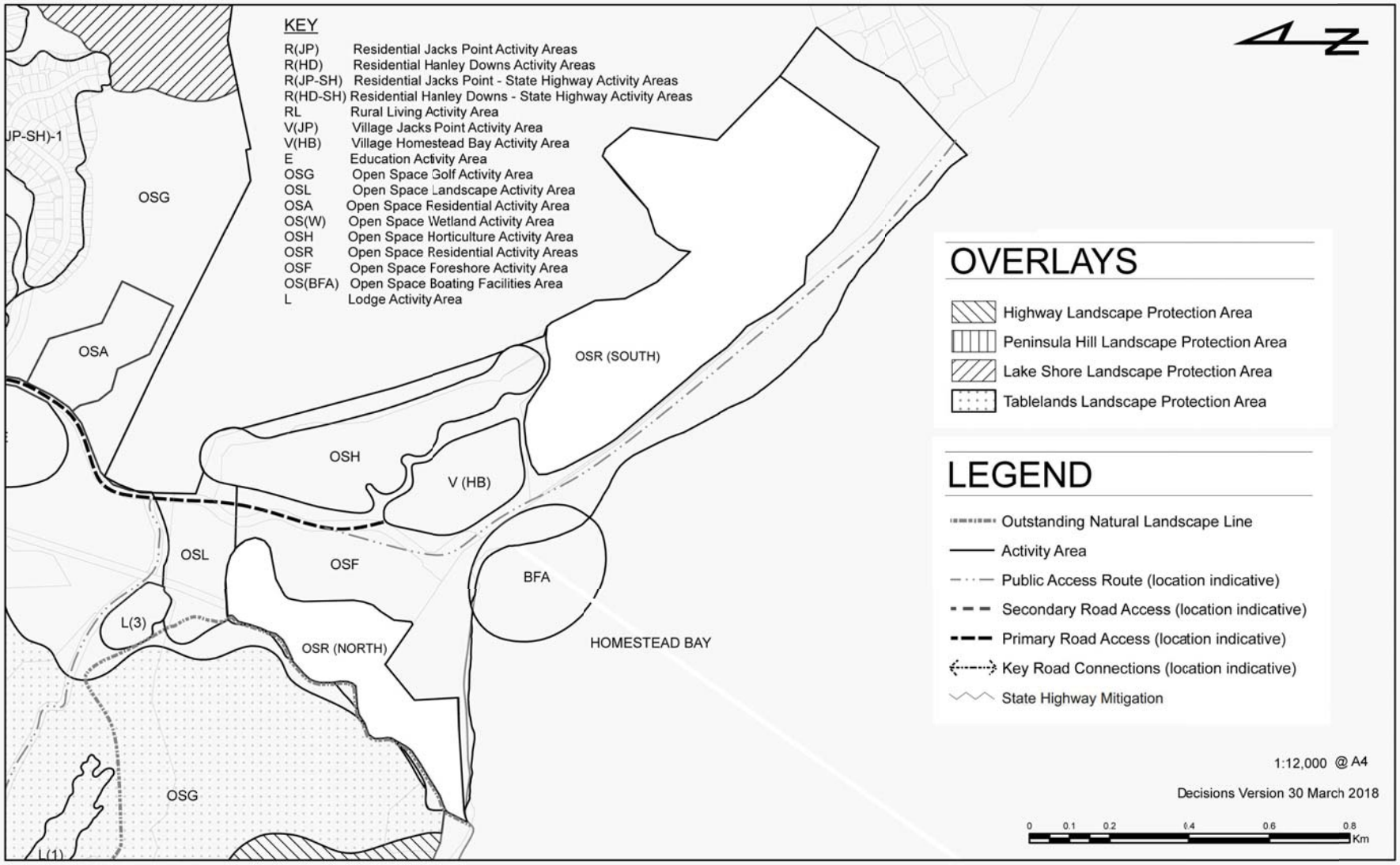
Jacks Point Resort Zone Structure Plan

Tablelands & Homesites Insert

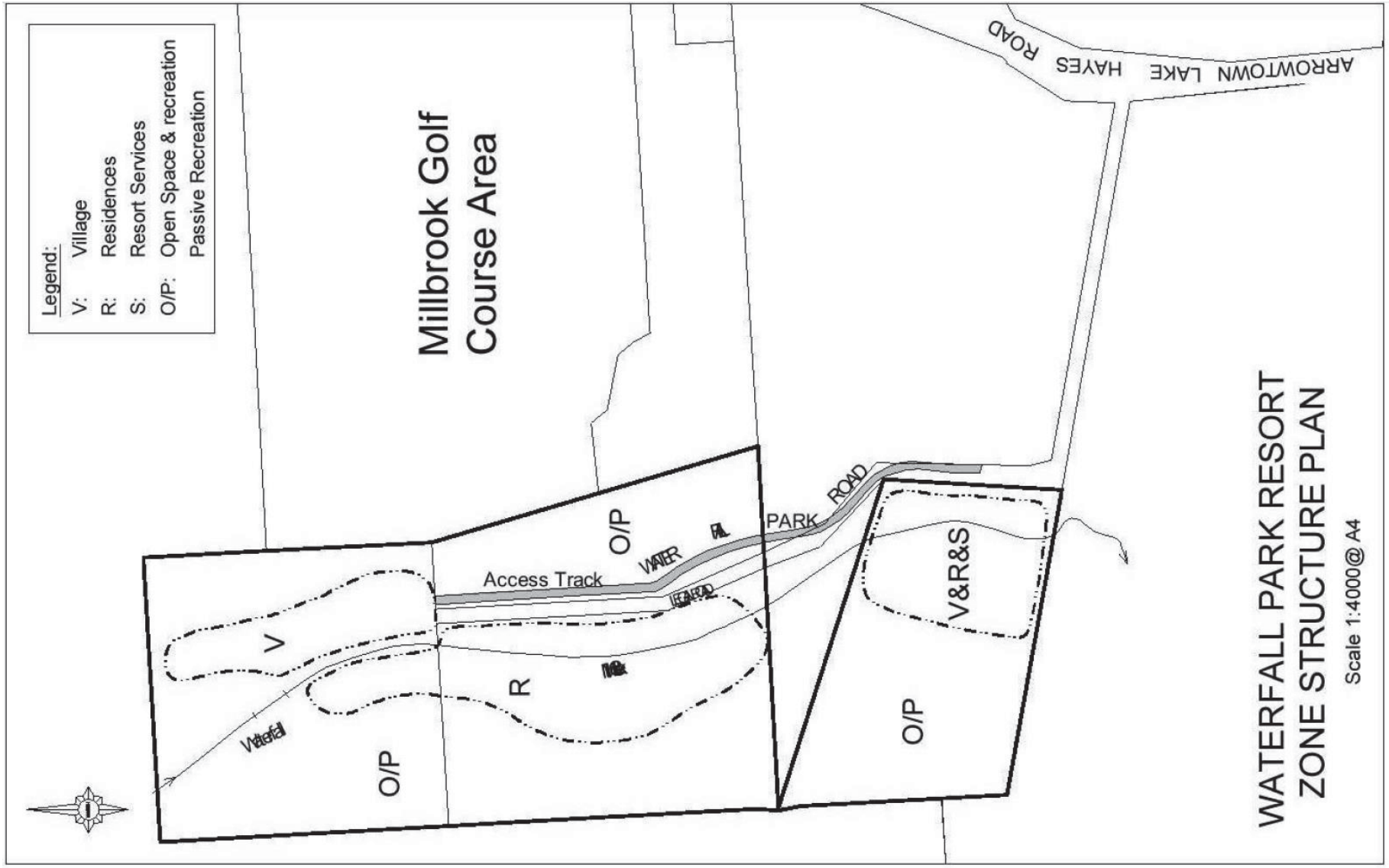


Jacks Point Resort Zone Structure Plan

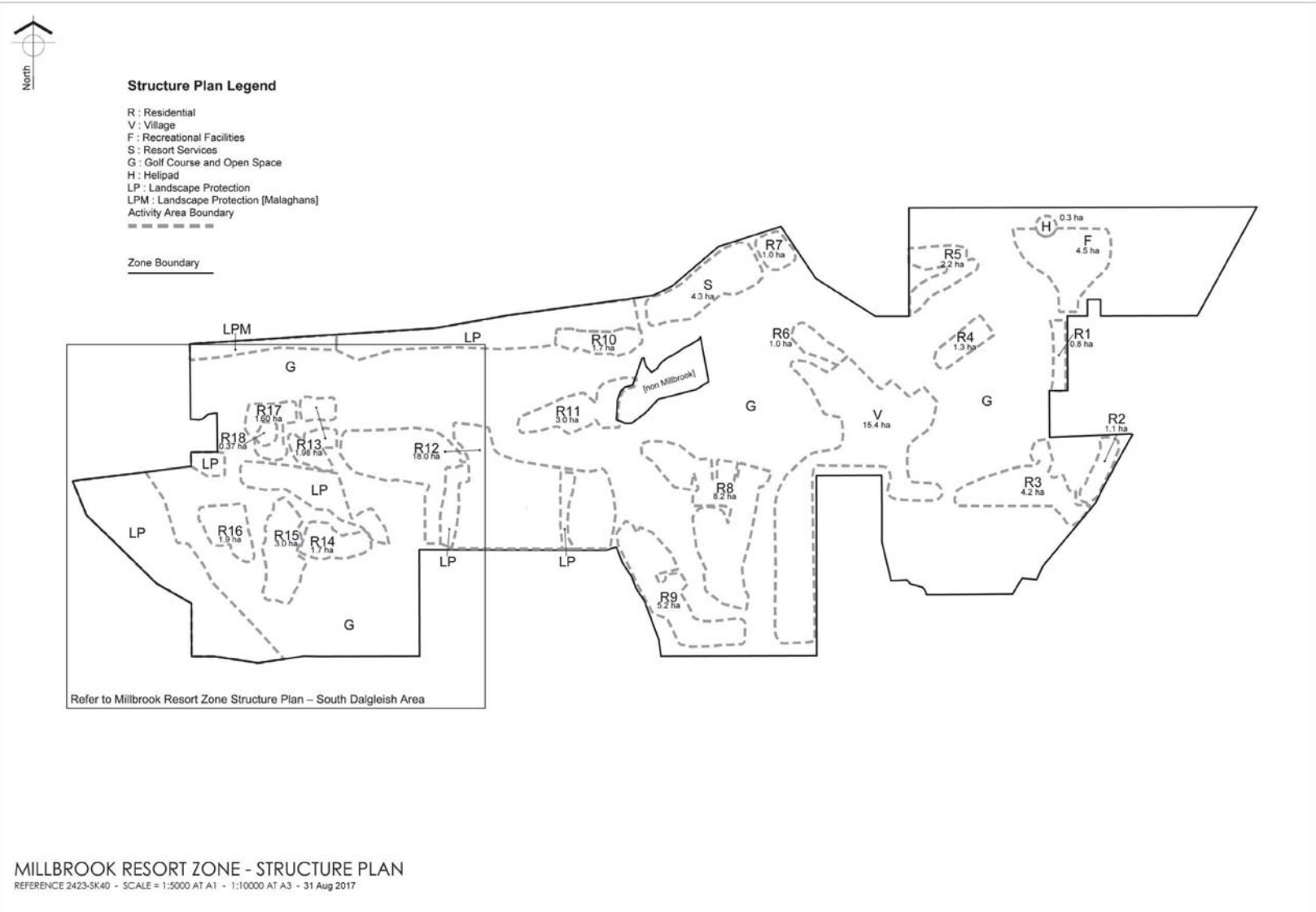
Homestead Bay Insert

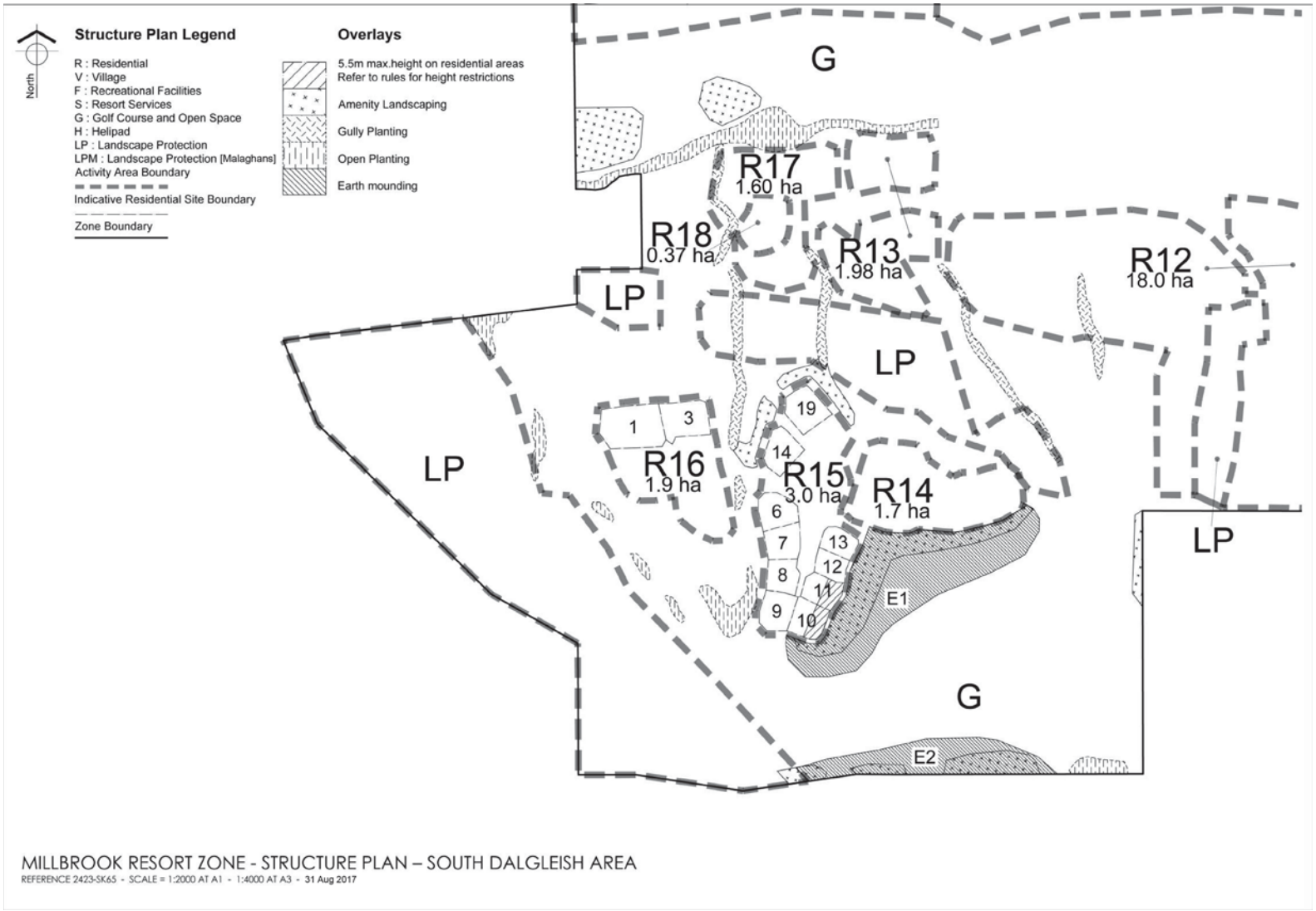


27.13.3 Waterfall Park Structure Plan

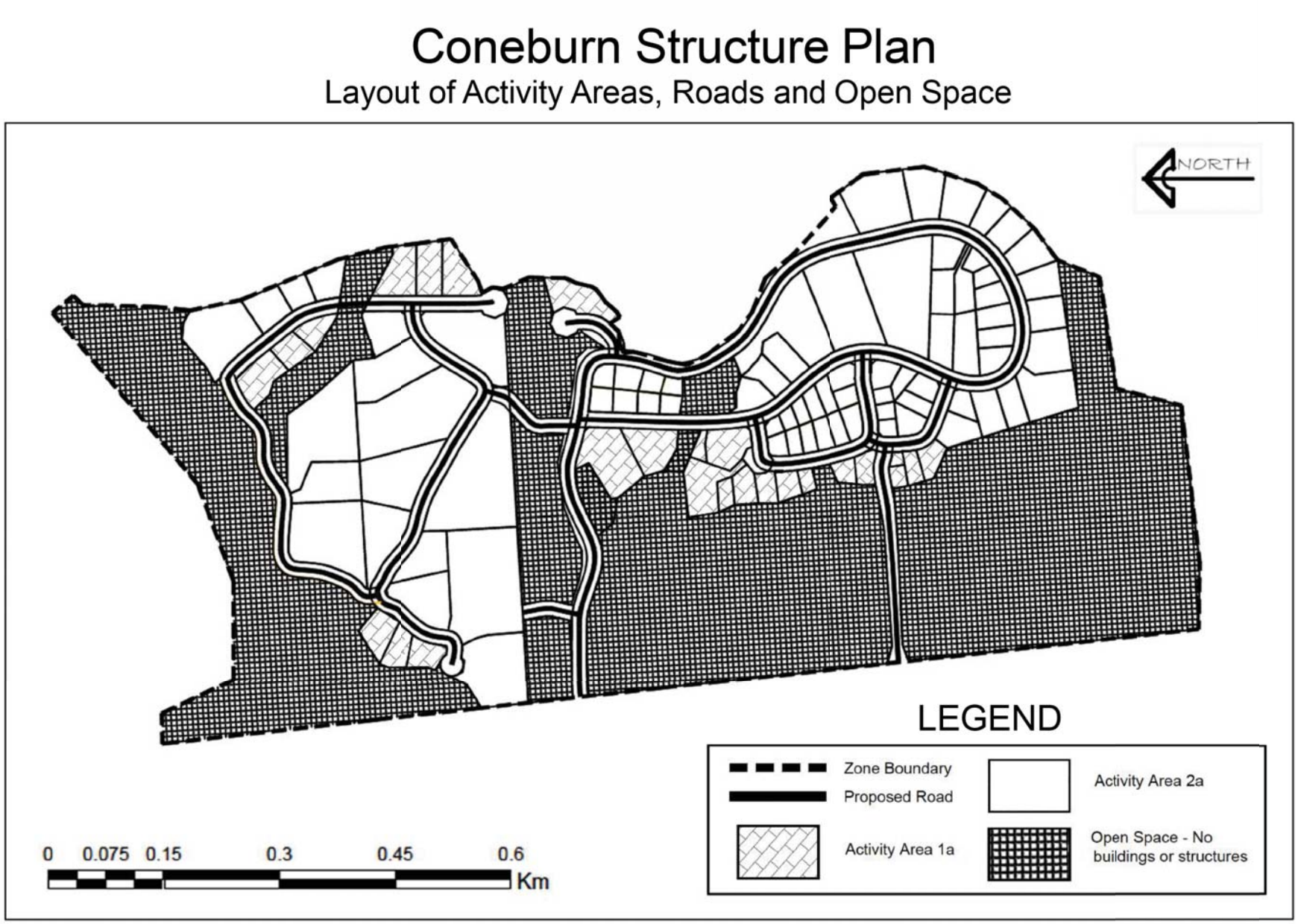


27.13.4 Millbrook Structure Plan



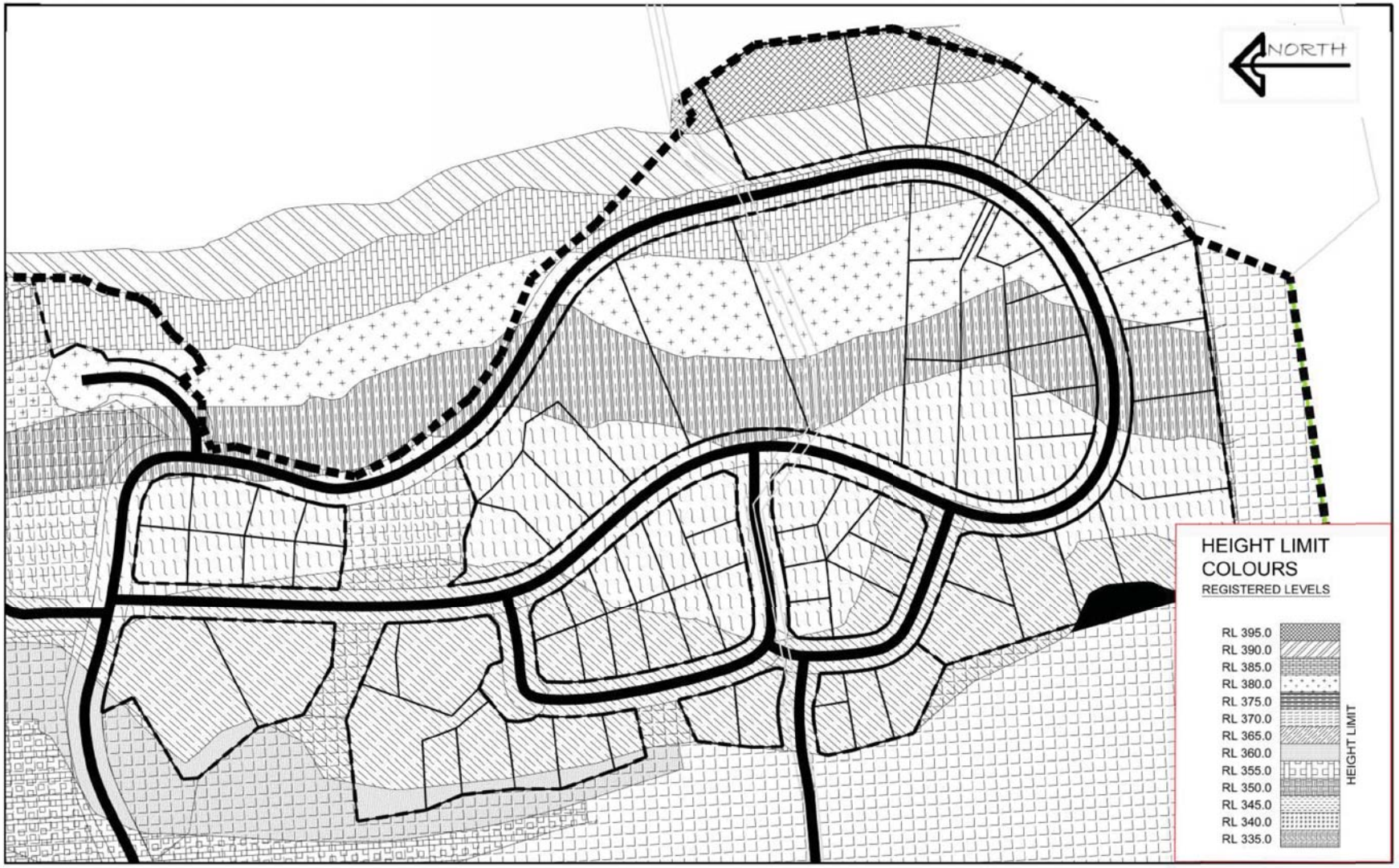

North
Structure Plan Legend
R : Residential
V : Village
F : Recreational Facilities
S : Resort Services
G : Golf Course and Open Space
H : Helipad
LP : Landscape Protection
LPM : Landscape Protection [Malaghans]
Activity Area Boundary
Indicative Residential Site Boundary
Zone Boundary
Overlays
5.5m max.height on residential areas
Refer to rules for height restrictions
Amenity Landscaping
Gully Planting
Open Planting
Earth mounding
G
R17
1.60 ha
R18
0.37 ha
R13
1.98 ha
R12
18.0 ha
LP
LP
LP
LP
1
3
19
14
R16
1.9 ha
R15
3.0 ha
R14
1.7 ha
6
7
8
9
10
11
12
13
E1
G
E2
MILLBROOK RESORT ZONE - STRUCTURE PLAN – SOUTH DALGLEISH AREA
REFERENCE 2423-SK65 - SCALE = 1:2000 AT A1 - 1:4000 AT A3 - 31 Aug 2017

27.13.5 Coneburn Industrial Structure Plan



Coneburn Structure Plan

Building Height Limits: Part 1

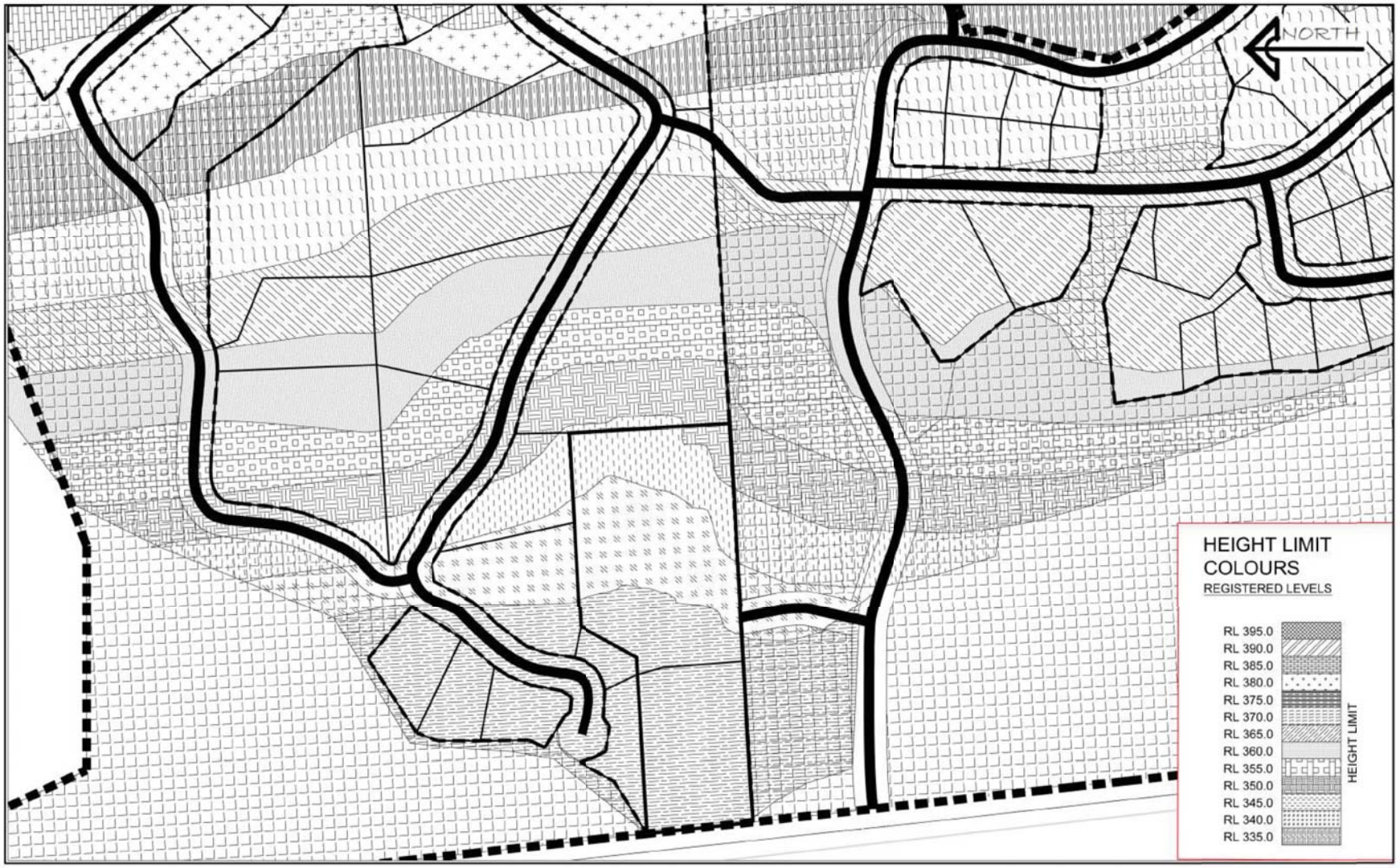


Coneburn Structure Plan

Building Height Limits: Part 2

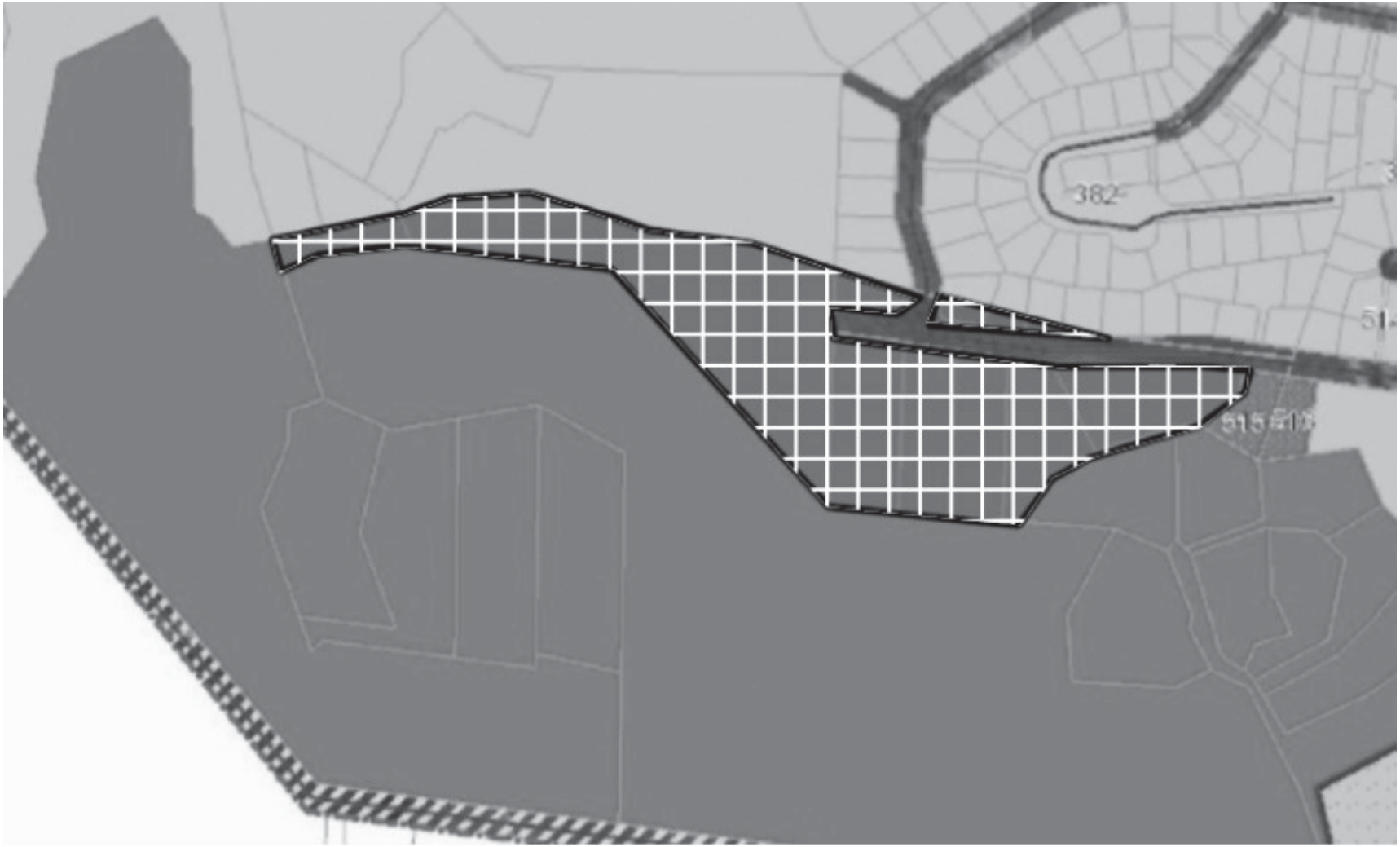
Coneburn Structure Plan

Building Height Limits: Part 3

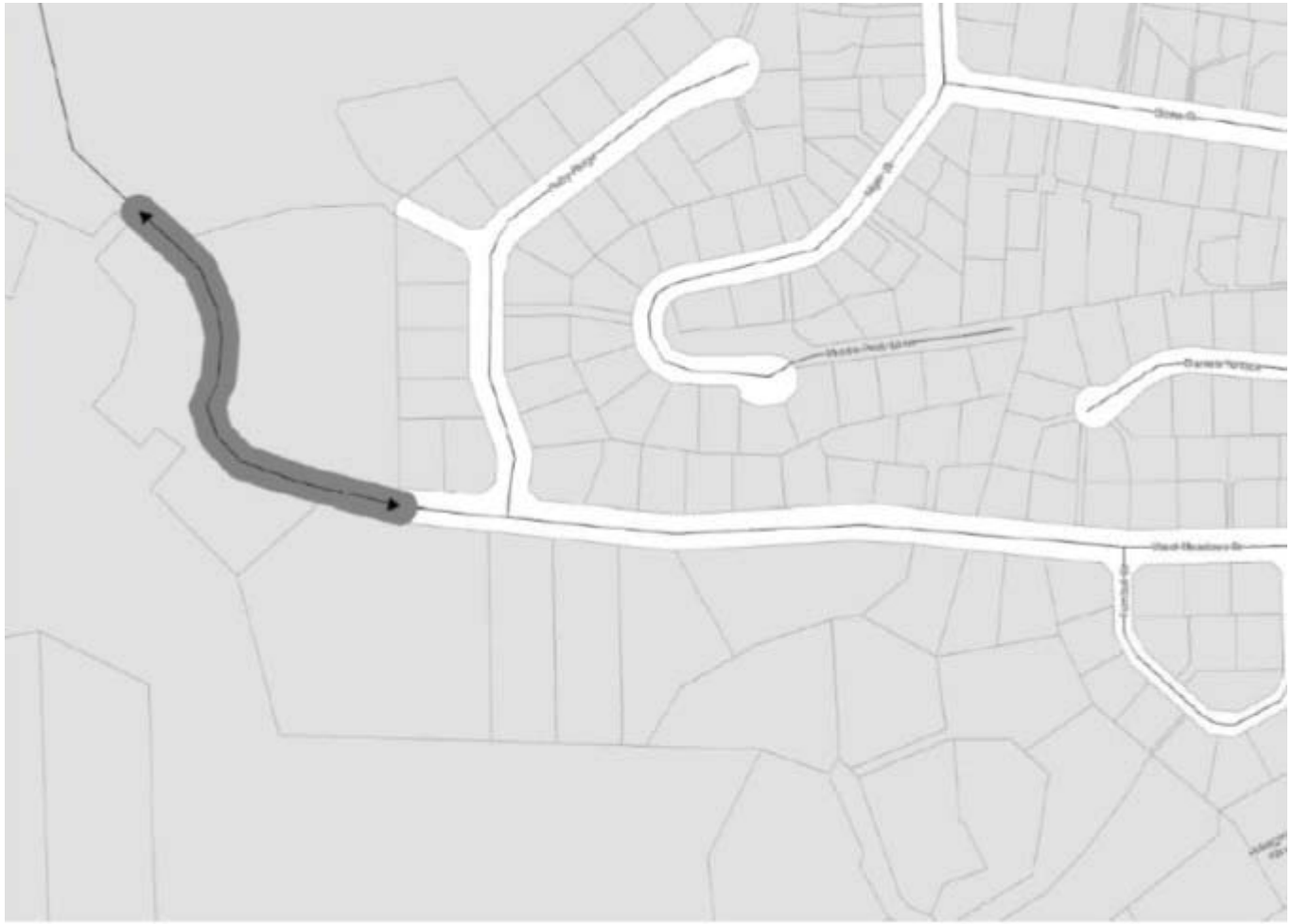


27.13.6 West Meadows Drive Structure Plan

Area of Lower Density Suburban Residential zoned land the subject of the West Meadows Structure Plan



West Meadows Drive Structure Plan



QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 7

Report and Recommendations of Independent Commissioners
Regarding Chapter 27 – (Subdivision and Development)

Commissioners
Denis Nugent (Chair)
Trevor Robinson
Scott Stevens

TABLE OF CONTENTS

1. PRELIMINARY MATTERS 3
1.1 Terminology in this Report 3
1.2 Topics Considered 3
1.3 Hearing Arrangements 4
1.4 Procedural Steps and Issues 6
1.5 Stage 2 Variations 7
1.6 Statutory Considerations 7
1.7 Scope Issue – Activity Status of Residential Subdivision and Development within ONLs and ONFs 13
1.8 General Matters 19

2. DEFAULT ACTIVITY STATUS 23
2.1 Controlled Activity? 23

3. PURPOSE 36
3.1 Section 27.1 - Purpose 36

4. SECTION 27.2 – OBJECTIVES AND POLICIES 41
4.1 General 41
4.2 Objective 27.2.1 and Policies Following 41
4.3 Objective 27.2.2 and Policies Following 47
4.4 Objective 27.2.3 and Policies Following 55
4.5 Objective 27.2.4 and Policies Following 57
4.6 Objective 27.2.5 and Policies Following 63
4.7 Objective 27.2.6 and Policies Following 77
4.8 Objective 27.2.7 and Policies Following 79
4.9 Objective 27.2.8 and Policies Following 81

5. SECTION 27.7 - LOCATION–SPECIFIC OBJECTIVES AND POLICIES 84
5.1 General 84
5.2 Objectives 27.7.1 and 27.7.2, and Policies Following those objectives 85
5.3 Objective 27.7.4 and Policies Following 86
5.4 Objective 27.7.5 and Policies Following 87
5.5 Objective 27.7.6 and Policies Following 88
5.6 Objective 27.7.7 and Policies Following 88
5.7 Objective 27.7.8 and Policies Following 88
5.8 Objective 27.7.9 and Policies Following 88
5.9 Objectives 27.7.10-13 Inclusive 88
5.10 Objective 27.7.14 and Policies Following 89
5.11 Objective 27.7.17 and Policies Following 90
5.12 Objective 27.7.19 and Policies Following 91
5.13 Conclusion on Location and Zone-Specific Objectives and Policies 91

6. SECTION 27.3 - OTHER PROVISIONS AND RULES 92
6.1 27.3.1 – District Wide Provisions 92
6.2 27.3.2 – Earthworks Associated with Subdivision 93
6.3 27.3.3 – Zones Exempt from PDP and Subdivision Chapter 93
6.4 Section 27.11 – Natural Hazards 94
6.5 Conclusion 94

7. SECTION 27.4 - RULES – SUBDIVISION 95
7.1 Introduction 95
7.2 Boundary Adjustments 95
7.3 Unit Title or Leasehold Subdivision 98
7.4 District Wide Subdivision Rules 99

8. SECTION 27.5 - RULES –STANDARDS FOR SUBDIVISION ACTIVITIES 107
8.1 Rule 27.5.1 – Minimum Lot Sizes 107
8.2 Zone and Location Specific Rules 110
8.3 Building Platform and Lot Dimensions 117
8.4 Infill subdivision 118
8.5 Servicing and Infrastructure Requirements 121
8.6 Exemptions 123
8.7 Assessment Criteria 124
8.8 Notification 126
8.9 Section 27.10 – Rules – General Provisions 129
8.10 Section 27.12 – Financial Contributions 130
8.11 Section 27.13 – Structure Plans 130
8.12 Conclusions on Rules 131

9. SUMMARY OF RECOMMENDATIONS TO OTHER HEARING STREAMS 131

10. SUMMARY OF RECOMMENDATIONS 131

Appendix 1 – Recommended Revised Chapter 27
Appendix 2 – Recommendations on Submissions and Further Submissions
Appendix 3 – Summary of Additional Recommendations to Council

1. PRELIMINARY MATTERS

1.1 Terminology in this Report

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

Act	Resource Management Act 1991 as it was prior to the enactment of the Resource Legislation Amendment Act 2017
Clause 16(2)	Clause 16(2) of the First Schedule to the Act
Council	Queenstown Lakes District Council
NPSET 2008	National Policy Statement for Electricity Transmission 2008
ODP	the Operative District Plan for the Queenstown Lakes District as at the date of this report
ONF	Outstanding Natural Feature(s)
ONL	Outstanding Natural Landscape(s)
PDP	Stage 1 of the Proposed District Plan for Queenstown Lakes District as publicly notified on 26 August 2015
Proposed RPS	the Proposed Regional Policy Statement for the Otago Region as modified by decisions on submissions and dated 1 October 2016
Proposed RPS (notified)	the Proposed Regional Policy Statement for the Otago Region dated 23 May 2015
QAC	Queenstown Airport Corporation
RPS	the Operative Regional Policy Statement for the Otago Region dated October 1998
UCES	Upper Clutha Environmental Society
Stage 2 Variations	the variations, including changes to the existing text of the PDP, notified by the Council on 23 November 2017

1.2 Topics Considered

2. The subject matter of this hearing was Chapter 27 of the PDP (Hearing Stream 4).

3. Chapter 27 sets out objectives, policies, rules and other provisions related to subdivision and development.

4. As notified, it was set out under the following major headings:
   a. 27.1 – Purpose;
   b. 27.2 – Objectives and Policies;
   c. 27.3 – Other Provisions and Rules;

d. 27.4 – Rules – Subdivision;
e. 27.5 – Rules – Standards for Subdivision Activities;
f. 27.6 – Rules – Exemptions;
g. 27.7 – Location – Specific Objectives, Policies and Provisions;
h. 27.8 – Rules – Location Specific Standards;
i. 27.9 – Rules – Non-Notification of Applications;
j. 27.10 – Rules – General Provisions;
k. 27.11 – Rules – Natural Hazards;
l. 27.12 – Financial Contributions.

1.3 Hearing Arrangements

5. Hearing of Stream 4 took place over five days. The Hearing Panel sat in Queenstown on 25-26 July and 1-2 August 2016 inclusive and in Wanaka on 17 August 2016.

6. The parties we heard on Stream 4 were:

Council:
- Sarah Scott (Counsel)
- Garth Falconer
- David Wallace
- Nigel Bryce

Millbrook Country Club Limited[1] and **RCL Queenstown Pty Limited**[2]**:**
- Daniel Wells

Roland and Keri Lemaire-Sicre[3]**:**
- Keri Lemaire-Sicre

G W Stalker Family Trust, Mike Henry, Mark Tylden, Wayne French, Dave Finlin, Sam Strain[4]**, Ashford Trust**[5]**, Bill and Jan Walker Family Trust**[6]**, Byron Ballan**[7]**, Crosshill Farms Limited**[8]**, Robert and Elvena Heywood**[9]**, Roger and Carol Wilkinson**[10]**, Slopehill Joint Venture**[11]**, Wakatipu Equities Limited**[12]**, Ayrburn Farm Estate Limited**[13]**, FS Mee Developments Limited**[14]**:**
- Warwick Goldsmith (Counsel)
- Alexander Reid

---

1 Submission 696
2 Submission 632/Further Submission 1296
3 Further Submission 1068
4 Submissions 534 and 535
5 Further Submission 1256
6 Submission 532/Further Submissions 1259 and 1267
7 Submission 530
8 Submission 531
9 Submission 523/Further Submission 1273
10 Further Submission 1292
11 Submission 537/Further Submission 1295
12 Submission 515/Further Submission 1298
13 Submission 430
14 Submission 525

- Jeff Brown (also on behalf of Hogan Gully Farming Limited[15], Dalefield Trustee Limited[16], Otago Foundation Trust Board[17], and Trojan Helmet Limited[18]):
- Ben Farrell

New Zealand Transport Agency[19]:
- Tony MacColl

Darby Planning LP[20], Soho Ski Area Limited[21], Treble Cone Investments Limited[22], Lake Hayes Limited[23], Lake Hayes Cellar Limited[24], Mt Christina Limited[25], Jacks Point Residential No.2 Limited, Jacks Point Village Holdings Limited, Jacks Point Developments Limited, Jacks Point Land Limited, Jacks Point Land No.2 Limited, Jacks Point Management Limited, Henley Downs Land Holdings Limited, Henley Downs Farms Holdings Limited, Coneburn Preserve Holdings Limited, Willow Pond Farm Limited[26], Glendhu Bay Trustees Limited[27], Hansen Family Partnership[28]:
- Maree Baker-Galloway (Counsel)
- Chris Ferguson
- Hamish McCrostie (17 August only)

NZ Fire Service Commission[29] and **Transpower New Zealand Limited[30]:**
- Ainsley McLeod
- Daniel Hamilton (Transpower only)

Queenstown Park Limited[31] and **Remarkables Park Limited[32]:**
- John Young (Counsel)

UCES[33]:
- Julian Haworth

Federated Farmers of New Zealand[34]:
- Kim Riley
- Phil Hunt

---

15 Submission 456
16 Submission 350
17 Submission 406
18 Further Submission 1157
19 Submission 719
20 Submission 608
21 Submission 610
22 Submission 613
23 Submission 763
24 Submission 767
25 Submission 764
26 Submission 762
27 Submission 583
28 Submission 751
29 Submission 438/Further Submission 1125
30 Submission 805/Further Submission 1301
31 Submission 806/Further Submission 1097
32 Submission 807/Further Submission 1117
33 Submission 145/Further Submission 1034
34 Submission 600/Further Submission 1132

Ros and Dennis Hughes[35]:

- Ros Hughes
- Dennis Hughes

QAC[36]:

- Rebecca Wolt and Ms Needham (Counsel)
- Kirsty O'Sullivan

Patterson Pitts Partners (Wanaka) Limited[37]

- Duncan White
- Mike Botting

Aurora Energy Limited[38]:

- Bridget Irving (Counsel)
- Nick Wyatt

7. Evidence was also pre-circulated by Ulrich Glasner (for Council), Joanne Dowd (for Aurora Energy Limited[39]), Carey Vivian (for Cabo Limited[40], Jim Veint[41], Skipp Williamson[42], David Broomfield[43], Scott Conway[44], Richard Hanson[45], Brent Herdson and Joanne Phelan[46]), and Nick Geddes (for Clark Fortune McDonald & Associates Limited[47]).

8. Mr Glasner was unable to attend the hearing and his evidence was adopted by David Wallace who appeared in his stead at the hearing.

9. Ms Dowd was unable to travel to the hearing due to an unfortunate accident. In lieu of her attendance, we provided written questions for Ms Dowd, to which she responded in a Supplementary Statement of Evidence dated 5 August 2016.

10. Messrs Vivian and Geddes were excused attendance at the hearing.

11. Mr Jonathan Howard also provided a statement on behalf of Heritage New Zealand Pouhere Taonga[48] and requested that it be tabled.

1.4 Procedural Steps and Issues

12. The hearing of Stream 4 proceeded based on the general pre-hearing directions made in the memoranda summarised in Report 1.

---

35 Submission 340
36 Submission 433/Further Submission 1340
37 Submission 453
38 Submission 635/Further Submission 1121
39 Submission 635/Further Submission 1121
40 Submission 481
41 Submission 480
42 Submission 499
43 Submission 500
44 Submission 467
45 Submission 473
46 Submission 485
47 Submission 414
48 Submission 426

13. Other procedural directions made by the Chair in relation to this hearing were:
    a. Consequent on the Hearing Panel's Memorandum dated 1 July 2016 requesting that Council undertake a planning study of the Wakatipu Basin (Noted in Report 1), a Minute was issued directing that if the Council agreed to the Hearing Panel's request[49], submissions relating to the minimum lot sizes for the Rural Lifestyle Zone would be deferred to be heard in conjunction with hearing the results of the planning study and granting leave for any submitter in relation to the minimum lot size in the Rural Lifestyle Zone to apply to be heard within Hearing Stream 4 if they considered that their submission was concerned with the zone provisions as they apply throughout the District[50];
    b. Granting leave for Mr Farrell's evidence to be lodged on or before 4pm on 20 July 2016;
    c. Granting leave for Ms Dowd's evidence to be lodged on or before noon on 3 August 2016, waiving late notice of Aurora Energy Ltd.'s wish to be heard and directing that Ms Dowd supply written answers to any questions we might have of Ms Dowd on or before noon on 16 August 2016;
    d. During the course of the hearing of submissions and evidence on behalf of Darby Planning LP and others, the submitters were given leave to provide additional material on issues that had arisen during the course of their presentation. Supplementary legal submissions and a supplementary brief of evidence of Mr Ferguson were provided. Ms Baker-Galloway, Mr Ferguson and Mr Hamish McCrostie appeared on 17 August to address the matters covered in this supplementary material.
    e. Directing that submissions on Chapter 27 specific to Jacks Point Resort Zone would not be deferred;
    f. Admitting a memorandum dated 18 August 2016 on behalf of UCES into the hearing record;
    g. Extending time for Council to file its written reply to noon on 26 August 2016.

1.5 Stage 2 Variations

14. On 23 November 2017, Council publicly notified the Stage 2 Variations. Relevantly to the preparation of this report, the Stage 2 Variations included changes to a number of provisions in Chapter 27.

15. Clause 16B(1) of the First Schedule to the Act provides that submissions on any provision the subject of variation are automatically carried over to hearing of the variation.

16. Accordingly, the provisions of Chapter 27 the subject of the Stage 2 Variations have been reproduced as notified, but 'greyed out' in the revised version of Chapter 27 attached as Appendix 1 to this report, in order to indicate that those provisions did not fall within our jurisdiction

1.6 Statutory Considerations

17. The Hearing Panel's Report 1 contains a general discussion of the statutory framework within which submissions and further submissions on the PDP have to be considered, including matters that have to be taken into account, and the weight to be given to those matters. We have had regard to that report when approaching our consideration of submissions and further submissions on Chapter 27.

18. Some of the matters identified in Report 1 are either irrelevant or have only limited relevance to the objectives, policies and other provisions of Chapter 27. The National Policy Statement

---

49 The Hearing Panel was advised by Memorandum dated 8 July 2016 from counsel for the Council that the Council would undertake the study requested

50 In the event, no such application was received

for Renewable Electricity Generation 2011 and the National Policy Statement for Freshwater Management 2014 are in this category. The NPSET 2008 and the NPSUDC 2016, however, are of direct relevance to some provisions of Chapter 27. The NPSUDC 2016 was gazetted after the hearing of submissions and further submissions concluded and the Chair sought written input from the Council as to whether the Council considered the provisions of the PDP that had already been the subject of hearings gave effect to the NPSUDC 2016. Counsel for the Council's 3 March 2017 memorandum concluded that the provisions of the PDP gave effect to the majority of the objectives and policies of the NPSUDC 2016, and that updated outputs from the Council's dwelling capacity model to be presented at the mapping hearings would contribute to the material demonstrating compliance with Policy PA1 of the document. We note specifically counsel for the Council's characterisation of the provisions of the NPSUDC 2016 as 'high level' or 'direction setting' rather than as providing detailed requirements. The Chair provided the opportunity for any submitter with a contrary view to express it but no further feedback was obtained. We discuss in some detail later in this report the provisions necessary to give effect to the NPSET and NPSUDC.

19. In his Section 42A Report, Mr Bryce drew our attention to particular provisions of the RPS. He noted in particular Objectives 5.4.1-5.4.4 that he described as promoting sustainable management of Otago's land resource by:

"Objective 5.4.1
To promote sustainable management of Otago's land resource, in order:

a. *To maintain and enhance the primary production capacity and life-supporting capacity of land resources; and*

b. *To meet the present and reasonably foreseeable needs of Otago's people and communities;*

Objective 5.4.2
To avoid, remedy or mitigate degradation of Otago's natural physical resources resulting from activities utilising the land resource;

Objective 5.4.3
To protect Otago's outstanding natural features and landscapes from inappropriate subdivision, use and development."

20. He also noted Objective 9.3.3 and 9.4.3 (Built environment) and the related policies as being relevant as seeking "*to avoid, remedy or mitigate the adverse effects of Otago's built environment on Otago's natural and physical resources, and promote the sustainable management of infrastructure."*

21. Mr Bryce also drew to our attention a number of provisions of the Proposed RPS (notified). By the time we came to consider our report, decisions had been made by Otago Regional Council on this document which superseded the provisions referred to us by Mr Bryce. We have accordingly had regard to the Proposed RPS provisions dated 1 October 2016.

22. We note, in particular, the following objectives of the Proposed RPS:

Objective 1.1
Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago.

Objective 2.1
The principles of Te Tiriti o Waitangi are taken into account in resource management processes and decisions.

Objective 2.2
Kai Tahu values, interests and customary resources are recognised and provided for.

Objective 3.1
The values of Otago's natural resources are recognised, maintained and enhanced.

Objective 3.2
Otago's significant and highly-valued natural resources are identified, and protected or enhanced.

Objective 4.1
Risk that natural hazards poised to Otago communities are minimised.

Objective 4.2
Otago's communities are prepared for and able to adapt to the effects of climate change.

Objective 4.3
Infrastructure is managed and developed in a sustainable way.

Objective 4.4
Energy supplies to Otago's communities are secure and sustainable.

Objective 4.5
Urban growth and development is well designed, reflects local character and integrates effectively with adjoining urban and rural environments.

Objective 5.1
Public access to areas of value to the community is maintained or enhanced.

Objective 5.2
Historic heritage resources are recognised and contribute to the region's character and sense of identity.

Objective 5.3
Sufficient land is managed and protected for economic production.

Objective 5.4
Adverse effects of using and enjoying Otago's natural and physical resources are minimised.

23. For each of the above objectives, there are specified policies that also need to be taken into account. Some of the policies of the Proposed RPS are particularly relevant to subdivision and development. We note at this point:

    a. Policy 1.1.2 Economic wellbeing:
    Provide for the economic wellbeing of Otago's people and communities by enabling the use and development of natural and physical resources only if the adverse effects of those

activities on the environment can be managed to give effect to the objectives and policies of the Regional Policy Statement;

b. Policy 2.1.2 Treaty principles:

Ensure that local authorities exercise their functions and powers, by:…
g) Ensuring that District and Regional Plans:
i. Give effect to the Nga Tahu Claims Settlement Act 1998;
ii. Recognise and provide for statutory acknowledgement areas in Schedule 2;
Iii Provide for other areas in Otago that are recognised as significant to Kai Tahu….;

c. Policy 2.2.2 Recognising sites of cultural significance:

"Recognise and provide for wahi tupuna, as described in Schedule 1C by all of the following:
a. Avoiding significant adverse effects on those values which contribute to wahi tupuna being significant;
b. Avoiding, remedying, or mitigating other adverse effects on wahi tupuna;
c. Managing those landscapes and sites in a culturally appropriate manner."

d. Policy 3.1.7 Soil values:

"Manage soils to achieve all of the following:….

f) Maintain or enhance soil resources for primary production……"

e. Policy 3.2.18 Managing significant soil:

"Protect areas of significant soil, by all of the following:….
c) Recognising that urban expansion on significant soils may be appropriate due to location and proximity to existing urban development and infrastructure…."

f. Policy 4.1.5 Natural hazard risk:

"Manage natural hazard risk to people and communities, with particular regard to all of the following:
a. The risk posed, considering the likelihood and consequences of natural hazard events;
b. The *implications of residual risk, including the risk remaining after implementing or undertaking risk reduction and hazard mitigation measures;*
c. The community's tolerance of that risk, now and in the future, including the community's ability and willingness to prepare for and adapt to that risk, and to respond to an event;
d. The changing nature of tolerance to risk;
e. Sensitivity of activities to risk;

g. Policy 4.3.2 Nationally and regionally significant infrastructure:

"Recognise the national and regional significance of all of the following infrastructure:

a. *Renewable electricity generation activities, where they supply the National Electricity Grid and local distribution network;*
b. *Electricity transmission infrastructure;*
c. *Telecommunication and radiocommunication facilities;*
d. *Roads classified as being of national or regional importance;*
e. *Ports and airports and associated navigation infrastructure;*
f. *Defence facilities;*
g. *Structures for transport by rail."*

h. Policy 4.3.4 Protecting nationally and regionally significant infrastructure:

"Protect the infrastructure of national or regional significance, by all the following:
a. *Restricting the establishment of activities that may result in reverse sensitivity effects;*
b. *Avoiding significant adverse effects on the functional needs of such infrastructure;*
c. *Avoiding, remedying or mitigating other adverse effects on the functional needs of such infrastructure;*
d. *Protecting infrastructure corridors from sensitive activities, now and for the future."*

i. Policy 4.4.5 Electricity distribution infrastructure:

"Protect electricity distribution infrastructure, by all the following:
a. *Recognise the functional needs of electricity distribution activities;*
b. *Restricting the establishment of activities that may result in reverse sensitivity effects;*
c. *Avoiding, remedying or mitigating adverse effects from other activities on the functional needs of that infrastructure;*
d. *Protecting existing distribution corridors for infrastructure needs, now and for the future;*

j. Policy 4.5.1 Managing for urban growth and development

"Manage urban growth and development in a strategic and co-ordinated way, by all of the following…..
c. *Identifying future growth areas and managing subdivision, use and development of rural land outside these areas to achieve all of the following:*
    i. *Minimise adverse effects on rural activities and significant soils;*
    ii. *Minimise competing demands for natural resources;*
    iii. *Maintain or enhance significant biological diversity, landscape or natural character values;*
    iv. *Maintain important cultural historic heritage values;*
    v. *Avoid land with significant risk from natural hazards;….*
e. *Ensuring efficient use of land…*
g. *Giving effect to the principles of good urban design in Schedule 5;*
h. *Restricting the location of activities that may result in reverse sensitivity effects on existing activities."*

k. Policy 4.5.3 Urban design:

"Encourage the use of Schedule 5 good urban design principles in the subdivision and development of urban areas."

l. Policy 4.5.4: Low impact design:

*"*Encourage *the use of low impact design techniques in subdivision and development to reduce demand on stormwater, water and wastewater infrastructure and reduce potential adverse environmental effects."*

m. Policy 4.5.5: Warmer buildings:

"Encourage the design of subdivision and development to reduce the adverse effects of the region's colder climate, and higher demand and costs for energy, including maximising the passive solar gain."

n. Policy 5.3.1: Rural activities:

"Manage activities in rural areas, to support the region's economy in communities, by all of the following:

a. Minimising the loss of significant soils;
b. Restricting the establishment of activities in rural areas that may lead to reverse sensitivity effects;
c. Minimising the subdivision of productive rural land to smaller lots that may result in rural residential activities;
d. Providing for other activities that have a functional need to locate in rural areas, including tourism and recreational activities that are of a nature and scale compatible with rural activities."

24. The Proposed RPS is a substantial document. Noting the above policies does not mean that the other policies in the Proposed RPS are irrelevant. We have taken all objectives and policies of the Proposed RPS into account and discuss them further, when relevant to specific provisions.

25. Mr Bryce reminded us of the existence of the Iwi Management Plans noted in Report 1. He did not, however, draw our attention to any particular provision of any of those Plans as being relevant to the matters covered in Chapter 27 and no representatives of the Iwi appeared at the hearing.

26. Consideration of submissions and further submissions on Chapter 27 has also necessarily taken account of the Hearing Panel's recommendations in Reports 2 and 3 as to appropriate amendments to the Strategic Chapters of the PDP (that is to say Chapters 3, 4, 5 and 6. We note in particular the following provisions:

Objective 3.2.2.1:
"Urban Development occurs in a logical manner so as to:

a. promote a compact, well designed and integrated urban form;
b. build on historical urban settlement patterns;
c. achieve a built environment that provides desirable, healthy and safe places to work and play;
d. minimise the natural hazard risk taking into account the predicted effects of climate change;
e. protect the District's rural landscapes from sporadic and sprawling development;
f. ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in;
g. contain a high quality network of open spaces and community facilities; and

h. be integrated with existing, and planned future, infrastructure."

Policy 3.3.24
"Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character."

Policy 3.3.26
"That subdivision and/or development be designed in accordance with best practice land use management so as to avoid or minimise adverse effects on the water quality of lakes, rivers and wetlands in the District."

27. The tests posed in section 32 form a key part of our review of the objectives, policies, rules and other provisions of Chapter 27 of the PDP. We refer to and adopt the discussion of section 32 in the Hearing Panel's Report 3. In particular, for the same reasons as are set out in Report 3, we have incorporated our evaluation of changes to the notified Chapter 27 into the report that follows rather than provide a separate evaluation meeting the requirements of section 32AA.

28. We note that the material provided to us by the Council did not include a quantitative analysis of costs and benefits either of the notified Chapter 27, or of the subsequent changes Mr Bryce proposed to us. We queried counsel for the Council on this aspect when she opened the hearing and were told that Council did not have the information to undertake such an analysis. None of the submitters who appeared before us provided us with quantitative evidence of costs and benefits of the amendments they proposed either. When we discussed with Ms Baker-Galloway whether her clients would be able to provide us with such evidence, she advised that any information they could provide would necessarily be limited to their own sites and therefore too confined to be useful.

29. We have accordingly approached the application of section 32(2) on the basis that a quantitative evaluation of costs and benefits of the different alternatives put to us is not practicable.

1.7 Scope Issue – Activity Status of Residential Subdivision and Development within ONLs and ONFs

30. The submissions and evidence of Mr Julian Haworth at the hearing on behalf of UCES sought that residential subdivision and/or development within ONLs and ONFs should be ascribed non-complying activity status. We discussed with Mr Haworth during his appearance whether we had jurisdiction to entertain his request given the terms on which the submission filed by UCES on the PDP had been framed. Mr Haworth's subsequent Memorandum of 18 August drew our attention to the potential relevance of a further submission made by UCES (on a submission by Darby Planning LP) to this issue.

31. In the legal submissions in reply on behalf of the Council, it was submitted that there was no scope for us to consider the UCES request in this regard.

32. Mr Haworth requested that we make a decision specifically on this point. In summary, we have concluded that counsel for the Council is correct and we have no jurisdiction to entertain Mr Haworth's request on behalf of UCES. Our reasons follow.

33. The legal submissions on behalf of counsel for the Council in reply summarised the legal principles relevant to determining the scope of our inquiry[51].

34. In summary, a two stage inquiry is required:
    a. What do submissions on the PDP provisions seek? and
    b. Is what submissions on the PDP seek itself within the scope of the inquiry – put colloquially, are they "*on"* the PDP?

35. The second point arises in relation to proposed plans that are limited by subject matter or by geography. Here, there is no doubt that Chapter 27 provides rules that govern residential subdivision within ONLs and ONFs as defined by other provisions in the PDP and so, subject to possible issues arising from the interpretation of the High Court decision in *Palmerston North City Council v Motor Machinists Limited*[52]*,* the UCES request would not fail a jurisdictional inquiry on that ground.

36. The larger issue turns on what it is that are sought by submissions. In determining this question, the cases establish a series of interpretative principles summarised by counsel for the Council as follows:

    a. *The paramount test is whether or not amendments [sought to a Proposed Plan] are ones which are raised by and within the ambit of what is fairly and reasonably raised in submissions on the PDP. This would usually be a question of degree to be judged by the terms of the PDP and the content of submissions*[53]*.*

    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*[54]*;*

    c. *Ultimately, it is a question of procedural fairness, and procedural fairness extends to the public as well as to the submitter*[55]*."*

37. Thus far, we agree that counsel for the Council's submissions accurately summarised the relevant legal principles. Those submissions, however, go on to discuss whether a submitter may rely on the relief sought by another submitter, on whose submission they have not made a further submission, in order to provide scope for their request. The Hearing Panel has previously received submissions on this point in both the Stream 1 and Stream 2 hearings from counsel for the Council. Counsel's Stream 4 reply submissions cross referenced the legal submissions in reply in the Stream 2 hearing and submitted that:

    "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."

38. This is contrary to the position previously put to the Hearing Panel by counsel for the Council. Those previous submissions said that while a submitter cannot derive standing to appeal decisions on a Proposed Plan by virtue of the submissions of a third party that they have not

---

51 Refer Council Reply legal submissions at 13.2-13.4

52 [2014] NZRMA 519

53 *Countdown Properties (Northland) Limited v Dunedin City Council* [1994] NZRMA 145, and 166

54 *Westfield (NZ) Ltd v Hamilton City Council* [2004] NZRMA 556, and 574-575

55 Ibid*,* at 574

lodged a further submission on, if a submitter advances submissions and/or evidence before the Hearing Panel in relation to relief sought by a second submitter, the Hearing Panel can properly consider those submissions/evidence. This is based on the fact that the Hearing Panel's jurisdiction to make recommendations is circumscribed by the limits of all of the submissions that have been made on the Proposed Plan. In a subsequent hearing (on Stream 10), counsel for the Council confirmed that her position was correctly stated in the Stream 1 and 2 hearings.

39. It follows that if any submission, properly construed, would permit us to alter the status of residential subdivision and development within ONLs and ONFs to non-complying, we should consider Mr Haworth's submissions and evidence on that point, although we accept that if jurisdiction to consider the point depends on a submission other than that of UCES, and on which UCES made no further submission, that might go to the weight we ascribe to Mr Haworth's submissions and evidence (a related submission made by counsel for the Council).

40. As the Hearing Panel noted in its Report 3, we do not need to consider whether, if we conclude some third party's submission provides jurisdiction, UCES will have jurisdiction to appeal our decision on the point, that being a matter properly for the Environment Court, if and when the issue arises.

41. Focussing then on the provisions of the notified PDP as the starting point, the activity status of subdivisions was governed by Rules 27.4.1-27.4.3 inclusive.

42. Rule 27.4.1. was a catchall rule providing that all subdivision activities are discretionary activities, except otherwise as stated.

43. Rule 27.4.2 specified a number of subdivision activities that were non-complying activities. Residential subdivision within ONLs and ONFs may have been deemed to be non-complying under one of the subparts of Rule 27.4.2 (e.g. because it involved the subdivision of a building platform), but not generally so.

44. Rule 27.4.3 provided that subdivision undertaken in accordance with a structure plan or spatial layout plan identified in the District Plan had restricted discretionary activity status. The structure plans and special layout plans identified in the District Plan are of limited areas in the District. Clearly, they do not cover all of the ONLs and ONFs as mapped in the notified PDP.

45. It follows that as notified, residential subdivisions within ONLs and ONFs would usually fall within the default classification provided by Rule 27.4.1 and be considered as discretionary activities.

46. UCES did not make a submission seeking amendment to any of Rules 27.4.1-27.4.3 inclusive. The submission that Mr Haworth referred us to focusses on the section 32 reports supporting the PDP. Paraphrasing the reasons for the UCES submission in this regard, they noted:
    a. The section 32 reports do not refer to non-complying status in relation to residential subdivision and development;
    b. A March 2015 draft of the PDP proposed to make residential subdivision and development non-complying within ONLs and ONFs;
    c. A 2009 monitoring report referred to non-complying status within ONLs and ONFs as an option;
    d. Failure to discuss the issue is a critical flaw in the section 32 analysis.

47. The relief sought by UCES in relation to this submission was worded as follows:

"The Society, seeks that the S.32 Landscape Evaluation Report be re-written containing discussion of the costs and benefits associated with the option of residential subdivision and development becoming non-complying versus the option of it being discretionary, as required by S.32 of the Act and especially S.32(2).

The S.32 Landscape Evaluation Report, once rewritten, should then be publicly notified.
The Society seeks that the 40 working day submission period should apply to the rural part of the Proposed District Plan from the date of renotification of the rewritten S.32 Landscape Evaluation Report."

48. In the summary of submissions publicly notified by the Council, the UCES submission was listed as a submission on Rule 27.4.1. The summary of submission read:

"Expresses concern regarding the Discretionary Activity status within Outstanding Natural Landscapes and Outstanding Natural Features; and the change from a proposed non-complying activity status which was indicated in the March 2015 Draft District Plan. The Society seeks that the s32 Landscape Evaluation Report be re-written containing discussion of the costs and benefits associated with the option of residential subdivision and development becoming non-complying versus discretionary. The s.32 Landscape Evaluation Report should then be publicly notified with a 40 working day submission period."

49. Against this background, counsel for the Council submitted that amendment to the activity status of subdivision in the manner sought by UCES was not a reasonably foreseeable consequence of the UCES submissions and relief. In particular, it was argued that other submitters could not have identified that non-complying status was a likely or even possible consequence of the relief and, as such, could be prejudiced by the outcome now sought by UCES.

50. Counsel did not, however, explain how her submission could be reconciled against the fact that there were two further submissions[56] that state the further submitters' opposition to the UCES position that subdivision in ONLs and ONFs be non-complying. We note also that a third further submission[57] opposed the relief described within the summary of submissions, while stating that this was not part of the package of relief sought in UCES's submission.

51. We think that the last further submission (from Darby Planning LP) made a valid point. The summary of submissions recorded a position being taken in the UCES submission that, at best, is implicit. The further submitters similarly seem to have read between the lines in the summary of submissions, inferring where the argument might go, rather than reading what the submission actually said. It should not be necessary for interested parties to guess where a submission might be taken. While submissions are not to be read literally or legalistically, the substance of what is sought should be reasonably clear.

52. Stepping back and looking at the submission, we think it was misconceived from the outset. While a submission may attack the way in which a section 32 evaluation has been carried out, as we observed to Mr Howarth at the hearing, this is only a means to an end. The reason for attacking the section 32 evaluation is to form the basis of a challenge to the objective, policy, rule or other method supposedly supported by the section 32 evaluation. The link between

[56] Further Submissions 1029 and 1097
[57] Further Submission 1313

the two is illustrated by section 32A of the Act which states that a challenge to a plan provision on the basis that the section 32 evaluation is flawed may only be made in a submission **on the Plan**[58]. The section 32 analysis is not part of the PDP.

53. The solution to a flawed section 32 evaluation is to reassess the Plan provision sought to be changed, not to renotify the section 32 evaluation and to give the general public another opportunity to make submissions on the Plan.

54. Counsel for the Council also pointed out that the UCES submission referred only to the potential that on such renotification, submissions would be invited on the rural provisions of the Plan. While technically correct, we do not think that that is decisive.

55. The point that we are more concerned about is that on a fair and reasonable reading of the UCES submission (and indeed the summary of that submission), the public would have thought that at worst there would be another opportunity to make submissions before the activity status of residential submissions in ONLs and ONFs was changed to be more restrictive.

56. Given the advice we have received on the extent of the District currently mapped as ONL or ONF (nearly 97%), the relief now sought by UCES is a highly significant change. There is in our view considerable potential that interested parties would not have been as assiduous in reading 'between the lines' of the UCES submission as the further submitters referred to above and would be prejudiced by our embarking on a consideration of the merits of non-complying status applying to subdivision and development for residential purposes within ONLs and ONFs.

57. We have considered Mr Howarth's alternative point, made in his 18 August memorandum, which relies on a UCES further submission on Darby Planning LP's submission in relation to Rule 27.4.1.

58. The Darby Planning submission sought that Rule 27.4.1 be amended so that the default status for subdivisions is a controlled status unless otherwise stated. The submission suggested a number of areas of control as consequential changes to the proposed change of status.

59. The UCES further submission stated in relation to aspects of the Darby Planning submission related to subdivision and development:

"The Society opposes the entire submission in paragraphs 23-29, and in particular the request that rural subdivisions and development become a controlled activity. The Society seeks that this part of the submission is entirely disallowed."

60. The further submission went on, however, to note the potential significance of proposed legislative changes which, if adopted, would have the result that discretionary activity subdivisions would not be publicly notified[59], and stated:

"The Society is changing its position from that in its Primary Submission and it now seeks that all rural zone subdivision and development becomes non-complying."

61. The first thing to note is that UCES viewed this as a change from its primary submission. Clearly, the Society did not regard its submission as already raising this relief.

---

58 See clause 6 of the First Schedule to the Act. Emphasis added.

59 The provision in question was Clause 125 of the Resource Legislation Amendment Bill 2015

62. Addressing the ability of a further submission to provide a jurisdictional basis for the relief sought, a further submission is not an appropriate vehicle to advise of substantive changes of position. This point is considered in greater detail in the Hearing Panel's Report 3, but in summary, clause 8(2) of the First Schedule to the Act states that a further submission must be limited to a matter in support of or in opposition to the relevant submission.

63. Clearly this particular further submission was in opposition to the relevant submission. It sought that the relevant submission be disallowed. If the Darby Planning LP submission was disallowed, the end result would be that Rule 27.4.1 would remain as notified, that is to say that unless otherwise stated, subdivision activities in ONLs and ONFs would be discretionary activities. A further submission cannot found jurisdiction in the manner that Mr Haworth sought.

64. We have considered, given the discussion above, whether any other submissions might provide jurisdiction for the relief now sought by UCES. There were a very large number of submissions seeking that Rule 27.4.1 be amended. The vast majority of those submissions sought, like Darby Planning LP, that the default status for subdivisions in the District be controlled activity status. Clearly those submissions do not provide jurisdiction for the relief UCES sought. They sought to move the rule in the opposite direction to that which UCES sought.

65. There are a number of more general submissions that sought that the entire Chapter 27 of the PDP be deleted and replaced with Chapter 15 of the ODP[60]. Under Chapter 15 of the ODP, the only non-complying subdivision activities are those falling within Rule 15.2.3.4. That rule related to a series of specific situations and does not support the UCES relief either.

66. Having reviewed all of the submissions on these Rules, none that we can identify provide jurisdictional support for the relief now sought by UCES.

67. We have therefore concluded that the altered relief now sought by UCES is outside the scope of any submission and cannot be considered further as the basis for any recommendation we might make on the final form of Chapter 27.

68. Before leaving the point, we should observe that had we identified any jurisdictional basis for Mr Haworth's submissions, there is considerable merit in the point he sought to make.

69. The Hearing Panel's Report 3 canvassed the material relevant to the strategic objectives and policies governing activities within and affecting ONLs and ONFs and concluded that the appropriate response would provide a high level of protection to those landscapes and features.

70. Against that background, discretionary activity status for subdivision and development associated with new residential activities being established in ONL's and ONFs appears somewhat incongruous. The Environment Court identified in relation to the ODP that discretionary activity status was an issue and sought to make it clear that that status had been applied in that context to activities in ONLs and ONFs because those activities are

60 E.g. Submissions 497, 512, 513, 515, 520, 522, 523, 525, 527, 529, 530, 531, 532, 534, 535, 536, 537, 608

inappropriate in almost all locations within the zone[61]. As the Court noted[62], it was necessary to displace the inferences that would otherwise follow from discretionary activity status. The Court also observed that if it had not been able to make clear that discretionary activity status was being used in that manner, non-complying status would have been appropriate.

71. In our view, it would be more consistent with the policy framework we have recommended, and arguably more transparent, if subdivision and development for the purposes of residential activities in ONLs and ONFs was a non-complying activity. Had we had jurisdiction, we would likely have recommended non-complying status for residential subdivision and development in ONLs and ONFs for this reason.

72. Mr Haworth drew our attention to another reason why, in our view, Council should consider this issue further.

73. At the time of our hearing, Parliament had before it the Resource Legislation Amendment Bill 2015. Among the amendments proposed was a change to the notification provisions that, as Mr Haworth observed, would mean that other than in special circumstances applications for subdivision consents would not be publicly notified unless they were non-complying activities. Mr Haworth expressed concern that this result would apply to residential development within the ONLs and ONFs. As noted above, this foreshadowed legislative change prompted a change in position from UCES.

74. The Resource Legislation Amendment Bill was enacted[63] in April 2017. As we read them, the notification provisions would have the same effect as those of the Bill that Mr Haworth drew to our attention.

75. We infer that this legislative change reflects the usual implications to be drawn from discretionary activity status discussed by the Environment Court in its 2001 decision, rather than the special meaning in the ODP, which has effectively been rolled over into the PDP.

76. We do not regard it as satisfactory that other than in exceptional circumstances, residential subdivision and development in ONLs and ONFs is considered on a non-notified basis given the national interest[64]in their protection and the intent underlying discretionary activity status in this situation. We recommend that Council initiate a variation to the PDP to alter the rule status of this activity to non-complying.

1.8 General Matters

77. There are a number of general submissions that we should consider at the outset. The first are the submissions that sought that Chapter 27 be deleted and replaced with Chapter 15 of the ODP. We have already noted the submissions in question in the context of our discussion of the UCES scope issue.

78. The equivalent rule to rule 27.4.1 in the ODP is Rule 15.2.8.1 which provides that the default status for subdivision is controlled activity status. This was at the heart of the huge bulk of submissions that we have considered on Chapter 27 and, indeed, much of the evidence and submissions we heard; namely that the default status under the ODP should not be changed.

---

61 ODP 1.5.3(iii)(iii)

62 Lakes District Landowners Society Inc v QLDC C75/2001 at [43-46]

63 As the Resource Legislation Amendment Act 2017

64 Section 6, of course, identifies it as being a matter of national interest

79. The broad relief sought in a number of submissions (that Chapter 27 revert to Chapter 15 of the ODP) necessarily includes the narrower point (as to the default status of subdivision activities). We will consider the broad point first, and address the narrower point in the next section.

80. The other set of general submissions that we should address at the outset are those that sought that the structure of the Chapter 27 be amended so it is consistent with other zones, including using tables, and ensuring that all objectives and policies are located at the beginning of the section[65].

81. Other general submissions worthy of note are submissions 693 and 702, which suggested that the objectives and policies in Chapter 27 be reordered to make it clear which are solely applicable to urban areas, and submission 696, which sought that that the number of objectives and policies in Chapter 27 be reduced.

82. Submission 817 sought that objectives D1 and D4 of the National Policy Statement for Freshwater Management 2014 be implemented in Chapter 27.

83. Lastly Submission115 sought general but more substantive relief – related to provision for cycleways and pathways, and reserves.

84. Looking first at the question as to whether Chapter 27 should simply be deleted and Chapter 15 of the ODP substituted, the evidential foundation for this submission is contained in the evidence of Messrs Brown, Ferguson and Farrell. Mr Goldsmith summarised their evidence as being that the "ODP CA [standing for Controlled Activity] regime is not complex and works well."

85. That might be contrasted with the view set out in the section 32 report underpinning Chapter 27 which stated[66] that the ODP subdivision chapter is complicated and unwieldy. Mr Bryce, who gave planning evidence for the Council, noted the section 32 analysis, but focused his evidence more on the substance of the ODP Chapter 15 provisions that we will come to shortly.

86. Mr Goldsmith likewise sought to distinguish between the format of Chapter 15 and the substance. He accepted that the format of Chapter 15 could be improved and described[67] that aspect of the matter as follows:

> *"Format refers to the structure of the existing ODP Chapter 15 which follows the 'sieve' structure of the rest of the ODP. The 'sieve' structure is the approach which does not detail activity status in the likes of a Table, but requires activity status to be determined by reviewing a considerable number of plan provisions to see which layer of the multi-layered 'sieve' (each layer containing different size holes) catches the activity in question. This is a somewhat complex and counter-intuitive approach. It is acknowledged that the alternative PDP approach, classifying activities by reference to Tables, is clearer, more easily understood, and preferable. That is not challenged."*

87. As against that somewhat negative viewpoint, Mr Goldsmith suggested to us[68] that one of the virtues of the ODP Chapter 15 is that "*it is easy to find and apply the relevant Chapter 15*

---

65 See Submissions 632, 636, 643, 688, 693, and 702. Submission 632 was the subject of a number of further submissions, but they do not appear to relate to this aspect of the submission.

66 Section 32 Evaluation at page 8

67 Legal submissions for GW Stalker Family Trust and others at page 3.

68 Ibid at page 4

objectives and policies. It is rarely necessary to have recourse outside Chapter 15 to the land use Residential, RR and RL Zones." At least in that regard, the broader structure of the PDP needs to be acknowledged. Unlike the ODP, the PDP seeks to provide strategic direction in its early chapters which guides the implementation of more detailed chapters of the PDP like Chapter 27. In Report 3, the Hearing Panel for that Stream recommended that submissions seeking that the strategic chapters be deleted and the PDP revert to the ODP approach be rejected.

88. The corollary of that recommendation is that Chapter 27 cannot operate as a code entirely separated from the balance of the PDP. Broader strategic objectives and policies need to be taken into account.

89. Further, if the subdivision chapter were to revert to the format of Chapter 15, that would be out of step with the chapters of the PDP governing specific zones which take a similar approach to Chapter 27 (indeed, some general submissions noted already seek that the format of Chapter 27 be moved even more closely into line with those other chapters).

90. Lastly, when considering the merits of the way in which Chapter 15 is constructed, we note that the final form of Chapter 15 was the subject of extensive negotiations as part of the resolution of the Environment Court appeals on the ODP. The Court confirmed the final form of Chapter 15 in a consent order, but commented[69]:

"The amendments to Section 15 have been the subject of a somewhat circuitous process of assessment, reassessment and finally confirmation by the parties. Having considered the amended Section 15 now confirmed by the parties, I find that it achieves the aim of consistency with Section 5 of the plan in substance, even if its form still appears somewhat incongruous and unwieldy when compared with the rest of the Plan."

91. This is hardly a ringing endorsement, such as would prompt us to reconsider the wisdom of a different format to the PDP approach that the parties we heard from appeared to accept is clearer and more easily understood, as well as being more consistent with the way the balance of the PDP is structured.

92. In summary, we recommend that the general submissions that sought Chapter 15 of the ODP be substituted for Chapter 27 be rejected. We emphasise that that is not the same thing as rejecting the submissions that sought incorporation of key elements of the existing ODP approach (in particular the controlled activity status for subdivisions generally). As Mr Goldsmith aptly put it, this is an issue of substance that needs to be distinguished from the format of the provisions.

93. Turning to the general submissions already noted, which sought that the structure of Chapter 27 be amended so that it has all objectives and policies together and utilises tables, those submissions were a response to the notified Chapter 27 which exhibited the following features:
    a. It separated general objectives and policies (in section 27.2) from location-specific objectives and policies (in section 27.7);
    b. Consequential on that division, the standards for subdivision activities were separated in a similar manner, with general standards in section 27.5 and location-specific standards in section 27.8;
    c. The general standards in section 27.5 are a mixture of text and tabulated standards.

---

69 *Wakatipu Environmental Society Inc & Others v Queenstown Lakes District Council* C89/2005 at [8]

94. In each of these respects, Chapter 27 is out of step with the detailed chapters in the balance of the PDP and Mr Bryce recommended that it be reformatted, as suggested by the submitters.

95. While consistency in formatting of the PDP is desirable, we also consider that the altered format suggested by Mr Bryce is both more logical and easier to follow. Accordingly, we agree with Mr Bryce and recommend that those submissions be accepted.

96. One consequence of such a significant reorganisation of the chapter is that it becomes difficult to track substantive changes sought in submissions, because of course, the submissions relate to the numbering in the notified chapter. In our discussion of submissions following, we will refer principally to the provision number in the submission (which in turn reflects the notified chapter), but provide in brackets the number of the comparable provision in our reformatted and revised version attached in Appendix 1.

97. The remaining general submissions noted above can be addressed more briefly.

98. As regards the submissions that sought that objectives and policies be reordered and labelled to make it clear which are solely applicable to urban areas, we formed the view during the course of the hearing that there is an undesirable degree of uncertainty as to when particular policies related just to the urban environment, given that this appeared to be the intention. We asked Mr Bryce to consider the merits of separating the district-wide objectives and policies into urban and rural sections[70]. Section 3 of Mr Bryce's reply evidence canvassed the point. Mr Bryce's opinion was that while there was some merit in a separation of objectives and policies into rural and urban sections, a number of the objectives and policies apply to both, making such separation problematic. We accept Mr Bryce's point, that a complete separation is not feasible, but we think that much more clarity is required for those objectives and policies that do not apply to both rural and urban environments, as to what it is that they do apply to.

99. In summary, therefore, we recommend acceptance in part of the general submissions we have noted. We do not think a further reordering is required or desirable, but we accept that a number of the objectives and policies need to be amended to remove the ambiguity that currently exists. We will discuss the exact amendments we propose as we work through the provisions of Chapter 27.

100. While we accept the desirability of keeping the number of objectives and policies to a minimum, the Millbrook submission seeking that the number be reduced is framed too generally to be of assistance. RCL Queenstown Pty Ltd[71] provided more targeted relief, listing the objectives and policies it thought should be deleted. However, Mr Wells, who gave evidence for both Millbrook and RCL, expressed broad satisfaction with the amendments Mr Bryce had recommended. While he expressed the views that further refinement might be made, he did not advance that point further, discussing specific provisions. It follows that while we have kept an eye on the potential for further culling of the objectives and policies beyond Mr Bryce's recommendations, so to minimise duplication, we have no evidential basis on which we could recommend a substantial reduction in the number of objectives and policies in Chapter 27.

---

70 Following the precedent set by the Independent Hearing Panel on the Proposed Auckland Unitary Plan

71 Submission 632

101. As regards Submission 817, the submission is non-specific as to what changes might appropriately be made to Chapter 27 and the submitter did not provide us with any evidence that would assist further. Mr Bryce recommended an amendment to Policy 27.2.5.12 to provide greater linkage between subdivision management and water quality in part to address this submission. We accept that suggested change. Having reviewed the point afresh, we have not identified any other respects in which the Chapter would be amended to properly give effect to the provisions of the National Policy Statement identified by the submitter.

102. Lastly, addressing Submission 115 Mr Bryce recommended its rejection. We concur. Provision for cycleways, pathways and reserves is a point of detail to be assessed on a case by case basis under the framework of the objectives and policies of Chapter 27.

2. DEFAULT ACTIVITY STATUS

2.1 Controlled Activity?

103. A logical analysis of the submissions on Chapter 27 would start with the objectives, move to the policies, and then consider the rules to implement those policies. In this case, however, the default activity status for subdivisions dominated the submissions and was almost the sole issue in contention at the hearing. Accordingly, although it may appear counter-intuitive, we have decided to address this issue first.

104. As already noted, Rule 27.4.1 of the notified subdivision chapter provided that all subdivision activities would be discretionary activities, except as otherwise stated.

105. Although Rules 27.4.2 and 27.4.3 provided for non-complying and restricted discretionary activities respectively, these rules addressed a series of specific situations that, with one exception, were likely to be a small subset of subdivision applications. The exception was the provision in Rule 27.4.2 that subdivision not complying with the standards in sections 27.5 and 27.8 should be non-complying (other than in the Jacks Point Zone).

106. It follows that on the basis of the PDP as notified, the overwhelming majority of subdivisions that met the Chapter 27 standards would be considered as discretionary activities. One submitter supported the notified provisions[72]. Two other submissions[73] supported discretionary activity status for subdivision in the low density residential zone. A very large number of submitters opposed Rule 27.4.1[74]. Most of those submitters sought that the default activity status be 'controlled'. Many submitters either proffered consequential changes such as suggested matters to which Council's control might be limited or sought consequential changes both to the rule and to the objectives and policies of Chapter 27 more generally.

107. Many submissions sought controlled activity status on a more targeted basis. Submission 591 sought controlled activity status for all subdivisions in the urban zones. Other submitters[75] sought controlled activity status in one or more of the urban zones. Another group of submissions focussed on the rural zones seeking that subdivision in the Rural Residential

---

72 Refer Submission 21

73 Submissions 406 and 427: Opposed in FS1262

74 The tabulated summary of the submissions and further submissions either on Rules 27.4.1-3 generally or specifically on Rule 27.4.1 occupied some 25 pages of Appendix 2 to Mr Bryce's Section 42A Report.

75 E.g. Submissions 249, 336, 395,399, 485, 488: Supported in FS1029, FS1061 and FS1270

and/or Rural Lifestyle zones be controlled[76]. A number of submitters[77] nominated the Rural Zone as an exception to a general controlled activity position, suggesting subdivisions in that zone should remain as discretionary activities. Some submissions focussed on the special zones seeking that subdivision in the Millbrook[78] or Jacks Point[79] Zone should be controlled activities. Oher variations were a submission that sought that subdivision within a proposed new subdivision at Coneburn be controlled[80] and a submission that sought that subdivisions for infill housing (one lot only) in all zones be controlled[81]. A group of infrastructure providers[82] sought that subdivision for utilities be a controlled activity.

108. Some submitters were less definitive in the relief sought. Submission 748 sought either controlled or restricted discretionary activity status for complying subdivisions. Submission 277 suggested an even more nuanced position with subdivision of land in the 'Rural General Zone' being discretionary and a mix of controlled and restricted discretionary activity subdivision rules *"for rural living areas and residential zones"*.

109. Some submissions sought more confined relief in the alternative. Submission 610 for instance sought a new rule providing that subdivision within the Ski Area Sub-Zones should be controlled if its primary relief (controlled activity status for all subdivisions except as otherwise stated) was rejected[83].

110. Many submitters did not consider the relevance of standards/conditions to activity status. Read literally, they would have the effect that all subdivisions, irrespective of subdivision design, would be controlled activities to which consent could not be refused. Many others referred to the need to comply with subdivision standards either explicitly (e.g. referring to minimum lot size requirements) or more generally. Many submitters also recognised the need for consequential amendments if the default activity status changed, in particular to the objectives and policies.

111. We have approached this issue as one of principle, considering first what the default activity status for subdivisions should be across all zones before considering (later in this report) whether particular zones (or sub-zones), or alternatively, particular types of subdivisions, need to be recognised as having characteristics warranting either more or less restrictive subdivision activity status as the case may be. Because of the breadth of the submissions on this point, a virtually infinite number of permutations would be within jurisdiction between the notified position (default discretionary status subject to specified exceptions) and all subdivisions being 'controlled' without any standards or other requirements. To keep our report within reasonable bounds, we have restricted our consideration of alternative options to those

---

76 Submissions 219,283, 345, 350, 360, 396, 401, 402, 403, 415, 416, 430, 467, 476, 500, 820: Supported in FS1097, FS1164 and FS1206; Opposed in FS1034, FS1050, FS1082, FS1084, FS1086, FS1087, FS1089, FS1099, FS1199, FS1133 and FS1146

77 Submissions 336, 497, 512, 513, 515, 520, 522, 523, 525, 527, 529, 530, 531, 532, 534, 535, 537, 608: Supported in FS1029, FS1125, FS1164, FS1259, FS1260, FS1267, FS1286, FS1322 and FS1331; Opposed in FS1034, FS1068, FS1071, FS1092, FS1097, FS1117 and FS1120

78 Submissions 234, 346, 541: Opposed in FS1266

79 Submission 567

80 Submission 361 – although the reasons for this submission appear to link it to a parallel submission on notified rule 27.5.2.1 because it refers to a house already being established, prior to subdivision- Supported in FS1118 and FS1229; Opposed in FS1296

81 Submission 169

82 Submissions 179, 191, 421 and 781: Supported in FS1121

83 Supported in FS1125

specifically the subject of submissions or which were canvassed during the course of the hearing.

112. The rationale for default discretionary status was set out in the Section 32 Evaluation accompanying the notified PDP. The key points made in the Section 32 Evaluation were that, in the view of the authors, the ODP contains insufficient emphasis on good subdivision and development design, that the ODP subdivision chapter is ineffective in encouraging good subdivision design, and that discretionary activity status would help focus on the importance of good quality subdivision design[84].

113. Mr Bryce reviewed the arguments as to the appropriate default subdivision status in his

114. Section 42A Report, concluding that the section 32 analysis had not demonstrated that a discretionary activity regime was necessarily the best mechanism to respond to subdivision in all zones. Specifically, Mr Bryce recorded his opinion that subdivisions in the Rural Residential and Rural Lifestyle Zones, and within the District's urban areas do not require the broad assessment that would follow from discretionary activity status[85].

115. Equally, however, Mr Bryce was of the opinion that a default controlled activity rule, as sought by a large number of submitters, would be not be particularly effective in responding to subdivision development within the District[86].

116. Mr Bryce saw subdivision and development within areas the subject of structure plans or spatial layout plans as being in a category of their own, justifying controlled activity status. Likewise, he recommended a controlled activity rule covering boundary adjustments. At the other end of the range, Mr Bryce recommended that subdivision and development within the Rural Zone should be a discretionary activity because of the range of potential issues in those areas. The recommendation in his Section 42A Report was, however, that the default activity status for both urban subdivision and development, and subdivision and development within the Rural Residential and Rural Lifestyle Zones, should be Restricted Discretionary (but with separate rules for each to recognise the differences between them)[87]. Consequent on his recommendation, Mr Bryce suggested revised rule provisions specifying the areas within which discretion was retained, based on the areas of control sought in submissions seeking controlled activity status.

117. The argument presented for submitters at the hearing, principally by Mr Goldsmith and Ms Baker-Galloway, supported by expert planning evidence, rested on a number of related considerations, including:
    a. The ODP regime based on a default controlled activity status had worked reasonably well.
    b. The ODP regime provided certainty for developers. By contrast, the PDP regime created significant uncertainty.
    c. While restricted discretionary activity status was an improvement on full discretionary status, the ambit of the matters for discretion was such that it was not materially different to a full discretionary activity status. In particular, retention of discretion over subdivision lot sizes was of particular concern because lot sizes ultimately determined the economic return from an investment in a subdivision.

84 Refer section 32 evaluation at pages 10 and 33
85 Section 42 Report at 10.28
86 Section 42 Report at 10.30
87 Noting that Mr Bryce recommended other targeted Restricted Discretionary rules

d. The Council's reliance on urban design assessments was flawed. To the extent that analysis indicated poor urban design, that was for reasons that had little or nothing to do with the subdivision activity rule status.
e. Further, to the extent that issues of poor urban design in the past had been identified, those issues could be addressed within a controlled activity framework.
f. The concern expressed by Mr Wallace in his evidence for Council regarding the need to retain control over road widths could be addressed under section 106 of the Act.
g. The statistics presented by Mr Bryce as to the percentage of subdivision applications in fact considered as 'controlled' under the ODP were misleading.

118. Other views that we received included evidence on behalf of two leading survey consultancies in the District. Mr Geddes on behalf of Clark Fortune McDonald and Co indicated that the recommendations of Mr Bryce's Section 42A Report largely resolved that submitter's concerns. Mr Duncan White, giving evidence for Patterson Pitts likewise supported a restricted discretionary activity rule.

119. Mr Vivian, giving evidence on behalf of a number of submitters, also generally supported Mr Bryce's recommendations. We note, in particular, Mr Vivian's observation that while it is easy to critique urban design of historic subdivisions, it is a lot harder to ascertain if those subdivisions could have been improved had a different class of rule been applied to them at the time they were consented. Notwithstanding that qualification, Mr Vivian saw merit in a restricted discretionary activity regime, certainly for urban subdivisions, although he recommended some alterations to the proposed matters for discretion in a restricted discretionary activity rule applying to Rural Residential and Rural Lifestyle subdivisions.

120. We did not hear evidence from infrastructure providers seeking to support controlled activity status specifically for utilities.

121. At the opening of the hearing, counsel for the Council advised that Mr Bryce had reflected on the evidence which had been pre-circulated and had formed the view that discretion over lot sizes, averages and dimensions should be deleted from his proposed restricted discretionary activity rule.

122. Mr Goldsmith frankly acknowledged that if this revised recommendation were accepted, then he would accept a restricted discretionary activity rule on behalf of his clients. Ms Baker-Galloway, however, maintained an objection in principle to the restricted discretionary activity rule proposed on behalf of the submitters she represented.

123. As the hearing proceeded, the matters in dispute were progressively narrowed. We would like to express our thanks, in particular, to Mr Bryce for his readiness to consider ways in which his recommendations might be refined to meet the concerns of submitters, while still achieving the policy objectives that underpinned the notified subdivision provisions.

124. Stepping back from the issues in contention, the evidence of Mr Falconer suggests to us that, for whatever reason, the ODP provisions have not been successful in driving high quality urban design. In Mr Falconer's words, while there is some variability between subdivision, generally they are very mediocre. He thought it was particularly concerning that there were no very good examples of urban design. Against the background where, as Mr Brown noted in his evidence, the PDP has a much greater urban design flavour, especially when coupled with the strategic direction provided in Chapters 3 and 4, this suggests to us a need for something to change.

125. While there is an issue (as counsel argued) whether previous mediocre urban design is the product of subdivision activity status, we have considerable difficulty with the argument put to us by both Mr Goldsmith and Ms Baker-Galloway that good design might be enforced within a controlled activity framework. Ms Baker-Galloway cited case law to us suggesting that conditions on subdivisions might produce different lot sizes and subdivisions that look different from what is proposed[88]. However, when we discussed the point with Ms Baker-Galloway, she agreed that the ambit of valid conditions is ultimately an issue of degree, which will determine whether particular issues are able to be controlled by a condition.

126. Accordingly, while counsel are correct, and the case law gives the consent authority considerable latitude to impose conditions on a resource consent application, so long as the conditions do not effectively prevent the activity taking place[89], in our view, the efficacy of those powers depends on the quality of what it is that one starts with. If the starting product is a reasonable quality design, then there will probably be scope to improve that design through discussion between the applicant and Council staff, and imposition of conditions as required to 'tweak' the design. By contrast, if the starting point is a poor quality subdivision design from a consent applicant who refuses to proffer a significantly changed (and improved) design, then in our view, it is neither practically nor legally possible for the Council to redesign a subdivision application by condition.

127. The clearest example of a need for discretion over subdivision design where the Council might need to require potentially significant changes to an applicant's design appeared to be in the width and location of internal roading networks. Mr Wallace summarised his evidence, when we discussed it with him, as being that there is no single formula to identify suitable roadworks based solely on the size of the subdivision.

128. As regards the specific issue of road widths and access issues, both Mr Goldsmith and Ms Baker-Galloway argued that this could be addressed under section 106(1)(c). That provision provides the Council with jurisdiction to refuse a subdivision consent application irrespective of the activity status of the subdivision in circumstances, among other things, where "*sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision".* Ms Baker-Galloway however could not point us to a case which has held that section 106 extends as far as road widths, as opposed to the existence of a practicable legal access.

129. She also accepted that section 106 would not answer a point that we discussed both with a number of the planning witnesses and with counsel who appeared before us that arises when the most efficient (in some cases the only practicable) access to adjacent subdividable land is via the road network of the subdivision. This situation has arisen in the past in the District[90].

130. Ultimately, though, we see the potential application of section 106 as something of a red herring. If section 106 confers the power to refuse a subdivision consent application, there is no practical difference if the District Plan similarly provides a discretion to refuse the consent on the same grounds, and good reason why it should do so – so applicants are more aware of that possibility. As Mr Goldsmith frankly acknowledged, the concern on the part of submitters

---

88 She relied in particular on *Dudin v Whangarei District Council* A022/07 and *Mygind v Thames-Coromandel District Council* [2010] NZ EnvC 34

89 Refer *Aqua King Limited v Marlborough District Council* (1998) 4ELRNZ 385 at [23]

90 In Subdivision Consent RM130588 (Larchmont)

is that that position is not 'leveraged' to carve out a greater ambit for subdivision consents to be rejected than section 106 would provide.

131. Mr Goldsmith called valuation evidence from Mr Alexander Reid to support his submission that an excessively wide discretion (certainly the full discretionary status in the notified PDP provisions) would have a chilling effect on the economics of subdivision in the District by reason of the inability to obtain land valuations on which banks and other financiers might rely.

132. Mr Reid's evidence was helpful because he confirmed that uncertainty in consent outcomes is ultimately an issue of degree. If there is some, but not great, uncertainty, then valuers (and banks) will accept that.

133. We discussed with Mr Reid specifically the statistics that Mr Bryce had provided to us which suggested that under the ODP, approximately half the applications for subdivision consent in residential zones, and the Rural Residential Zone (and substantially more than half of the applications in the Rural Lifestyle Zone and deferred Rural Lifestyle Zone) were actually considered on the basis that they were either discretionary or non-complying. Mr Reid's evidence was that he had never regarded there being a great risk of subdivision not occurring in those zones and thus it had not been an issue to value the land[91].

134. We discussed with Mr Jeff Brown and Mr Chris Ferguson whether the difference between controlled activity status and restricted discretionary activity status would have cost implications for applicants. Mr Brown's view was that costs would generally not vary, provided the points of control and discretion were the same. Mr Ferguson pointed out the potential, if the ability to decline under a restricted discretionary rule were used to force an outcome, for transaction costs to increase. He also identified the potential for a different outcome to have cost implications.

135. We had difficulty reconciling Mr Ferguson's reasoning with the legal submissions we heard from both Mr Goldsmith and Ms Baker-Galloway that the same outcomes could be achieved under a controlled activity regime as with a restricted discretionary activity regime, unless the outcome Mr Ferguson was referring to was that consent applications would be declined.

136. Perhaps more importantly, Mr Ferguson agreed that the time and cost for compiling a high quality application would likely not vary greatly either way.

137. Taking these matters into consideration, we have formed the following views.

138. First, we agree with Mr Bryce's recommendation that the full discretionary default subdivision rule in the notified Chapter 27 is not the most appropriate way in which to achieve the objectives of the PDP or (to the extent that those objectives might envisage that status) the most appropriate way to achieve the purpose of the Act. For zones in which development is envisaged, with the scale of development the subject of minimum standards, the increase in uncertainty for subdivision applicants is, in our view, not justified by the potential environmental issues that a subdivision that complies with those minimum standards might raise.

---

91 A view supported by the updated information provided in Mr Bryce's reply indicating that in the 6 years between 2009 and 2015 one subdivision consent application only had been declined after the exercise of the right of appeal, where applicable.

139. We also regard full discretionary status as being inconsistent with the strategic direction contained in Part Two of the Plan which seeks to enable urban development within defined Urban Growth Boundaries (recommended Policy 3.3.14) and to recognise the Rural Lifestyle and Rural Residential Zones as the appropriate planning mechanism to provide for new Rural Lifestyle and Rural Residential developments (recommended Policy 6.3.0).

140. Secondly, we agree with Mr Bryce's recommendation that there are a number of exceptions to that general position, where retention of full discretionary activity status is justified, most obviously in the Rural and Gibbston Character Zones[92]. Those zones have no minimum lot sizes and rely on the exercise of a broad discretion to ensure that subdivision and development is consistent with the objectives and policies applying to those areas. Submitters advanced the case at the hearing that the Ski Area Sub-Zones needed to be considered separately from the balance of the Rural Zone, having characteristics justifying controlled activity status for subdivisions. We will discuss that point separately. We also discuss the other exceptions later in this report.

141. Thirdly, we agree with Mr Bryce's recommendation that while controlled activity status may be appropriate in some specific situations, the most appropriate way to achieve the objectives of the PDP is to provide that the default activity status for subdivisions in both Urban Zones and the Rural Residential and Rural Lifestyle Zones should be restricted discretionary activity. We did not hear evidence justifying a different approach to Rural Residential and Rural Lifestyle Zones compared to urban residential zones, or indeed to distinguishing between different residential zones. The evidence we heard, as summarised above, is that the relative costs (between restricted discretionary and controlled activity status) are only likely to be material in the case of poor quality applications. In our view, the need for Council to be able to demand high quality outcomes, and to not have to accept poor applications, are key reasons for restricted discretionary activity status.

142. We do not regard utilities as one of the situations where controlled activity status would be appropriate. While subdivisions will on occasion solely relate to utilities, provision for utilities is an essential component of all subdivisions and in our view, the discretion to refuse consent (where applicable) needs to extend to the utility component. The important point (as Submission 179 notes as justification for controlled activity status) is that subdivisions for utilities are not subject to the minimum lot sizes specified for other subdivisions and this is achieved in our recommended Rules 27.6.2 and 27.7.11.

143. Fourthly, particular attention needs to be paid to limiting the matters in respect of which discretion is reserved to minimise the uncertainty for subdivision consent applicants, while providing the framework to best ensure good quality subdivision design outcomes.

144. As already noted, Mr Bryce recommended two restricted discretionary activity rules in his reply evidence to replace Rule 27.4.1 as notified. The first (now numbered 27.5.7 in our recommended version of Chapter 27) was recommended to read as follows:

> *"All urban subdivision activities, unless otherwise stated, within the following zones:*
>
> 1. *Low Density Residential Zones;*
> 2. *Medium Density Residential Zones;*

[92] Noting our previous finding that in those parts of the Rural Zone classified as ONL or ONF, residential subdivision and development might appropriately be classified as a non-complying activity and recommending Council consider initiating a variation to achieve that result.

3. *High Density Residential Zones;*
4. *Town Centre Zones;*
5. *Arrowtown Residential Historic Management Zone;*
6. *Large Lot Residential Zones;*
7. *Local Shopping Centres;*
8. *Business Mixed Use Zones;*
9. *Queenstown Airport Mixed Use Zone.*

Discretion is restricted to the following:

- *Lot sizes and dimensions in respect of internal roading design and provision, relating to access and service easements for future subdivision on adjoining land;*
- *Subdivision design and layout of lots;*
- *Property access and roading;*
- *Esplanade provision;*
- *On site measures to address the risk of natural and other hazards on land within the subdivision;*
- *Fire fighting water supply;*
- *Water supply;*
- *Stormwater design and disposal;*
- *Sewage treatment and disposal;*
- *Energy supply and telecommunications;*
- *Open space and recreation; and*
- *Ecological and natural values;*
- *Historic heritage;*
- *Easements; and*
- *Bird strike and navigational safety.*

For the avoidance of doubt, where a site is governed by a Structure Plan, spatial layout plan or concept development plan that is identified in the District Plan, subdivision activity should be assessed in accordance with Rule 27.7.1."

145. The second rule recommended by Mr Bryce in his reply (now numbered 27.5.8) would read as follows:

"All subdivision activities in the District's Rural Residential and Rural Lifestyle Zones."

Discretion is restricted to all of the following:

- *In the Rural Lifestyle Zone the location of building platforms;*
- *Lot sizes and dimensions in respect of internal roading design and provision,*
- *relating to access and service easements for future subdivision on adjoining land;*
- *Subdivision design and lot layout;*
- *Property access and roading;*
- *Esplanade provision;*
- *On site measures to address the risk of natural and other hazards on land within the subdivision;*
- *Fire fighting water supply;*
- *Water supply;*
- *Stormwater disposal;*
- *Sewage treatment and disposal;*
- *Energy supply and telecommunications;*

- *Open space and recreation;*
- *Ecological and natural values;*
- *Historic heritage;*
- *Easements; and*
- *Bird strike and navigational safety."*

146. These two suggested rules are virtually identical – the only difference in the matters to which discretion is reserved is recognition of the need to consider the location of building platforms in the Rural Lifestyle Zone – but like Mr Bryce, we think there is value in separating the rules related to subdivision in Urban Zones from those applying in the Rural Residential and Rural Lifestyle Zones, if only for clarity of coverage to lay readers of the Plan.

147. Looking first at the proposed urban subdivision rule, we recommend a minor change to the introductory wording to refer to activities otherwise "*provided for"* rather than otherwise "*stated*". The latter suggests a more explicit reference than may always be the case.

148. Consequential changes are also required arising from recommended changes to the names of different zones in other reports to the Lower Density Suburban Residential Zone and the Airport Zone – Queenstown respectively.

149. In terms of the matters in respect of which discretion is restricted, as Mr Bryce indicated, the list of matters is largely drawn from the submissions that suggested matters for control, in the context of a proposed controlled activity rule. As Mr Goldsmith acknowledged to us at the hearing, most of these are a standard list of matters that have to be considered on any subdivision application.

150. We therefore propose to discuss on an exceptions basis, the matters where Mr Bryce proposed amended wording, inserted additional considerations, or the one point that he proposed be deleted from the rule.

151. As above, much of the discussion at the hearing focussed on the first proposed matter of discretion. Having initially (at the opening of the Council case) formed the view that this matter might be entirely deleted, Mr Bryce came around to the view that limited provision for a discretion over lot sizes and dimensions was appropriate, to address the specific issue discussed during the course of the hearing of the need for access to adjoining subdivisable land.

152. We think that the debate at the hearing got a little side-tracked by the concerns of submitters about the ambit of any discretion over lot sizes. While important, the principal consideration justifying reservation of discretion is the need to promote quality subdivision design. We propose that should be the first matter listed.

153. As above, Mr Bryce's suggested matter of discretion is "*subdivision design and layout of lots"*. We regard the layout of lots as an aspect of subdivision design rather than a discrete issue in its own right. If the subdivision design changes, for whatever reason, the layout of lots, and indeed lot sizes (in m^2) and dimensions (i.e. shape) will change correspondingly. Mr Goldsmith had no problem with that in principle. The concern he was expressing was of an explicit and separate discretion over lot sizes.

154. To put that beyond doubt, we think it would be helpful to reframe this first and primary matter of discretion as follows:

"subdivision design and any consequential effects on the layout of lots, and on lot sizes and dimensions."

155. Like Mr Bryce, we consider that the potential need to require access to adjoining subdivisable land is a discrete issue that needs specific discretion to enable it to be properly considered. Mr Bryce's suggested drafting focussing on lot sizes and dimensions, whereas, to us, this is the consequence of a discretion over internal roading design and provision. As well as being more logical, putting it that way round assists in meeting the concerns expressed for submitters. We also think it would also be helpful if the same consequential flow-on effect on lot layouts were identified as with subdivision design.

156. In summary, we recommend that the relevant point of discretion be amended to read:

"internal roading design and provision relating to access to and service easements for future subdivision on adjoining land, and any consequential effects on the layout of lots, and on lot sizes and dimensions."

157. The submissions we received focussed only on property access. Like Mr Bryce, we think that the focus might more explicitly be on roading as the primary means of property access.

158. The submissions likewise focussed solely on "natural hazards". We agree with Mr Bryce's recommendation that in the context of restricted discretionary activity, the ambit of potential action required should be stated more clearly – it is about onsite measures to address the risk of both natural and other hazards on land within the subdivision rather than, for instance, attempts to address natural hazards at source. It is both unreasonable and impracticable to contemplate a subdivision applicant having responsibility, for instance, for mitigating the causes of flooding that is the result of natural processes occurring offsite.

159. In our view, it also needs to be made clear that it is not just a choice of what on-site measures are taken to mitigate natural hazard risk. In some cases, precisely because it is beyond the control of any subdivision applicant to control natural hazards at source, all available mitigation steps would still be insufficient to enable subdivision and development of the scale and in the manner proposed to proceed. We therefore recommend that the point of discretion should refer to "*the adequacy*" of on-site measures to address natural hazard risk.

160. The submissions we received suggested "*stormwater disposal"* as a matter of control. We agree with Mr Bryce's recommendation that discretion needs to be retained over the design of stormwater management, not just its disposal.

161. Mr Bryce recommended two new matters of discretion, being "*ecological and natural values"* and "*historic heritage"*. Given the identification of those values and the objectives and policies of the Plan (not to mention the provisions of the Proposed RPS quoted above that sit behind them, they are obvious additions.

162. Lastly, Mr Bryce recommended addition of "*bird strike and navigational safety".*

163. This addition reflected submissions we heard from QAC seeking recognition of the potential for the development associated with subdivision to cause a potential safety issue at Queenstown Airport (principally) due to bird strike. QAC both made legal submissions and called planning evidence on the need for PDP provisions to discourage activities attracting birds that might give rise to a bird strike risk.

164. We had some difficulty with QAC's case in this regard. Ms Kirsty O'Sullivan, giving expert planning evidence for QAC, advised us that the essential issue was with stormwater ponds that might form part of a subdivision design attracting birds that roost in the Shotover Delta.

165. At the hearing, we sought to explore with QAC's representatives the extent to which bird strike is already an issue given the location of the municipal wastewater facilities in close proximity to the eastern end of the runway, on the opposite side of the runway to Shotover Delta. The initial advice we received from Ms O'Sullivan was that bird strike was not an issue at present because QAC knows about current flight paths. Subsequently, however, after we sought input on where subdivision-related development might pose a risk of bird strike, we were advised that most reported bird strikes had been on the airfield, but that there have been reports of near misses further afield. We were also advised that the highest recorded bird strike was at 30,000 feet and that it was difficult to define the relevant area in a spatial sense.

166. We found this unhelpful to say the least. QAC were seeking examination of potential bird strike issues as a discrete matter of discretion on all urban subdivisions, so as to enable a case by case assessment. My Bryce also recommended that this be a matter of discretion in both urban areas and in the Rural Lifestyle and Rural Residential Zones.

167. The only way in which a subdivision consent applicant could address that issue would be by obtaining expert ornithological evidence as to the potential impact of the proposed subdivision and development on the existing pattern of bird flights and expert aviation evidence on the potential risk to aircraft within the District where they might intersect with the predicted flight-paths of birds. The collective costs involved, given that this would need to be considered on every subdivision application in urban areas and in the Rural Lifestyle and Rural Residential Zone if Mr Bryce's recommendation were accepted, might well be substantial, but we were not provided with any quantification of those costs[93].

168. While any threat to aircraft safety is of course a matter for considerable concern, we regard it as incumbent on QAC to provide us with expert evidence that would enable us to evaluate whether the risks that subdivision and development might pose to aircraft movements justified the imposition of those costs. At the very least, we would have expected QAC to produce expert evidence on where birds currently roost, the current flight-paths of birds to and from those roosting areas, and the nature and scale of future subdivision and development sufficient to materially alter those flight-paths in a manner with the potential to create a risk to aircraft. Demonstrably, Ms O'Sullivan was not equipped to provide evidence on these matters. And to be fair to her, she did not suggest she could do so other than at a very general level.

169. We inquired of QAC whether it had taken a position on the recently reviewed earthworks provisions of the ODP, given our understanding that birds are attracted by newly excavated earthworks. We were advised that QAC had made submissions on those provisions, but those submissions were not accepted and QAC did not pursue the matter.

170. Had QAC provided us with the evidential basis to do so, we might well have recommended a focus on effects on bird strike and navigational safety within some defined distance from the

---

93 Mr Bryce identified that the addition of new matters of discretion would add costs in the s32AA evaluation attached to his reply evidence, but did not comment on the potential quantum of such costs. Ms O'Sullivan did not comment on the cost implications for applicants of the relief she supported.

flight paths into and out of Queenstown Airport, recognising a potentially greater risk in such areas (QAC told us existing spray irrigation at the end of the runway at Wanaka had not created an issue at Wanaka Airport and provided no information as to the position at the smaller facilities). As it was, QAC did not provide us with an adequate evidential foundation either for the planning relief sought, or for some more targeted response.

171. In summary, we do not agree with Mr Bryce's recommendation that the default rules contain a recognition of potential bird strike risk as a separate area of discretion.

172. Submissions seeking a controlled activity rule suggested that "*the nature, scale, and* adequacy *of environmental protection measures associated with earthworks"* be an additional matter of control. Mr Bryce did not recommend that earthworks be a matter for discretion. Rather, his recommendation was that a cross reference be inserted to provisions of the earthworks chapter of the ODP. We think there are good reasons to treat earthworks as a separate issue under the rules. We will revert to that point when we address Mr Bryce's recommendations in that regard.

173. We do, however, consider that there is a case for an additional matter of discretion based on the submissions and evidence we heard for Aurora Energy Ltd[94]. We explore the issues raised in much greater detail in the context of the policies related to subdivision and development affecting electricity distribution lines[95]. Mr Bryce recommended a new rule governing subdivision and development in close proximity to 'sub-transmission' lines. We discuss that recommendation later in this report also. In summary, we do not regard it as either necessary or efficient to have a standalone rule, but we do consider it necessary to preserve a discretion on subdivision applications that might be exercised in accordance with recommended Policy 27.2.2.8.

174. Having identified the desirability of an additional point of discretion, we then considered whether it should be limited to effects on electricity distribution lines. Mr Bryce's draft rule considers "*Energy supply and telecommunications"* together. While the rationale for that discretion is (we think) related to the adequacy of the infrastructural arrangements, the same logic would apply to reverse sensitivity effects on telecommunication networks as on energy networks – both are essential local infrastructure.

175. Accordingly, we recommend that the relevant matter of discretion be amended to read:

"energy supply and telecommunications, including adverse effects on energy supply and telecommunication networks."

176. The suggested rule is stated to apply within the Low Density Residential Zone and the Queenstown Airport Mixed Use Zone. The Stream 6 Hearing Panel has recommended that the name of the Low Density Residential Zone be changed to the Lower Density Suburban Residential Zone. The Stream 8 Panel has recommended the Queenstown Airport Mixed Use Zone, as the term is used in Chapter 27, be changed to the Airport Zone - Queenstown. We therefore recommend use of those titles for those zones here, and elsewhere in Chapter 27 where they are referred to.

177. Lastly, we recommend that the language introducing the matters of discretion be tightened in this and the other Restricted Discretionary rules in Chapter 27 and that the specified matters

---

94 Submission 71

95 Refer the discussion of our recommended Policy 27.2.2.8

be individually identified using an alphanumeric list for ease of subsequent reference. Again, this is a recommended general change. We also recommend that generally listing of sub-parts of policies or rules by identified by alphanumeric lists.

178. Turning to the parallel rule (now numbered 27.5.8), providing for subdivision in the Rural Residential and Rural Lifestyle Zones, the opening words, describing the ambit of the rule, need to provide for the operation of other rules in the rule package in the same way as Mr Bryce's recommended urban subdivision rule; that is to say, it needs the words "*unless otherwise provided for"* inserted into it.

179. As above, the only additional point of discretion Mr Bryce recommended in this rule was reference to building platforms in the Rural Lifestyle Zone. At the hearing, we discussed with both Mr Bryce and Mr Jeff Brown whether the size of building platforms might be an issue. Currently the zone standards for the Rural, Gibbston and Rural Lifestyle Zones[96] require identification of one building platform between 70m² in area and 1000m² in area per lot where allotments are created for the purposes of containing residential activity.

180. Mr Brown confirmed that in principle, both the location and size of building platforms are the issue in the Rural Lifestyle Zone, but he could not recall any consent holder trying to fill out building platforms to the full 1000m². Mr Goldsmith drew our attention to the fact that this issue was canvassed in the hearings on the rural chapters (the Stream 2 hearing). In that hearing, Mr Paddy Baxter, an expert landscape architect, suggested to the Hearing Panel that design controls might be appropriate for larger sized houses.

181. Relevant design controls in this context are those contributing to the visibility and external appearance of buildings constructed within approved building platforms since it is these matters that affect the ability of the landscape to absorb new or altered buildings.

182. We also note that Rule 22.4.2 provides that where a building is constructed or altered outside an approved building platform in the Rural Lifestyle Zone the Council retains discretion over external appearance, visibility from public places, landscape character and visual amenity. Logically, these matters should be equally relevant to the decision whether to approve building platforms (within which buildings might be constructed or altered as permitted activities).

183. Accordingly, we recommend that the relevant point of discretion be expanded to read:

"in the Rural Lifestyle Zone, the location and size of building platforms and in respect of any buildings within those building platforms:

a. external appearance;

b. visibility from public places;

c. landscape character; and

d. visual amenity.

184. In all other respects, the same conclusions about the matters in respect of which discretion is reserved follow as for subdivision in the urban zones.

[96] Rule 27.5.1.1 of the notified Chapter and 27.7.12.1 of our recommended revised Chapter

185. As already noted, a number of submissions identified the need for the objectives and policies of Chapter 27 to be amended to reflect any changes to the default rules related to subdivision. Accordingly, it is appropriate that we move now to address first the introductory statement of the purpose of Chapter 27 (in Section 27.1) and then the objectives and policies, before returning to the package of rules.

3. PURPOSE

3.1 Section 27.1 - Purpose

186. Section 27.1, as its title suggests, is designed to set out the purpose of Chapter 27. Submissions on it sought variously:
   a. Addition of reference to the protection of areas and features of significance and to passive solar design of dwellings[97];
   b. Deletion of reference to subdivision being discretionary, to be replaced with a statement that subdivision in zoned areas is controlled[98];
   c. Deletion of reference to logic[99];
   d. Deletion of reference to the Land Development and Subdivision Code of Practice and Subdivision Design Guidelines[100];
   e. Clarification that Chapter 27 does not apply to the Remarkables Park Zone and the proposed Queenstown Park Special Zone[101];
   f. Drawing attention to the relationship between subdivision and land use, softening the description of the relationship between subdivision and desirable community outcomes, deletion of specific reference to management of natural hazards and insertion of identification of the role of subdivision in provision of services[102].

187. Mr Bryce recommended the following changes to the notified version of Section 27.1:
   a. Consequential on his recommendation that the default status of subdivisions be restricted discretionary activity, the reference to all subdivision requiring resource consent as a discretionary activity should be amended;
   b. Deletion of reference to subdivision design being underpinned by logic;
   c. Separation of reference to the Subdivision Design Guidelines from the Land Development and Subdivision Code of Practice, recognising the focus of the Subdivision Design Guidelines on urban design and pitching the role of the Code of Practice as providing a best practice guideline;
   d. Deletion of reference to provisions in other chapters governing assessment of subdivision;
   e. Insertion of reference to the Council's development contributions policy.

188. We do not consider that the opening words of Section 27.1 need to place greater emphasis on the inter-relationship between subdivision and land use. In our view, the opening paragraph already draws that connection.

189. The reference in Section 27.1 to all subdivision requiring resource consent as a discretionary activity was problematic even on the basis of the notified Chapter 27, given that Rule 27.4.2

97 Submission 117
98 Submissions 288, 442, 806: Supported in FS1097
99 Submission 383
100 Submissions 567 and 806
101 Submission 806
102 Submission 806

provided for non-complying activities and Rule 27.4.3 provided for restricted discretionary activities. We have already addressed the appropriate default rule activity status, recommending that it be restricted discretionary. It follows that the existing text of Section 27.1 requires amendment. We agree with Mr Bryce's suggestion that the statement should read that "*all subdivision requires resource consent unless specified as a permitted activity".*

190. We also agree with Mr Bryce's recommendation that reference to logic in the second paragraph might appropriately be deleted. Without amplification as to what a logical subdivision design might involve, such as is contained in proposed Objective 3.2.2.1, this is likely to be unhelpful.

191. We do not, however, consider that the entire sentence in which that reference is made need be deleted. Given the overlap with recommended Objective 3.2.2.1, stating that good subdivision design is underpinned by an objective of creating healthy, attractive and safe places is a suitable comment. We do agree, however, that some qualification of the reference to management of natural hazards is required since as currently framed, the text provides no indication of how natural hazards should be managed. The Proposed RPS contains a comprehensive suite of provisions around natural hazard management. In the context of a general introduction to the subdivision and development section, it would be difficult to capture all of the nuances of the Proposed RPS position. We recommend therefore that the introduction talk about "*appropriate"* management of natural hazards.

192. We agree with the suggestion in Submission 806 that the opening words to paragraph 3 should state that good subdivision "*can help to create"* desirable outcomes. It is unduly ambitious to think that good subdivision will necessarily achieve these matters on its own.

193. We do not consider that reference to passive solar design of dwellings is required given the existing reference in the third paragraph to maximising access to sunlight. Similarly, in relation to the relief sought in Submission 117, reference to protection of areas and features of significance is an unnecessary level of detail. These matters are covered more appropriately in the objectives and policies following.

194. As regards the degree to which the Subdivision Design Guidelines and the Land Development and Subdivision Code of Practice are referenced, this matter overlaps with how they are addressed in the balance of the chapter.

195. Counsel for the Council noted that both of these documents had been incorporated by reference under Part 3 of Schedule 1 of the Act. As counsel noted, the advantage of incorporating documents by reference in this way is that they can then be referenced in the PDP without needing to be annexed to it. As counsel also pointed out, however, the downside of such referencing is that the document cannot thereafter be changed without the reference to it also being changed through the mechanism of a Plan Change.

196. Mr Wallace produced a copy of the current Code of Practice for us. It is both a lengthy and highly detailed document and Mr Wallace highlighted the fact that it is a "*live, ever evolving document"* and that he anticipated that it would be amended and readopted by Council before the close of 2016. Nor would this be the only amendment. In his words, "*there will be an ongoing process of updating the Code of Practice to ensure evolving best practice is captured in the document"*[103].

[103] D Wallace, Evidence at 4.2

197. Against this background, the recommendation of Mr Bryce was that specific reference to the Code of Practice should be removed from the relevant policy (27.2.1.1).

198. This recommendation produced a degree of puzzlement from the representatives of submitters who appeared before us, given that the Code of Practice is referred to in the ODP generically and, as far as the submitters could ascertain, this has never been seen as posing a legal issue in the past notwithstanding that the Code of Practice has been updated from time to time.

199. Mr Goldsmith did not seek to contradict counsel for the Council's submissions. Rather his approach was to query why reference to the Code of Practice is a problem now if it has never previously been a problem. Ms Baker-Galloway noted that in the litigation on the Horizons One-Plan, the High Court had no difficulty with a generic reference to the OVERSEER nutrient model in the One-Plan, notwithstanding that new versions of the model would be produced[104].

200. As we understand the argument for the Council, it is the additional step of incorporating the Code of Practice by reference that has created the legal issue.

201. The High Court decision referred to us quoted a section of the Environment Court's decision on the One-Plan querying whether a model like OVERSEER is written material within the meaning of clause 30 of the First Schedule (so as to be able to be incorporated by reference). It appears to us also that the High Court's decision turned on the fact that the One-Plan did not require use of OVERSEER. Rather it was mentioned as one means by which the Plan's provisions might be complied with.

202. We do not, therefore, regard the High Court's decision as supporting an explicit policy reference to the Code of Practice as something that is required to be complied with (as notified Policy 27.2.1.1 currently does), given the Council's intention that the Code of Practice will change.

203. Mr Duncan White gave evidence for Paterson Pitts noting that submitter's concern with the notified provisions given the lack of external input into the content of the Code of Practice. We agree that this is problematic, even if the legal concerns expressed by counsel for the Council could be overcome.

204. Mr Goldsmith drew our attention to a possible concern that removing reference to the Code of Practice, when in practice the Council will rely on the current version of the document. In his submission, this might mislead readers of the PDP who are not as a result aware that there is a large and very detailed document sitting outside the PDP which has, in Mr Goldsmith's words, "*a very significant influence on the subdivision design consent process".*

205. Ultimately though, Mr Goldsmith expressed himself as being ambivalent as to where the Code of Practice is referenced as long as it is referenced somewhere in the PDP. He took the pragmatic view that any rules and policies referring to the adequacy or appropriateness of infrastructure and service provision would then enable the Code of Practice to be referenced during the processing of a subdivision application.

206. We discussed the concern Mr Goldsmith had identified with counsel for the Council who agreed that the Code of Practice might appropriately be referred to in the introductory sections, provided it has not been incorporated by reference. We think that is the best solution, but it faces the problem that, of course, the Council has already resolved to

---

104 Discussed in *Horticulture New Zealand v Manawatu-Wanganui Regional Council* [2013] NZHC 2492 at [106]-[115]

incorporate the Code of Practice (2015) version by reference. We recommend that Council resolve that that document should cease to be incorporated by reference.

207. Assuming the Council does so resolve, we further recommend that the existence of a Code of Practice be highlighted in Section 27.1, but in a separate paragraph to the discussion of the Subdivision Design Guidelines that we will come to shortly. Mr Bryce drafted a sentence to insert on the end of the fourth paragraph of section 27.1 reading:

"The purpose of the QLDC Land Development and Subdivision Code of Practice is to provide a best practice guideline for subdivision and development infrastructure in the District."

208. Mr Bryce's suggestion did not capture what we had in mind because it assumed an understanding of what the Code of Practice was and failed to convey the critical point, which is that subdivision applicants need to consult the document.

209. Accordingly, we recommend that a new paragraph be inserted following the existing paragraph 4 reading:

"The QLDC Land Development and Subdivision Code of Practice provides assistance in the design of subdivision and development infrastructure in the District and should also be considered by subdivision applicants."

210. Consequential deletions of reference to the Code of Practice in the existing text of the fourth paragraph will be required.

211. The Subdivision Design Guidelines did not attract the same concern regarding the need for ongoing change. While Mr Goldsmith critiqued the Subdivision Guidelines, the thrust of his point seemed to be that they were a little trite and overlapped with the existing policies. As against that view, Mr Falconer gave evidence for the Council indicating his view that the Design Guidelines are well founded, helpful and provide a concise checklist for the layout and broad scale design of subdivisions[105]. To the extent that Mr Dan Wells critiqued the illustrated design contained in the Subdivision Design Guidelines, Mr Falconer described those criticisms to us as matters of detail, not raising major issues.

212. Mr Falconer did, however, accept that the Subdivision Design Guidelines would benefit from being extended in scope.

213. Given Mr Falconer's undoubted expertise and experience in the field of subdivision and urban design, we accept his opinion as to the value of the Subdivision Design Guidelines, and are satisfied that Section 27.1 should acknowledge their role. The only amendments we recommend to the text suggested by Mr Bryce are to make it a little clearer that the Guidelines are principally focused on development in urban areas, but that some aspects may be relevant to rural subdivisions.

214. We do not think it is helpful to state on a piecemeal basis that Chapter 27 does not apply to the Remarkables Park Zone and the requested Queenstown Park Special Zone as Queenstown Park Limited proposes. We discussed with counsel from the Council how Chapter 27, once finalised, will interrelate with the ODP subdivision provisions that will continue to apply in a number of zones (including the Remarkables Park Zone, which forms part of the ODP). We will discuss this issue in greater detail in our consideration of the notified Section 27.3. For the same reason, however, we agree with Mr Bryce's recommendation that what was the first part

[105] G Falconer, Evidence at paragraph 2.1

of the fifth paragraph of Section 27.1 should delete reference to provisions for assessment of subdivisions outside Chapter 27.

215. Lastly, Mr Bryce recommended that a paragraph be inserted on the end of Section 27.1 as a consequential change resulting from his recommendation that reference to the Development Contributions Policy be deleted from Policy 27.2.5.11 (same numbering in notified version), reading:

"Infrastructure upgrades necessary to support subdivision in future development are to be undertaken and paid for by subdividers and developers in accordance with the Council's 10 Year Plan Development Contribution Policy."

216. The difficulty we have with the suggested addition to Section 27.1 is that it assumes an understanding of the role of the Development Contributions Policy and records the current policy set under the Local Government Act, which may change during the lifetime of the PDP.

217. Accordingly, we recommend that Mr Bryce's suggestion not be accepted, but rather that a new paragraph 6 be inserted in section 27.1 reading as follows:

"The Council uses its Development Contributions Policy set out in its 10 Year Plan to fix the contributions payable by subdividers for infrastructure upgrades. That policy operates in parallel with the provisions of this chapter and should be referred to by subdivision consent applicants."

218. We have discussed each of the amendments we have recommended to Section 27.1 above. The end result, accepting the suggested changes, is that the introductory section of Chapter 27 related to its purpose would read as follows:

"Subdivision and the resultant development enables the creation of new housing and land use opportunities, and is a key driver of the District's economy. The council will support subdivision that is well designed, is located in the appropriate locations anticipated by the District Plan with the appropriate capacity for servicing and integrated transportation.

All subdivision requires resource consent unless specified as a permitted activity. It is recognised that subdivisions will have a variable nature and scale with different issues to address. Good subdivision design, servicing and the appropriate management of natural hazards are underpinned by a shared objective to create healthy, attractive and safe places.

Good subdivision can help to create neighbourhoods and places that people want to live or work within, and should also result in more environmentally responsive development that reduces car use, encourages walking and cycling, and maximises access to sunlight.
Good subdivision design will be encouraged by the use of the QLDC Subdivision Design Guidelines 2015. The Subdivision Design Guidelines includes subdivision and urban design principles and outcomes that give effect to the objectives and policies of the Subdivision and Strategic Directions Chapters, in both designing and assessing subdivision proposals in urban areas. Proposals at odds with this document are not likely to be consistent with the policies of the Subdivision and Strategic Directions chapters, and therefore, may not achieve the purpose of the RMA. Some aspects of the Subdivision Design Guidelines may be relevant to rural subdivisions.

The QLDC Land Development and Subdivision Code of Practice provides assistance in the design of subdivision and development infrastructure in the District and should also be considered by subdivision applicants.

The Council uses its Development Contributions Policy set out in its 10 Year Plan to fix the contributions payable by subdividers for infrastructure upgrades. That policy operates in parallel with the provisions of this chapter and should be referred to by subdivision consent applicants.

The subdivision chapter is the primary method to ensure that the District's neighbourhoods are quality environments that take into account the character of local places and communities."

219. We are satisfied that as amended, this introductory statement is the most appropriate way to achieve the objectives of Chapter 27 that we are about to discuss, given the alternatives open to us.

4. SECTION 27.2 – OBJECTIVES AND POLICIES

4.1 General

220. We have already discussed the general submissions seeking that the objectives and policies more clearly identify where they are limited in scope either to urban or rural environments. The only other general submission that we need to discuss at the outset of our consideration of the objectives and policies in Chapter 27 is that of Transpower New Zealand Limited[106] that sought a new objective related to reverse sensitivity effects on the national grid.

221. Mr Bryce recommended that the suggested objective not be inserted into Chapter 27, on the basis that Transpower's relief would more appropriately be addressed by a new policy seeking to achieve existing Objective 27.2.2.

222. The relief sought by Transpower was in fact framed as a course of action (i.e. as a policy) rather than as an environmental outcome (i.e. as an objective) and Ms Ainsley McLeod, giving planning evidence for Transpower, accepted that this was the appropriate way for Transpower's concern to be addressed. We concur.

223. Before considering the first objective and the policies related to it, we should note that the existing objectives and policies were supported by a number of submitters, either as is, or generally, but subject to specific points of concern[107].

4.2 Objective 27.2.1 and Policies Following

224. Turning to Objective 27.2.1, as notified, it read:

"Subdivision will create quality environments that ensure the District is a desirable place to live, visit, work and play."

225. Submissions seeking changes to Objective 27.2.1 sought variously:

106 Submission 805: Supported in FS1121 and FS1211

107 See submissions 453, 586, 775 and 803: Supported in FS1117

a. Reference be made to "*high"* quality environments[108];
b. Rewording to read:

   "The formative role of subdivision creating quality environments is recognised through attention to design and servicing needs."[109]
c. Soften the wording so it states that subdivision will "*help to"* create quality environments[110].

226. By his reply evidence, Mr Bryce had come to the view that the objective might appropriately be amended in line with the thinking underlying the third of the submissions only – substituting "*enable"* for *"create".*

227. We largely agree. We do not think it is necessary to add a second adjective. Referring to quality environments already conveys the message that Submission 238 sought.

228. We consider that the more comprehensive amendment sought in Submission 632 would obscure rather than clarify the outcome sought in this objective. Accordingly, we do not recommend that that be accepted.

229. As we have noted in our discussion of Section 27.1, however, the PDP needs to be realistic as to what subdivision can deliver in terms of desirable outcomes. Ultimately, it is one of a number of contributing factors that create quality environments. Accordingly, we agree with Mr Bryce's suggested amendment and recommend the objective be retained with only a minor grammatical change, as follows:

"Subdivision that will enable quality environments to ensure the District is a desirable place to live, visit, work and play."

230. Given the range of alternatives open to us, we consider that this objective aligns well with recommended Objective 3.2.2.1 and is accordingly the most appropriate way in which to achieve the purpose of the Act in this context.

231. Policy 27.2.1.1 as notified read:

"Require subdivision to be consistent with the QLDC Land Development and Subdivision Code of Practice, while recognising opportunities for innovative design."

232. A number of submissions on it sought its deletion[111]. Some of these submissions focussed on the fact that the Code of Practice can be changed without consultation[112]. A number of other submissions focussed on the interrelationship between this and other policies, and the default discretionary rule status[113].

---

108 Submission 238: Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

109 Submission 632: Supported in FS1097; Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

110 Submission 806

111 Submissions 248, 453, 567, 632 and 806: Supported in FS1097; Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

112 See in particular Submission 453: Supported in FS1097

113 E.g. Submissions 248 and 567: Supported in FS1097 and FS1117

233. Mr Bryce recommended that reference to the Code of Practice be deleted, largely for the reasons discussed above in the context of Section 27.1, and that the policy require subdivision infrastructure (the subject of the Code of Practice) be designed so as to be fit for purpose.

234. We concur. It is not efficient to have a policy that refers to a document that is likely to be superseded a number of times during the life of the PDP. That will only necessitate a series of future plan changes.

235. The addition we have recommended that Section 27.1 address the sole substantive concern expressed to us, that readers of the PDP might not appreciate the role of the Code of Practice.

236. Accordingly, we recommend that Mr Bryce's suggested amendments to Policy 27.2.1.1 be accepted, subject only to minor grammatical changes, so that it would read:

"Require subdivision infrastructure to be constructed and designed so that it is fit for purpose, while recognising opportunities for innovative design."

237. Policy 27.2.1.2 as notified read:

"*Support subdivision that is consistent with the QLDC Subdivision Design Guidelines, recognising that good subdivision design responds to the neighbourhood context and the opportunities and constraints of the application site."*

238. This policy attracted opposition from the same submitters and for largely the same reasons as are summarised above in relation to Policy 27.2.1.1.

239. Mr Bryce distinguished this policy from the previous one on the basis that it was unlikely that the subdivision guidelines would need to be updated as regularly as the Code of Practice. Based on the evidence of Mr Falconer summarised earlier, we agree that the Subdivision Design Guidelines play a valuable role that should be recognised in the policies of Chapter 27. The concern expressed in Submission 453 is addressed by the fact that, having been incorporated by reference, the Subdivision Design Guidelines can effectively only now be changed by means of a publicly notified Plan Change.

240. Mr Bryce recommended in his reply evidence two amendments to the notified policy: the first to clarify what "*support"* means in this context and the second to be clear that the document referenced is the 2015 version of the Subdivision Design Guidelines. We agree with those amendments. The only further amendments we would recommend are a minor grammatical change and insertion of reference to urban subdivision, to make it clear, as sought by the general submissions already noted, that this is one of the policies that is specific to urban subdivision.

241. Accordingly, we recommend that Policy 27.2.1.2 read as follows:

"*Enable urban subdivision that is consistent with the QLDC Subdivision Design Guidelines 2015, recognising that good subdivision design responds to the neighbourhood context and the opportunities and constraints of the application site."*

242. Policy 27.2.1.3 as notified read:

"Require that allotments are a suitable size and shape, and are able to be serviced and developed to the anticipated land use of the applicable zone."

243. Two submissions sought changes to this policy, one to delete reference to development and to make consequential changes[114] and the other to delete the opening words "*require that"*[115].

244. Mr Bryce did not recommend any change to this policy. We agree with his reasoning. The ability to develop an allotment for the anticipated land use will be one of the key factors that determines whether an allotment is a suitable size and shape. Deleting the opening words would mean that the policy ceases to be a course of action and would rather state an outcome (i.e. objective). We recommend only minor grammatical changes, so that the policy would read:

"Require that allotments are a suitable size and shape, and are able to be serviced and developed for the anticipated land use under the applicable zone provisions."

245. Notified policy 27.2.1.4 reads:

"*Where minimum allotment sizes are not proposed, the extent any adverse effects are mitigated or compensated by achieving:*

a. *Desirable urban design outcomes;*

b. *Greater efficiency in development and use of the land resource;*

c. *Affordable or community housing."*

246. One submission sought it be deleted[116]. Another submission queried whether the word "proposed*"* should be replaced with *"achieved"*[117]. A third submission[118] suggested that the opening words should read, "*where small lot sizes are proposed, the extent….".*

247. Mr Bryce agreed with the submitters seeking amendments that the policy is unclear and requires clarification. What it is actually seeking to address, as Submission 453 surmised, is the position where the minimum allotment sizes are not achieved. We agree with Mr Bryce that the initial point that needs to be made is that failure to comply with minimum allotment sizes is not a desirable state of affairs. In some circumstances in the urban environment (and we think it needs to be made clear that it is the urban environment), that may nevertheless be acceptable based on the criteria identified in the policy.

248. In summary, we recommend acceptance of Mr Bryce's suggested amended policy wording with one addition (to focus the second part of the policy on urban environments) and minor reformatting changes. It would therefore read as follows:

"Discourage non-compliance with minimum allotment sizes. However, where minimum allotment sizes are not achieved in urban areas, consideration will be given to whether any adverse effects are mitigated or compensated by providing:

a. desirable urban design outcomes.

---

114 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

115 Submission 806

116 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

117 Submission 453

118 Submission 806

b. greater efficiency in the development and use of the land resource.

c. affordable or community housing."

249. Policy 27.2.1.5 as notified, read:

"The Council recognises that there is an expectation by future landowners that the effects and resources required of anticipated land uses will have been resolved through the subdivision approval process."

250. Submission 453 sought a minor grammatical change so that the policy would refer to effects and resources required "*by"* anticipated land uses. Submissions 632[119] and 806 sought deletion of this policy. The latter submission suggested that it was not framed as a policy.

251. Mr Bryce recommended that the minor grammatical change sought by Submission 453 be accepted but otherwise that the policy remain unamended.

252. For our part, we think that Submission 806 made a valid point. The policy needs to start with a verb to express a course of action.

253. We also have a concern that subdivision consent processes will not necessarily resolve all effects of anticipated land uses. That is what land use consent applications are for.

254. To state more clearly what course of action the policy envisages being undertaken, it should start with the words "*recognise that"*. That might be considered to rather beg the question as to how that recognition might be implemented. We think the answer to that rhetorical question is that it will be implemented through the subdivision approval process considering these matters. The end result we have in mind sits between the outcome sought by submitters and the status quo.

255. In summary, therefore, we recommend that Policy 27.2.1.5 be amended to read:

"Recognise that there is an expectation by future landowners that the key effects of and resources required by anticipated land uses will have been resolved through the subdivision approval process."

256. Policy 27.2.1.6, as notified, read:

"Ensure the requirements of other relevant agencies are fully integrated into the subdivision development process."

257. The only submission seeking change to this policy sought its deletion[120]. Mr Bryce acknowledged that it might be argued that this policy is not necessary to give effect to the notified Objective 27.2.1, but considered that it was still helpful in guiding PDP users. We concur and note that Mr Wells, who gave evidence for submitter 632, did not provide any reasons why this particular policy should be deleted.

258. Accordingly, we recommend that Policy 27.2.1.6 be retained without amendment.

---

119 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

120 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

259. Policy 27.2.1.7, as notified, read:

"Recognise there will be certain subdivision activities, such as boundary adjustments, that are undertaken only for ownership purposes and will not require the provision of services."

260. The sole submission seeking a change to this policy[121] sought that it be amended to ensure that boundary adjustments are not subject to the discretionary activity rule [i.e. notified Rule 27.4.1] and are exempt from the policies relating to provision of services.

261. Mr Bryce did not recommend any change to this policy specifically in response to the concern expressed in Submission 806. Mr Bryce drew our attention to his separate discussion of rules related to boundary adjustments, but in summary, took the view that the policy already states that some subdivision activities and in particular boundary adjustments, will not require the provision of services. We agree. The only amendment we recommend is one suggested by Mr Bryce in his reply evidence, following a discussion we had with him, that reference to "*ownership purposes"* should be deleted. We are not at all sure what that means and we think that there might be a number of purposes that would justify a boundary adjustment. We do not regard that as a substantive change since the motivation of the applicant is not material to the course of action the policy identifies.

262. Accordingly, we recommend that Policy 27.2.1.7 be amended to read:

"Recognise there will be certain subdivision activities, such as boundary adjustments, that will not require the provision of services."

263. Mr Bryce recommended two new policies for this objective, the first relating to subdivision of a residential flat from a residential unit, and the second relating to subdivision of land resulting in division of a residential building platform. As Mr Bryce explained in his reply evidence, these suggested new policies (27.2.1.8 and 27.2.1.9) arose from a discussion we had with him regarding the apparent lack of any policy support for non-complying activity rules governing these activities. Mr Bryce confirmed our concern that there is something of a policy vacuum as regards these activities and, as such, non-complying rule status is somewhat illusory – if there are no directly applicable objectives and policies, it is difficult to imagine that an application would ever not pass through the second statutory gateway in section 104D(1)(b). Put simply, if there are no objectives and policies that the application could be contrary to, the conclusion would inevitably be that the statutory precondition is satisfied. This is an unsatisfactory position in the structuring of Chapter 27 which ought to be filled and we agree with Mr Bryce that the corollary of a non-complying activity is a policy indicating that generally, these activities should be avoided.

264. However, the fact that there is a policy vacuum is not a sufficient justification for new policies to be inserted into the chapter, certainly where they would have a substantive effect on the implementation of the PDP's provisions, in the absence of a submission seeking that relief.

265. In this case, there does not appear to be any submission seeking policies along the lines suggested by Mr Bryce and there is only one submission on the relevant rules[122] related to Rule 27.4.2(d) as notified (Rule 27.5.19 in our revised chapter). That submission, however, sought only that the rule be clarified. While we have approached the issue on the basis that a

121 Submission 806

122 Submission 453

submission on a rule could provide a jurisdictional basis for consequential changes to objectives and policies if such changes can be said to be fairly and reasonably raised in the submission[123], the submission in this case was associated with more general relief seeking that subdivisions around existing buildings should be controlled activities. We do not consider that the submission gives any jurisdiction for firming up on the non-complying status of the activity through a supporting policy.

266. Accordingly, we have concluded that while worthwhile, we do not have jurisdiction to accept Mr Bryce's recommendations in this regard.

267. For these reasons, the Chair recommended to the Council that policies be introduced by way of variation to address this policy gap in his Minute dated 22 May 2017.Having reviewed the policies recommended as above, we have concluded that they are the most appropriate way to achieve Objective 27.2.1, given the alternatives open to us, and the jurisdictional limitations we have discussed.

4.3 Objective 27.2.2 and Policies Following

268. Objective 27.2.2. as notified read:

"Subdivision design achieves benefits for the subdivider, future residents and the community."

269. One submitter[124] sought that this objective be deleted. The evidence presented by the submitter did not seek to support this submission with detailed reasons. Given that the only other submissions on the objective sought its retention, we agree with Mr Bryce's recommendation that it should remain as notified. As Mr Bryce recorded[125], the objective gives effect to the Proposed RPS (see in particular Objective 4.5) and the strategic direction of the PDP (see in particular recommended Objective 3.2.2.1). We therefore conclude that Objective 27.2.2 in its notified form is the most appropriate way to achieve the purpose of the Act in this context.

270. Policy 27.2.2.1, as notified read:

"Ensure subdivision design provides a high level of amenity for future residents by aligning roads and allotments to maximise sunlight access."

271. The only submission seeking to change this policy [126] sought that it be reworded to read:

"Encourage roads and allotments to align in a manner that maximises sunlight access."

272. Mr Bryce did not recommend that the suggested amendment be made. As he observed, it would weaken the outcome sought. That does not necessarily mean that it is not the most appropriate way to achieve the objective, but in this case, the evidence the submitter called did not support the relief sought. Indeed, Mr Wells pronounced himself broadly satisfied with the amendments Mr Bryce had recommended, and his reasons for his recommendations.

273. Accordingly, we likewise recommend no change to the suggested policy.

---

123 Refer the Legal advice received by the Hearing Panel from Meredith Connell dated 9 August 2016

124 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

125 Updated Section 42A Report at 18.48

126 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277 and FS1283 and FS1316

274. Policy 27.2.2 as notified, read:

"Ensure subdivision design maximises the opportunity for buildings to front the road."

275. There were no submissions on this policy and Mr Bryce recommended that it remain as notified.

276. For our part, we think amendment is required in line with the general submissions already noted, to make it clear that this policy applies to urban subdivisions, but otherwise agree that no change to it is required.

277. Accordingly, we recommend that the policy be amended to read:

"Ensure subdivision design maximises the opportunity for buildings in urban areas to front the road."

278. Policy 27.2.2.3 as notified read:

"Open spaces and reserves are located in appropriate locations having regard to topography, accessibility, use and ease of maintenance, and are a practicable size for their intended use."

279. Submission 632[127] sought that this policy be reworded to be more direct, starting with the verb "*locate"*.

280. The Council's corporate submission[128] sought that reference to "*use"* and "*practicable* size*"* be deleted from the policy.

281. Mr Bryce supported the relief sought by Submission 632 in substance, while suggesting a grammatical change to better express the intent, having regard to the altered wording. Mr Bryce did not support the Council's submission on the basis that size is relevant to future use.

282. We agree with Mr Bryce's recommendation for the reasons that he set out in his evidence[129]. The stance advocated in the Council's submission might in our view also be considered inconsistent with Policy 27.2.1.3. Accordingly, we recommend that Policy 27.2.2.3 be reworded to read:

"*Locate open spaces and reserves having regard to topography, accessibility, use and ease of maintenance, while ensuring these areas are a practicable size for their intended use."*

283. Policy 27.2.2.4 as notified read:

"Subdivision will have good and integrated connections and accessibility to existing and planned areas of employment, community facilities, services, trails, public transport in adjoining neighbourhoods."

284. Submission 524 sought that reference to community activities be inserted into this policy. Submission 632[130] sought a more comprehensive amendment so that the policy would read:

---

127 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

128 Submission 809

129 Updated Section 42A Report at 18.50 and 18.52

130 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

"Design subdivisions to achieve connectivity between employment locations, community facilities, services, recreation facilities and adjoining neighbourhoods."

285. Mr Bryce recommended acceptance of the suggestion in Submission 524 and rejection of the more comprehensive amendment sought in Submission 632 on the basis that the latter would weaken the outcomes sought in the policy. He did accept, however, that the policy needed to be expressed as a course of action rather than as an outcome, which we considered was a positive feature of that submission.

286. Mr Bryce also recommended expansion of the reference to adjoining neighbourhoods to make it clear that the neighbourhoods in question might be planned neighbourhoods, and that they might be either within the subdivision area or adjoining it. Having initially recommended that reference to trail connections be inserted[131], after discussion with us at the hearing, Mr Bryce came around to the view that this was unnecessary given the initial reference to connections at the start of the policy. We agree with his position on both points, and with the reformatting Mr Bryce suggested, to have a numbered list of the matters being connected (subject in the latter case to some minor reformatting to standardise the style of the sub-policies with the balance of the Chapters).

287. We therefore largely accept Mr Bryce's recommendations. It follows that we do not consider additional changes are required to address submissions 625 and 671[132]. We also do not agree that reference needs to be made to community activities rather than community facilities. The point being made in Submission 524 is that the current definition of "*community facilities"* is anomalous and needs to be corrected, among other things to include educational facilities. We agree with the underlying point (which has already been discussed in the Hearing Panel's Report 3). There are two ways in which the issue can be addressed. The definition of "*community facilities"* could be revised and expanded. Alternatively, and more simply, the existing definition could simply be deleted. We prefer the latter approach. The existing definition serves no purpose (there is no community facility subzone in the PDP) and in its ordinary natural meaning, community facilities would include recreational facilities, which would address another point made in Submission 632. Accordingly, we recommend to the Hearing Panel on Stream 10 that the definition of "*community facilities"* be deleted.

288. Lastly, this is another policy that is specific to the urban environment, and this also needs to be made clear.

289. In summary, therefore, we recommend that Policy 27.2.2.4 be reworded to read:

"Urban subdivision *shall seek to provide for good and integrated connections and accessibility to:*

a. *existing and planned areas of employment;*
b. *community facilities;*
c. *services;*
d. *trails;*
e. *public transport; and*
f. *existing and planned neighbourhoods both within and adjoining the subdivision area."*

131 Mr Bryce thought that this would address the relief sought in submissions 625 and 671 (seeking recognition in a policy for the need for trails as part of the subdivision process)

132 We therefore recommended acceptance of Further Submission 1347

290. Policy 27.2.2.5 as notified read:

"Subdivision design will provide for safe walking and cycling connections that reduce vehicle dependence within the subdivision."

291. The only submission seeking to amend this policy was Submission 632[133], which sought that it be reworded to read:

"Encourage walking and cycling and discourage vehicle dependence through safe connections between and within neighbourhoods."

292. We think that consideration of this policy needs to occur in tandem with consideration of the following Policy (27.2.2.6) which read as notified:

"Subdivision design will integrate neighbourhoods by creating and utilising connections that are easy and safe to use for pedestrians and cyclists."

293. Submission 632 sought that that policy be deleted[134]. When we discussed these two policies with Mr Bryce, he agreed with our initial view that there is a significant degree of duplication between them. Mr Bryce recommended that they be combined into one policy in his reply evidence. We concur.

294. To that extent, we agree also with the thinking underlying Submission 632.

295. We agree, however, with Mr Bryce that the wording proposed in Submission 632 would soften the policy too much, and thus would not be the most appropriate way to achieve the objective.

296. We therefore agree with Mr Bryce's suggested rewording save that this is another urban focussed policy. We therefore recommend an amendment to make that clear.

297. In summary, we recommend that policies 27.2.2.5 and 27.2.2.6 be combined as new Policy 27.2.2.5 reading as follows:

"Urban subdivision design will integrate neighbourhoods by creating and utilising connections that are easy and safe to use for pedestrians and cyclists, and that reduce vehicle dependence within the subdivision."

298. Policy 27.2.2.7 as notified read:

"Encourage innovative subdivision design that responds to the local context, climate, land forms and opportunities for views or shelter."

299. The only submission seeking to amend this policy[135] sought deletion of the word "*innovative*".

300. Mr Bryce did not recommend that that submission be accepted, and the submitter did not pursue the point when they appeared at the hearing. When we discussed the matter with Mr Bryce, he agreed that reference to innovative design was not necessary in the policy, but he felt that innovation was something to be encouraged. We agree and, accordingly, we

133 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

134 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

135 Submission 453

recommend that the policy remain without change (other than by being renumbered 27.2.2.6).

301. Policy 27.2.2.8 as notified, read:

"Encourage informal surveillance of streets and the public realm for safety by requiring that the minority of allotments within a subdivision are fronting, or have primary access to, cul-de-sacs and private lanes."

302. Submission 632[136] sought that this policy be deleted. Mr Bryce did not recommend any amendment to it.

303. In our view, this policy needs to be considered in tandem with the following policy (27.2.2.9) which as notified, read:

"Encourage informal surveillance for safety by ensuring open spaces and transport corridors are visible and overlooked by adjacent sites and dwellings."

304. Submission 632 was again the only submission seeking substantive change to Policy 27.2.2.9, so that it would read:

"Promote safety through overlooking of open spaces and transport corridors from adjacent sites and dwellings and effective lighting."

305. Mr Bryce supported this relief in part. The exception was that he thought that retaining specific reference to '*informal surveillance"* provided greater clarity.

306. Stepping back from these policies, we think there is substantial duplication between them. Streets in the public realm are open spaces (as well as being transport corridors). We agree with Mr Bryce that the concept of information surveillance is a helpful one. However, we also think that there is a case for informal surveillance of cul-de-sacs and private lanes on safety grounds.

307. Lastly, this is another policy that is specific to urban areas and this should be made clear.

308. In summary, therefore, we recommend acceptance of Submission 632 by deletion of notified Policy 27.2.2.8 and acceptance in part of that submitter's relief in relation to the following policy, so that the end result is one policy, renumbered 27.2.2.7, reading:

> *"Promote informal surveillance for safety in urban areas through overlooking of open spaces and transport corridors from adjacent sites and dwellings and by effective lighting."*

309. In his Section 42A Report, Mr Bryce recommended inclusion of another policy addressing subdivision near electricity transmission corridors with reference to amenity and urban design outcomes and to minimising potential reverse sensitivity effects.

310. Mr Bryce's recommendation reflected his consideration of a submission by Transpower New Zealand Limited[137] seeking a new objective of reverse sensitivity effects on the National Grid.

---

136 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

137 Submission 805: Supported in FS1211

As already discussed, Mr Bryce recommended that this matter be addressed through a new policy supporting objective 27.2.2. Also as above, we agreed with that recommendation.

311. Ms McLeod gave evidence for Transpower supporting, in principle, Mr Bryce's recommendation, but seeking amendments to the language that he had suggested. Specifically, Ms McLeod suggested that the policy be specific to the National Grid (she opposed, in particular, an amendment to expand it to cover the Aurora Line Network), broadening it to talk about potential direct effects on the National Grid, not just reverse sensitivity effects, and lastly amending it to require avoidance of such effects, rather than their minimisation. She was of the opinion that these amendments were necessary to better give effect to the NPSET 2008.

312. We also need to consider, in this context, the relief sought by Aurora Energy Limited[138], which was addressed in the submissions of Ms Irving and the evidence of Ms Dowd. Aurora had already sought, in the Stream 1B hearing, recognition of what it described as critical electricity lines (66kV 33kV and 11Kv sub-transmission and distribution lines of strategic importance to its line network, and to its customers). Aurora sought a new policy that would read:

"Avoid, remedy or mitigate reverse sensitivity effects on infrastructure."

313. In his reply evidence, Mr Bryce agreed with the amendments suggested by Ms McLeod in her evidence and recommended that the policy be expanded to cater for sub-transmission lines, as sought by Aurora. Mr Bryce drew on recommendations which Mr Barr had made to the Hearing Panel considering Chapter 30 (Stream 5) of the PDP suggesting that the Aurora's sub-transmission lines needed to be specifically recognised through an amended policy and rule framework.

314. In its Report 3, the Hearing Panel recommended that the primary focus at a strategic level should be on regionally significant infrastructure. Further, that identification of what is regionally significant should primarily be a matter for the Regional Council. The Hearing Panel noted in this regard that the Proposed RPS deliberately excludes electricity transmission infrastructure that does not form part of the National Grid when identifying infrastructure that is regionally significant.

315. As Ms Irving put to us, however, the fact that the Regional Council has not chosen to class Aurora's line network (or components thereof) as being regionally significant, does not mean that the PDP should not provide for it at a more detailed level. Ms Irving also drew to our attention provisions of the Proposed RPS making provision for electricity distribution infrastructure. We note in particular Policy 4.4.5 of the Proposed RPS which states:

"Protect electricity distribution infrastructure, by all of the following:

a. Recognising the functional needs of electricity distribution activities;

b. Restricting the establishment of activities that may result in reverse sensitivity effects;

c. Avoiding, remedying or mitigating adverse effects from other activities on the functional needs of that infrastructure;

d. Protecting existing distribution corridors for infrastructure needs, now and for the future."

[138] Submission 635: Supported in FS1211

316. Mr Bryce's recommendation in his reply evidence was that the appropriate policy to pick up on these issues should read:

"Manage subdivision within or near to electricity transmission corridors and electricity sub-transmission lines to facilitate good amenity and urban design outcomes, while avoiding potential adverse effects (including reverse sensitivity effects) on the National Grid and electricity sub-transmission lines."

317. We have a number of difficulties with that suggested policy wording. First, focussing on the National Grid and on what is required to implement the NPSET 2008, policy 10 of that document requires that "*decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised."*

318. As noted in the report of the Hearing Panel considering Chapter 4[139] inclusion of the qualifier "*to the extent reasonably possible"* means that this is not the same thing as requiring that all adverse effects be avoided, given the guidance we have from the Supreme Court in *King Salmon* as to what the latter means. The Hearing Panel's conclusion was that it was both consistent with the NPSET 2008 and appropriate that reverse sensitivity effects on regionally significant infrastructure be minimised. We take the same view in this context.

319. We do agree though with Ms McLeod and Mr Bryce that the focus should not solely be on reverse sensitivity effects. Certainly, with the National Grid, direct effects need to be managed so as to avoid compromising the operation, maintenance, upgrading and development of the National Grid "*to the extent reasonably possible"*.

320. Turning to the Aurora Network, while the Regional Council has confirmed that it is not regionally or nationally significant, it is clearly important to the health and wellbeing of the District's people and communities.

321. Neither the Proposed RPS nor Aurora's own submission would, however, support a policy of avoiding reverse sensitivity effects on the Aurora line network.

322. As above, the Proposed RPS talks in terms of avoiding, remedying or mitigating adverse effects from other activities "*on the functional needs"* of electricity distribution infrastructure. Aurora's submission, as above, seeks that reverse sensitivity effects be avoided, remedied or mitigated.

323. The other point to note is that the Proposed RPS addresses the requirements of electricity distribution infrastructure which it defines as "*lines and associated equipment used for the conveyance of electricity on lines other than lines that are part of the National Grid."*

324. In other words, it makes no distinction between different elements of line networks like those of Aurora. Accordingly, we take the view that introducing some subset of the Aurora Network (e.g. sub-transmission lines) is likely only to promote confusion, especially given that Aurora's own submission does not seek a higher level of protection from reverse sensitivity effects than the Proposed RPS would require for the entire distribution network. We note also that the Hearing Panel considering Chapter 30 (Report 8) has recommended that Aurora's submissions

139 Report 3 at [937]

(and the Staff Recommendation) that sub-transmission lines be recognised in separate objectives, policies and rules in that chapter not be accepted.

325. We also think that the reference to electricity transmission corridors needs to be clarified. Policy 11 of the NPSET 2008 requires identification of buffer corridors around elements of the National Grid and Ms McLeod agreed that the appropriate reference in the rules would be to the National Grid Corridor. We consider that this policy should likewise refer to the National Grid Corridor. Also, having defined a buffer corridor, the focus should be on activities within that corridor. It is only other electricity lines, where a corridor has not been defined, where nearby subdivision might be an issue.

326. In summary, we recommend that a new policy be inserted as 27.2.2.8 reading:

"Manage subdivision within the National Grid Corridor or near to electricity distribution lines to facilitate good amenity and urban design outcomes, while minimising potential adverse effects (including reverse sensitivity effects) on the National Grid and avoiding, remedying or mitigating adverse effects (including reverse sensitivity effects) on electricity distribution lines."

327. Submission 632[140] sought a new policy in this section related to heritage values. Mr Bryce's view was that that matters the policy would address were already adequately covered in existing policies. We concur – see in particular the policies related to Objective 27.2.4 that we will discuss shortly.

328. The other submission seeking a new policy in this part of the Chapter we should discuss at this time is that of Queenstown Airport Corporation[141] seeking a new policy that would discourage activities "*that encourage the congregation of birds within aircraft flight paths."*

329. This is of course linked to the point we discussed in the context of the default subdivision rules, as to whether the potential bird strike should be a matter of discretion reserved for consideration.

330. While, as already noted, Mr Bryce recommended that provision should be made in the rules as sought by QAC, he did not reconsider the recommendation in his Section 42A Report that this was not an appropriate matter for a new policy.

331. For our part, the same reasoning that prompted us to reject the QAC submission in the context of a specific discretion of the rules leads us to the view that it should not be provided for in a policy either. Put simply, QAC did not provide us with the evidential foundation for a policy and having decided that it is not appropriate to leave it as a discretion within the rules, it would be inconsistent to insert a policy to the same effect.

332. Accordingly, we recommend that the QAC submission be rejected.

333. Having reviewed the policies discussed above and the alternatives open to us, we record our view that policies 27.2.1-27.2.8 recommended above are the most appropriate way in which to achieve Objective 27.2.2.

---

140 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

141 Submission 433: Opposed in FS1097 and FS1117

4.4 Objective 27.2.3 and Policies Following

334. Objective 27.2.3 as notified read as follows:

"Recognise the potential of small scale and infill subdivision while acknowledging that the opportunities to undertake comprehensive design are limited."

335. Submissions seeking to *amend* this objective sought either to soften the last phrase (to say that opportunities may be limited *"in some circumstances"*)[142] or to convert it into a policy with slightly amended wording[143].

336. Mr Bryce considered that the notified objective does indeed read like a policy. Rather than converting it to a policy, however, as sought by Submission 632, he recommended amendments to reframe it as an outcome. Mr Bryce's suggested rewording also addressed the point taken in Submission 208. While the Hearing Panel has had difficulty in other contexts with the language now recommended by Mr Bryce (recognise and provide for)[144], the following policies flesh out how small-scale and infill subdivision might be recognised and provided for and thus, in this context, we regard it as acceptable. We do think that the focus of the objective is on the potential of small scale and infill subdivision in urban areas and that this should be made clear. Small scale subdivision in rural areas raises different, and not necessarily positive, issues. Otherwise, we recommend that Mr Bryce's wording be accepted with only minor grammatical changes, with the result that the objective would read:

"The potential of small scale and infill subdivision in urban areas is recognised and provided for while acknowledging their design limitations."

337. For the reasons set out above, and given the jurisdictional limitations on our choosing any alternative rewording, we consider that this objective is the most appropriate way to achieve the purpose of the Act as it relates to small scale and infill subdivision.

338. Policy 27.3.2.1, as notified, read as follows:

"Acknowledge that small scale subdivision, (for example subdivision involving the creation of fewer than four allotments) and infill subdivision where the subdivision involves established buildings, might have limited opportunities to give effect to policies 27.2.2.4, 27.2.2.6 and 27.2.2.8."

339. There were no submissions seeking amendment to this policy and Mr Bryce recommended that the sole submission supporting it[145] be accepted on the basis that the policy provided clear guidance and was effective in guiding plan users as the intent of the objective. He therefore recommended that the policy be retained as notified, other than to revise the numbering of the policy cross references to reflect other recommendations.

340. We agree in substance with that position. As with the objective, we think that the policy is focussing on small scale subdivision in urban areas (that is the focus of the cross-referenced

142 Submission 208

143 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

144 Refer Report 3 at Section 1.9

145 Submission 691

policies). It should make that clear. The only other amendment we suggest is to clarity what "*acknowledgement"* means in this context. Logically, it must mean that the design limitations are accepted.

341. Accordingly, we recommend that the policy be slightly amended from Mr Bryce's recommendation to read:

"Accept that small scale subdivision in urban areas, (for example subdivision involving the creation of fewer than four allotments), and infill subdivision where the subdivision involves established buildings, might have limited opportunities to give effect to policies 27.2.2.4, 27.2.2.5 and 27.2.2.7."

342. Policy 27.2.3.2 as notified read:

"While acknowledging potential limitations, encourage small scale and infill subdivision to:

- *Ensure lots are shaped and sized to allow adequate sunlight to living in outdoor spaces, and provide adequate on-site amenity and privacy;*
- *Where possible, locate lots so that they over-look and front road and open spaces;*
- *Where possible, avoid the creation of multiple rear sitesWhere buildings are constructed with the intent of a future subdivision, encourage site and development design to maintain, create and enhance positive visual coherence of the development with the surrounding neighbourhood;*
- *Identify and create opportunities for connections to services and facilities in the neighbourhood."*

343. The only submissions seeking amendment of this policy sought variously *qualification* of the third bullet point to insert a practicability test[146] or its deletion[147].

344. Mr Bryce recommended that the substance of Submission 453 be accepted. He preferred, however, to delete all reference to *possibilities*. Mr Bryce also recommended reformatting so that, rather than setting subparagraphs as bullet points, numbered sub policies be used.

345. The evidence advanced by Submitter 632 did not support the relief sought on this policy and we thus have no evidential basis to consider its deletion.

346. We agree with Mr Bryce's preference that the policy not speak in terms of what is possible, but rather in terms of what is practicable. We also agree that alphanumeric listing sub-policies, will assist future reference to them, subject to minor reformatting for consistency. As with the objective, however, the application of the policy should be related to urban subdivision.

347. Accordingly, we recommend that Policy 27.2.3.2 be reworded as follows:

"While acknowledging potential limitations, encourage small scale and infill subdivision in urban areas to:

---

146 Submission 453

147 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

a. *ensure lots are shaped and sized to allow adequate sunlight to living areas and outdoor spaces, and provide adequate on-site amenity and privacy;*
b. *where possible, locate lots so that they over-look and front road and open spaces;*
c. *avoid the creation of multiple rear sites, except where avoidance is not practicable;*
d. *where buildings are constructed with the intent of a future subdivision, encourage site and development design to maintain, create and enhance positive visual coherence of the development with the surrounding neighbourhood;*
e. *identify and create opportunities for connections to services and facilities in the neighbourhood."*

348. Having considered the alternatives open to us, we have concluded that Policies 27.2.3.1 and 27.2.3.2 as amended above, are the most appropriate way in which to achieve Objective 27.2.3.

4.5 Objective 27.2.4 and Policies Following

349. Objective 27.2.4 as notified read:
"Identify, incorporate and enhance natural features and heritage".

350. A number of submissions supported this objective[148]. One submission sought its deletion[149]. Another submission[150] sought that the objective be reworded to read:

"Identify and where possible incorporate and enhance natural features and heritage values within subdivision design."

351. Mr Bryce recommended rejection of the submission seeking deletion of this objective, pointing to strategic objectives seeking to protect heritage values[151]. Mr Bryce, however, thought elements of the relief sought in Submission 806 should be accepted – to refer to heritage values and to reference subdivision design – and that the term "*natural features"* be clarified so as to remove the potential that it might be seen as restricted to ONFs. Mr Bryce noted in this regard that the policies seeking to achieve this objective focussed, among other things, on biodiversity values. Mr Bryce also recommended that the objective be restructured to be expressed as an outcome rather than a course of action.

352. Mr Bryce did not specifically discuss the request in Submission 806 that the objective be qualified by a reference to what is possible. We do not consider that the outcome sought needs to be softened in the manner suggested. While it is obviously correct that subdivision design cannot enhance, for instance, natural features in all cases, it does not mean that that should not be the aspiration of the PDP. It is for the policies to provide a more nuanced course of action.

353. Accordingly, we agree with Mr Bryce's recommendations with the result that Objective 27.2.4 would be revised to read:

"Natural features, indigenous biodiversity and heritage values are identified, incorporated and enhanced within subdivision design."

148 Submissions 117, 339, 426 and 706: Opposed in FS1162
149 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316
150 Submission 806
151 Refer recommended Objective 3.2.3.2

354. We consider that this objective is the most appropriate way to achieve the purpose of the Act in this context having regard to the strategic objectives we have recommended in Chapter 3 and the alternatives available to us.

355. Policy 27.2.4.1 as notified read:

"Enhance biodiversity, riparian and amenity values by incorporating existing and planned waterways and vegetation into the design of subdivision, transport corridors and open spaces."

356. Submissions seeking substantive amendment to this policy included a request that it commence "*where possible and practical enhance…."*[152], seeking that the words "*and protecting"* be added[153], and seeking its amendment to read:

"Incorporate existing and planned waterways and vegetation into the design of subdivision, transport corridors and open spaces, as a means of mitigating effects and where possible enhancing biodiversity, riparian and amenity values."[154]

357. Mr Bryce did not recommend acceptance of a policy seeking to soften the focus on enhancement of relevant values. Addressing Submission 453 specifically, he felt that the relief sought would weaken the intent of the policy which, in his view, responded to the outcomes of the strategic directions in Chapter 3 and was consistent with sections 6(a) and 7(c) of the Act.

358. By the same token, however, Mr Bryce did not recommend acceptance of Submission 809 since that would be going further than the notified objective that the policy seeks to achieve.

359. While we understand and agree with Mr Bryce's reasoning, in principle, we do not consider that he has addressed the fundamental issue posed by Submissions 453 and 806, namely that it will not always be possible to achieve enhancement of biodiversity, riparian and amenity values through subdivision design. Removal of existing vegetation may also, in some cases, be desirable as a means to enhance biodiversity values given that that term will encompass everything from pristine indigenous bush to wilding pines and gorse. Similarly, if an existing waterway is low in natural values, its incorporation into subdivision design may not be desirable.

360. The qualifications suggested in Submissions 806 (*"where possible"*) and 453 ("*where possible and* practical*")* go too far, however, and, as Mr Bryce notes, would weaken the intent of the policy.

361. To address these points, we recommend that the policy be revised to read:

"Incorporate existing and planned waterways and vegetation into the design of subdivision, transport *corridors and open spaces where that will maintain or enhance biodiversity, riparian and amenity values."*

362. Policy 27.2.4.2 as notified, read:

---

152 Submission 453

153 Submission 809: Opposed in FS1097

154 Submission 806

"Ensure that *subdivision and changes to the use of land that results from subdivision do not reduce the values of heritage items and protected features scheduled or identified in the District Plan*."

363. Submissions on this policy either supported it[155] or sought its deletion[156].

364. Mr Bryce noted the direct connection between the policy and the notified objective and accordingly recommended that the policy remain in its existing form.

365. We agree that the policy responds directly to the objective and should be retained. Consequent on the Hearing Panel's recommendations in relation to management of heritage values[157] we recommend minor changes to be consistent with the recommended form of Chapter 26, as follows:

"Ensure that subdivision and changes to the use of land that result from subdivision do not reduce the values of heritage features and other protected items scheduled or identified in the District Plan."

366. Policy 27.2.4.3 as notified read:
"The Council *will support subdivision design that includes the joint use of stormwater and flood* management *networks with open spaces and pedestrian/cycling transport corridors and recreational* opportunities *where these opportunities arise."*

367. Submissions on this policy ranged between support for it in its current form[158], its deletion[159], its amendment to address situations where joint use may not be appropriate because of resulting adverse effects on the environment[160], and amendment to remove the focus on the Council's actions, substituting "*encourage"* at the front of the policy[161].

368. Mr Bryce supported the policy direction of this policy, but recommended that it be relocated to fall under Objective 27.2.5. Given that that objective relates to infrastructure and services, including stormwater and flood management, we agree. We will return to the point in that context. Accordingly, we accept Mr Bryce's recommendation and recommend that the policy should be deleted from section 27.2.4.

369. Policy 27.2.4.4 as notified read:

"Encourage the protection of heritage and archaeological sites, and avoid the unacceptable loss of archaeological sites."

370. Submissions on this policy either sought its deletion[162] or clarification of what "*unacceptable loss"* means[163].

---

155 Submissions 339, 706: Opposed in FS1162
156 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316
157 See Section 6.5 of Report 4
158 Submissions 339 and 706: Opposed in FS1162
159 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316
160 Submission 117 – noting that the Summary of Submissions did not correctly record the relief sought in this submission.
161 Submission 806
162 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316
163 Submission 806

371. Mr Bryce recommended that this policy be retained in his Section 42A Report while agreeing with Submission 806 that the term "*unacceptable loss"* was not easily defined. Mr Bryce drew attention, in particular, to the strength of the intention underlying the policy. When we discussed the point with him, he accepted that the term is problematic, but frankly acknowledged that he was having difficulty identifying an alternative form of words that was suitable. When he returned to the point in reply, Mr Bryce drew on the Council staff reply on Chapter 26 suggesting that the term "*unacceptable"* should be deleted and the policy amended to focus on avoidance in the first instance, and to mitigation proportionate to the level of significance of the feature where avoidance cannot reasonably be amended.

372. Mr Bryce also suggested that the opening words of the policy should be "*provide for"* rather than "*encourage"* on the basis that this would better align with the provisions of the Act.

373. While Mr Bryce's suggested amendment to this policy does indeed provide the clarification which Submission 806 sought, we have a degree of unease regarding the extent to which this policy will have moved if we accept Mr Bryce's recommendation on that relatively slender jurisdictional base. We note that Submission 806 suggested (in the reasons for the relief sought) that regard should be had to the relative significance of the archaeological site when determining what loss is unacceptable, but Mr Bryce suggests moving that concept some distance. We are also concerned about the proposed amendment to the start of the policy which would make it more restrictive without any submission having sought that end result.

374. Standing back from these concerns, we note that there is significant duplication between this policy and the notified Policies 27.2.4.2 (addressing retention of the values of heritage features) and 27.2.4.6 (regarding protection of archaeological sites). We have come to the view that rather than attempt to massage an unsatisfactory policy with limited assistance from submissions suggesting viable alternatives, the better course is to delete this policy and rely on the other policies just noted to address heritage and archaeological aspects of the relevant objective. We therefore recommend that notified Policy 27.2.4.4 be deleted (i.e. that Submission 632 be accepted).

375. Policy 27.2.4.5 as notified read:

"Ensure opportunity for the input of the applicable agencies where the subdivision and resulting development could modify or destroy any archaeological sites."

376. The only submissions on this policy[164] sought its deletion.

377. Mr Bryce recommended that those submissions be accepted on the basis that the policy simply duplicates a process already entrenched in the Act and in other legislation. In particular, in his view, the Act would replicate the statutory requirements under the Heritage New Zealand Pouhere Taonga Act 2014.

378. We agree with Mr Bryce's reasoning. As he notes, the proposed rules of Chapter 27 provide for consideration whether Heritage New Zealand is an affected party in any given case. Heritage New Zealand exercises control over modification or destruction of archaeological sites under its own Act and we do not think it is necessary to provide for its involvement in a policy of this kind. We also note that Heritage New Zealand was not among the further submitters opposing deletion of this policy.

---

[164] Submissions 632 and 806: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

379. We therefore recommend deletion of notified Policy 27.2.4.5.

380. Policy 27.2.4.6 as notified, read:

"Encourage subdivision design to protect and incorporate archaeological sites or cultural features, recognising these features can contribute to and create a sense of place. Where applicable, have regard to Maori culture and traditions in relation to ancestral lands, water, sites, wahi tapu and other taonga."

381. One submission sought deletion of this policy[165]. Another submission sought its amendment to refer to protection of archaeological sites or cultural features where possible[166].

382. Mr Bryce did not recommend acceptance of either submission. In his view, the notified policy is effective in implementing the outcomes of the relevant objective. As regards the amendments sought in Submission 806, Mr Bryce suggested to us that they did not adequately respond to sections 6(e) and 6(f) of the Act.

383. We agree with Mr Bryce's reasoning, while noting that he might also have drawn support for his position from the Proposed RPS. Given our recommendation, as above, that notified Policy 27.2.4.4 be deleted, it is important that the provision for protection of archaeological sites and cultural features in Policy 27.2.4.6 be retained. Indeed, were there jurisdiction to consider it, the provisions noted by Mr Bryce, along with the Proposed RPS, would have justified, if anything, a more directive policy stance. As regards the specific concern expressed in Submission 806 that provision for cultural features is problematic if they are not clearly identified, we understand this will be addressed in a subsequent stage of the District Plan review process.

384. Accordingly, we recommend that notified Policy 27.2.4.6 be retained unamended, other than to renumber it 27.2.4.3.

385. Notified Policy 27.2.4.7 read:

"Encourage initiatives to protect and enhance landscape, vegetation and indigenous biodiversity by having regard to:

a. *Whether any landscape features or vegetation are of a sufficient value that they should be retained and the proposed means of protection;*

b. *Where a reserve is to be set aside to provide protection to vegetation and landscape features, whether the value of the land so reserved should be off-set against the development contribution to be paid for open space and recreation purposes."*

386. Submissions seeking change to this policy sought amendment to the wording of the second bullet point to make offsetting more certain[167], amendment to the second bullet point to

165 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316
166 Submission 806
167 Submission 453

express it in a slightly different way[168] and extension of the policy to encourage initiatives for provision of public access to natural features and heritage[169].

387. Mr Bryce did not support any of the suggested changes on the basis that none of them would make the notified policy any more effective.

388. We agree with that recommendation. The development contribution is imposed under the Local Government Act. Accordingly, it would be inappropriate for a policy in the PDP to purport to constrain how it should operate. Like Mr Bryce, we are unconvinced that the wording amendments suggested in Submission 809 improve the policy. Lastly, submitter 806 provided no evidence that would provide us with a basis for accepting the extent of the proposed extension to the policy.

389. In summary, we therefore recommend that notified Policy 27.2.4.7 be retained unamended other than to renumber it 27.2.4.4 and to convert the bullet points of the notified version to alphanumeric sub-paragraphs, together with minor reformatting.

390. Lastly under Objective 27.2.4, the Council's corporate submission[170] sought inclusion of a new policy to support the objective that would read:

"Ensure that new subdivision and developments recognise, incorporate and where appropriate, enhance existing established protected vegetation and where practicable ensure that this activity does not adversely impact on protected vegetation."

391. The suggested new policy is opposed on the basis that it is unnecessary.

392. In his Section 42A Report, Mr Bryce recommended acceptance of an amended version of the suggested new policy deleting the final clause commencing "*and where practicable".* In Mr Bryce's view, such a policy would better give effect to what was the notified section 3.2.4 goal (and is now recommended Objective 3.2.4).

393. When we discussed the point with him, we expressed some concern that the policy lacked guidance as to the criteria for determining appropriateness. Mr Bryce agreed that this was a gap in the proposed wording. In his reply evidence, Mr Bryce recommended deleting the term "*where appropriate",* substituting a reference to "*suitable measures to enhance existing established protected indigenous vegetation"* and inserting further guidance as to what suitable measures might include – such things as protective fencing, destocking, removal of existing wilding species and invasive weeds or active ecological restoration.

394. Mr Bryce's suggested addition to the policy rather tended to miss the point we were making, namely that the policy needed to identify when it would be appropriate to require enhancement measures.

395. Mr Bryce's suggested addition also takes the policy a significant distance further than the relief proposed in Submission 809.

396. Stepping back from the detail, Mr Bryce did not explain to us why, if indigenous vegetation was already protected, it was necessary to ensure its enhancement in this context. It seems

168 Submission 809

169 Submission 806

170 Submission 809: Opposed in FS1097

to us that these matters are better addressed in the policies establishing the protection of indigenous vegetation.

397. In summary, we do not agree that this policy, or some amendment thereof is the most appropriate way in which to achieve Objective 27.2.4. Accordingly, we do not recommend its inclusion.

398. Having reviewed the four policies we have recommended as above, we consider that collectively, having regard to the alternatives open to us, they represent the most appropriate way to achieve Objective 27.2.4.

4.6 Objective 27.2.5 and Policies Following

399. Notified Objective 27.2.5 read:

"Require infrastructure and services are provided to lots and developments in anticipation of the likely effects of land use activities on those lots and within overall developments."

400. A number of submissions supported this objective. Submissions seeking substantive change to it included those seeking its deletion[171], a request to delete reference to likely effects[172] and a request to make that deletion combined with a statement that subdivision development not adversely affect the National Grid[173].

401. Mr Bryce's consideration of this objective started with the observation (that we agree with) that although supposedly an objective, it does not read like an outcome statement.

402. In addition, given the range of policies specified in this section of Chapter 27, we do not consider that reference to likely effects of land use activities accurately captures the intention underlying this provision (as evidenced by the policies seeking to achieve it).

403. It follows that, like Mr Bryce, we largely accept the relief sought in Submission 635.

404. While we accept the need to ensure that subdivision and development that might potentially affect the National Grid needs to be managed in accordance with the NPSET 2008, this objective (or the policies under it[174]) does not seem to be the correct vehicle for that management given that it focusses on infrastructure and services to lots and developments rather than the effects of subdivision and development. We note that Ms McLeod, giving evidence on behalf of Transpower New Zealand Ltd, agreed with Mr Bryce's recommendation that the amendments sought in Submission 805 not be accepted.

405. Lastly, given that provision of infrastructure and services to new lots is a key aspect of the management of subdivision and development, it would clearly not be appropriate or consistent with the purpose of the Act to delete this objective.

406. Ideally the objective would give some guidance as to the nature and extent of infrastructure and services provided to new subdivisions and developments, but the requirements of subdivisions are so many and varied in this regard that a concise summary of the desired outcome is a challenge. Mr Bryce did not recommend that we go down that path and none of

171 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

172 Submission 635: Opposed in FS1097

173 Submission 805

174 Addressing the relief sought in Submissions 635 and 805, supported in FS1211 in this regard

the submissions seeking amendment to the objective provided any suggestions that we could adopt or adapt.

407. In summary, therefore, we accept Mr Bryce's recommendation that Objective 27.2.5 should be amended to state simply:

"Infrastructure and services are provided to new subdivisions and developments."

408. For the reasons set out above, given the alternatives open to us, we consider this objective the most appropriate way to achieve the purpose of the Act in this context.

409. The first group of five policies under Objective 27.2.5 relate to transport, access and roads.

410. Policy 27.2.5.1 as notified read:

"Integrate subdivision roading with the existing road networks in an efficient manner that reflects expected traffic levels and the provision for safe and convenient walking and cycling."

411. Submissions on it variously sought its retention[175], and an amendment to refer to both safe and efficient integration of roading[176].

412. We note also Submission 798[177], requesting that in considering subdivisions and development, provisions require the inclusion of links and connections to public transport and infrastructure, not just walking and cycling linkages.

413. Mr Bryce recommended acceptance of the wording amendments sought in Submission 805. He noted that the relief sought in Submission 798 is provided for within Policy 27.2.5.3. Lastly, Mr Bryce recommended an amendment to refer to potential traffic levels rather than expected traffic levels – to reflect the fact that the Code of Practice states that development design "*shall ensure connectivity to properties and roads that have been developed, or that have the potential to be developed in the future."*

414. This recommendation prompted us to discuss with Mr Wallace how potential traffic levels might be ascertained. Mr Wallace's response was that, in his mind, it was linked to the PDP zoning, which sets out what is anticipated by the PDP.

415. In his reply evidence, Mr Bryce picked up on Mr Wallace's evidence and suggested a clarification be inserted to this effect.

416. We agree with Mr Bryce's recommendation that Submission 719 should be accepted and that Submission 798 is appropriately addressed in another policy. We do not think, however, that the suggested amendment substituting '*potential'* for '*expected'* is necessary, particularly if it implies a substantive change to the policy unsupported by a submission seeking that relief. Given Mr Wallace's clarification (which we think is helpful), the traffic levels of relevance are those that are expected into the future, having regard to the zoning of the area. We think a slight amendment is required of the suggested clarification because the PDP zoning does not itself anticipate or provide for traffic levels. Traffic levels are the result of the zone provisions being implemented. We regard this as a minor non-substantive change.

---

175 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

176 Submission 719

177 Supported in FS1097

417. In summary, therefore, we recommend that Policy 27.2.5.1 be amended to read:

"Integrate subdivision roading with the existing road networks in a safe and efficient manner that reflects expected traffic levels and the provision for safe and convenient walking and cycling.

For the purposes of this policy, reference to 'expected traffic levels' refers to those traffic levels anticipated as a result of the zoning of the area in the District Plan."

418. Notified Policy 27.2.5.2 read:

"Ensure safe and efficient pedestrian, cycle and vehicular access is provided to all lots created by subdivision and to all developments."

419. The only substantive change sought to this policy[178] would specify that access is along roads and delete reference to developments.

420. Mr Bryce did not recommend acceptance of the suggested changes because he did not believe that they made the policy more effective.

421. We agree. Safe and efficient pedestrian and cycle access to lots might not necessarily be along roads and the evidence for Submitter 632 did not explain to us why reference to developments should be deleted.

422. Accordingly, we recommend retention of Policy 27.2.5.2 unamended.

423. Policy 27.2.5.3 as notified read:

"Provide trail, walking, cycle and public transport linkages, where useful linkages can be developed."

424. The only submission seeking a material change to this policy was Submission 632, seeking its deletion[179]. Once again, the submitter did not seek to support this position in evidence. Mr Bryce did not recommend acceptance of that submission, but he did suggest that Submission 798 noted above might appropriately be addressed by a reordering of this policy to shift reference to public transport to the front of the policy. We agree with Mr Bryce's view that with some minor grammatical amendments, the suggested revisions make the policy clearer. Accordingly, we recommend that Policy 27.2.5.3 be revised to read:

"Provide linkages to public transport networks, and to trail, walking and cycling networks, where useful linkages can be developed."

425. Policy 27.2.5.4 as notified read:

"The design of subdivision and roading networks to recognise topographical features to ensure the physical and visual effects of subdivision and roading are minimised."

[178] Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

[179] Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

426. The policy is the subject of two substantive submissions. The first[180] opposed the policy as being too open to differing interpretations. The second[181] suggested that it be revised to read:

"Encourage the design of subdivision and roading networks to recognise and accommodate pre-existing topographical features where this will not compromise design outcomes and the efficient use of land."

427. Mr Bryce recommended revision of the policy to the format suggested in Submission 632, but did not accept the substantive shift from ensuring to encouraging, or the deletion of reference to minimising effects.

428. We agree with Mr Bryce's recommendation with only a minor grammatical change. Given the policy already focuses on minimising effects, in our view, it provides sufficient flexibility for subdividers.

429. In summary, therefore, we recommend that Policy 27.2.5.4 be revised to read:

"Ensure the physical and visual effects of subdivision and roading are minimised by utilising existing topographical features."

430. Policy 27.2.5.5 as notified read:

"Ensure appropriate design and amenity associated with roading, vehicle accessways, trails, walkways and cycle ways within subdivisions by having regard to:

a. *Location, alignment, gradients and pattern of roading, vehicle parking, service lanes, access to lots, trails, walkways and cycle ways, and their safety and efficiency;*
b. *The number, location, provision and gradients accessways and crossings from roads to lots for vehicles, cycles and pedestrians, and their safety and efficiency;*
c. *The standard of construction and formation of roads, private accessways, vehicle crossings, service lanes, walkways, cycle ways and trails;*
d. *The provision and vesting of corner splays or rounding at road intersections;*
e. *The provision for and standard of street lighting, having particular regard to the avoidance of upward light spill;*
f. *The provision of appropriate tree planting within roads;*
g. *Any requirements for widening, formation or upgrading of existing roads;*
h. *Any provisions relating to access for future subdivision on adjoining land;*
i. *The provision of public transport routes and bus shelters."*

431. Submissions on this policy seeking changes to it sought variously:
   a. Consideration be given in subdivision design to other species[182];
   b. Amendment to require old and replacement lighting to be downward facing using energy efficient lightbulbs[183];
   c. Amendment of the final bullet point to add a cross reference to Council transport strategies[184];

180 Submission 453
181 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316
182 Submission 117
183 Submission 289
184 Submission 453

d. Deletion of the policy[185];
e. Addition of reference to links and connections to public transport services and infrastructure[186].

432. Mr Bryce did not recommend additional reference to Council transport strategies, noting that the transport section of the PDP will be reviewed as part of a subsequent stage of the District Plan review process. He was also of the view that the amendment recommended to the notified Policy 27.2.5.3 would address the Otago Regional Council's submission noted above[187]. He did, however, recommend an amendment to the final bullet point to reference linkages to public transport routes to address this submission.

433. As regards Submission 289, Mr Bryce was of the view that the outcome sought by the submitter is both impractical and would constitute a significant policy shift that would in turn require significantly more detailed Section 32 evaluation before adoption. Mr Bryce did, however, recommend that reference be added to siting and location of lighting and to the night sky.

434. Mr Bryce also drew our attention to a new policy sought in Submission 632, overlapping with and effectively amending the fifth bullet point in Policy 27.2.5.5, so that it would refer to the inter-relationship between lighting and public safety and substitute the word '*reduce'* for *'avoidance'*. Mr Bryce recommended acceptance of the former but not the latter.

435. Mr Bryce did not specifically address the relief sought in Submission 117. For our part, we think that Objective 27.2.4 and the recommended revisions to the policies supporting that objective already address the substance of the submission.

436. We largely agree with Mr Bryce's recommendations regarding the balance of submissions on the policy. So far as provision for lighting is concerned, Mr and Mrs Hughes appeared at the hearing to address their submissions on steps required to protect the District's night sky. Most of their evidence and submissions in fact related to Chapters 3 and 6 and will be considered by the Hearing Panel in that context. They supported the existing lighting provisions in Chapter 27.

437. We agree with Mr Bryce's view that more analysis would be required of costs and benefits before Submission 289 could be accepted in its entirety. We agree, however, that with minor grammatical amendments, reference to siting and location, and to public safety are desirable improvements to this sub-policy.

438. Like Mr Bryce, we do not accept the suggestion in Submission 632 that the focus should be on reduction of upward light spill. Rather, we recommend that the policy should be more effects-based. In Report 3, the Hearing Panel has recommended that provisions related to the night sky focus on views of the night sky[188]. We recommend a similar focus in this context.

439. We do not accept Mr Bryce's suggestion as to how Submission 798 might be incorporated into the ninth bullet point. The submission sought inclusion of links and connections to public transport services and infrastructure as a matter for consideration in relation to subdivision and development, not just walking and cycling linkages. For most subdivisions, it is the location

185 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316
186 Submission 798
187 Ibid
188 Report 3 at Section 8.5

of public transport routes which will determine the ability to link/connect to public transport. We recommend that that be the focus of amendment to the ninth bullet point.

440. Mr Bryce also recommended that reference be made to trail connections to address Submissions 625 and 671 that we have already discussed, and that the words "*are provided for"* are inserted to provide clarity as to how having regard to the listed matters will ensure the outcomes desired. We agree with Mr Bryce's recommendation in this regard, and with his suggested formatting change to convert the bullet points to a numbered list. We also recommend minor reformatting for consistency.

441. Focusing on the areas of substantive change to the policy, we therefore recommend that it read:

*"*Ensure *appropriate design and amenity associated with roading, vehicle accessways, trails and trail connections, walkways and cycle ways within subdivisions are provided for by having regard to:…*

e. the provision for and standard of street lighting, having particular regard to siting and location, the provision for public safety, and the avoidance of upward light spill adversely affecting views of the night sky…

i. the provision and location of public transport routes and bus shelters"

442. Before leaving access issues, we should note Submission 275 that sought a policy providing for reduced access widths in the High Density Residential Zone. Mr Bryce did not specifically address this submission and the submitter did not provide evidence to support its submission, which appeared counter-intuitive to us. Be that as it may, we do not have an evidential basis to recommend acceptance of the relief sought.

443. The next group of policies in this section of the chapter relate to water supply, stormwater and wastewater (referred to as the 'three waters' in Mr Wallace's evidence). The format of the policies is that Policy 27.2.5.6 deals with the three waters collectively. Then follow discrete policies on each of "water", "stormwater" and "wastewater".

444. Policy 27.2.5.6 as notified read:

445. *"All new lots shall be provided with connections to a reticulated water supply, stormwater disposal and/*or *sewage treatment and disposal system, where such systems are available or should be provided for."*

446. This submission is supported in one submission[189]. A second submission[190] queried the position if systems aren't available, asking whose responsibility it is to provide those systems in that situation.

447. Mr Bryce did not recommend any change to this policy. We agree with this recommendation. The answer to the question posed in Submission 117 is that the more specific policies following address the point.

448. Submission 632 sought a new policy on a related point – providing that when connected to Council infrastructure, capacity in the system should be ensured or necessary upgrades

189 Submission 438

190 Submission 117

reasonably expected to occur. Mr Bryce did not discuss it specifically, and the submitter's evidence did not address it. It seems to us, however, that the capacity of the Council's infrastructure is considered at an earlier point than subdivision. In general, land should not be zoned for development if infrastructure capacity is not available (or likely to be available) to service it. Accordingly, we do not consider the suggested policy is necessary, particularly in the absence of evidence setting out its costs and benefits.

449. Accordingly, we recommend that Policy 27.2.5.6 be retained unamended.

450. Addressing the policies specifically related to water, the first policy is 27.2.5.7 which, as notified, read:

"Ensure water supplies are of a sufficient capacity, including firefighting requirements, and of a potable standard, for the anticipated land uses on each lot or development."

451. The only submissions on this policy[191] sought its retention. Mr Bryce did not recommend any change to the policy and we agree with that recommendation.

452. Accordingly, we recommend that Policy 27.2.5.7 be retained unamended.

453. Policy 27.2.5.8 as notified, read:

"Encourage the efficient and sustainable use of potable water by acknowledging that the Council's reticulated potable water supply may be restricted to provide primarily for households' living and sanitation needs and that water supply for activities such as irrigation and gardening may be expected to be obtained from other sources."

454. Submission 117 agreed with this policy but suggested that the rules of the PDP needed to be consistent with it ensuring, for instance, that height requirements on water collection tanks not effectively prohibit collection of rainwater.

455. Submission 289[192] also supported the policy but suggested that existing houses could be encouraged to install water tanks.

456. Submission 632[193] sought the deletion of the policy.

457. Mr Bryce did not recommend any change to the policy. We agree. The point made in Submission 117 is relevant, but needs to be considered in the context of the rules of the PDP.

458. The relief sought in Submission 289 is beyond the scope of provisions addressing subdivision and development.

459. Lastly, Submission 632 was not supported by the evidence we heard on behalf of the submitter and we have no basis on which to recommend deletion of the policy.

460. Accordingly, we recommend that Policy 27.2.5.8 be retained unamended.

461. Policy 27.2.5.9 as notified, read:

---

191 Submissions 438 and 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

192 Supported in FS1125

193 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

*"*Encourage *initiatives to reduce water demand and water use, such as roof rain water capture and use and greywater recycling."*

462. Submissions on it opposed the policy on the basis variously that the issue is better addressed as part of the building process rather than through controls on subdivision[194], sought to introduce a practicality qualification[195] and sought that a similar provision be applied to existing houses[196].

463. Mr Bryce did not recommend acceptance of either Submission 453 or Submission 632. Mr Bryce noted in particular that in some circumstances, particularly where subdivisions are undertaken at locations not connected to a reticulated water supply, it would be appropriate to address water conservation at the subdivision stage. He also observed that the policy seeks to encourage the outcome rather than require it. We agree with Mr Bryce. The policy enables consideration of water conservation. If it is premature or impractical in a particular case, the policy accommodates that. As with the submission made on the previous policy, the relief sought in Submission 289 does not relate to subdivision and development.

464. Accordingly, we recommend that Policy 27.2.5.9 be retained unamended.

465. Policy 27.2.5.10 as notified read:

"Ensure appropriate water supply, design and installation by having regard to:

a. The availability, quantity, quality and security of the supply of water to the lots being created;
b. Water supplies for firefighting purposes;
c. The standard of water supply systems installed in subdivisions, and the adequacy of existing supply systems outside the subdivision;
d. Any initiatives proposed to reduce water demand and water use."

466. Submissions on this policy consisted of a submission from New Zealand Fire Service seeking that it specifically refer to the Fire Service Code of Practice for the definition of what adequate water supplies for firefighting purposes might require[197] and a request that it be deleted[198].

467. Submission 632 was not supported by evidence when the submitter appeared before us and given the obvious relevance of the matters addressed in the policy to subdivision and development, we need say no more about it.

468. New Zealand Fire Service, however, did appear to support its submission. Ms McLeod gave evidence explaining why, in her view, it was appropriate to reference the relevant New Zealand Standard[199] (referred to in turn in the Fire Service Code of Practice).

194 Submission 453
195 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316
196 Submission 289
197 Submission 438: FS1097 queried the need for the suggested reference
198 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316
199 SNZ PAS 4509:2008

469. Ms McLeod drew attention to the desirability of referencing the standard to eliminate any possible confusion that might arise as a result of an existing agreement between the Council and the Fire Service Commission providing for alternatives not covered by SNZ PAS 4509:2008.

470. In his reply evidence, Mr Bryce remained of the view that this was not necessary, but noted that he had recommended that SNZ PAS 4509:2008 be integrated into the assessment matters supporting the redrafted rule.

471. We agree with Mr Bryce's recommendation on this point. We consider that it is better that the policy remain broadly expressed. SNZ PAS 4509:2008 is referenced in the Land Development and Subdivision Code of Practice. We have already discussed the desirability of generalising reference to that document and we think the same logic applies to the Standard the Fire Service seeks to include. The concerns expressed by the Fire Service are in our view adequately addressed by the more detailed provisions, including the recommended assessment matter that Mr Bryce drew our attention to.

472. In summary, we recommend retention of Policy 27.2.5.10 unamended, save only for reformatting the bullet pointed matters as a numbered list and decapitalising the first word in each part.

473. Policy 27.2.5.11, as notified, read:

"Ensure that the provision of any necessary additional infrastructure for water supply, stormwater disposal and/or sewage treatment and disposal and the upgrading of existing infrastructure is undertaken and paid for subdividers and developers in accordance with the Council's 10 Year Plan Development Contributions Policy."

474. Submissions addressing this policy included Submission 117 which stated, somewhat enigmatically, that the policy "*needs long-term foresight".* We are unsure what that means, and the submitter did not appear at the hearing to provide clarification.

475. Other submissions opposed the policy. One submitter stated that the costs it covers should be covered by development contributions[200]. Submission 632[201] simply sought its deletion.

476. Mr Bryce's initial response to Submission 453[202] was to accept that referencing the Development Contribution Policy within Policy 27.5.2.11 is not necessarily required, but he considered that the guidance the policy provided assisted with implementation of the PDP. Mr Bryce suggested, however, that specific reference to the Development Contribution Policy be deleted in his reply evidence.

477. We do not think that assists. If anything, it exacerbates the issue identified in Submission 453 as the implication of Policy 27.2.5.11, as amended, would be that this policy would operate separately from the Development Contribution Policy. From Mr Bryce's evidence, we do not understand that to be the intention.

478. We have already addressed the Development Contribution Policy in the context of Section 27.1. For the reasons set out in our discussion of the purpose of Chapter 27, we think that

200 Submission 453: Supported in FS1117

201 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

202 Section 42A Report at 18.140

greater clarity is required that development contributions are fixed in parallel with PDP, and independently of it. Accordingly, we recommend that Policy 27.2.5.11 be deleted.

479. Turning to stormwater arrangements, notified Policy 27.2.5.12 read:

"Ensure appropriate stormwater design and management by having regard to:

a. *Recognise and encourage viable alternative design for stormwater management that minimises run-off and recognises stormwater as a resource through re-use in open space and landscape areas;*
b. *The capacity of existing and proposed stormwater systems;*
c. *The method, design and construction of the stormwater collection, reticulation and disposal systems, including connections to public reticulated stormwater systems;*
d. *The location, scale and construction of stormwater infrastructure;*
e. *The effectiveness of any methods proposed for the collection, reticulation and disposal of stormwater run-off, including the control of water-borne contaminants, litter and sediments, and the control of peak flow."*

480. Submission 117 sought inclusion of provision in the policy to manage organic contaminants and heavy metals to mitigate adverse effects on water bodies. The submission also advocates expert design including a "*treatment train"* approach.

481. Submission 289 supported the policy but sought that stormwater collection from roads in particular be designated so that it does not run into lakes and rivers.

482. Submission 453 sought that the policy be qualified by the words "*where possible and practical"*.

483. Mr Bryce did not recommend acceptance of Submission 453 on this point. In his view, the policy already provides for a broad range of stormwater design options.

484. Mr Bryce likewise did not recommend acceptance of Submission 289. In Mr Bryce's view, the engineering evidence of the Council indicated that the relief sought was not practicable. Mr Bryce, however, noted that the fifth bullet point already addressed the substance of much of the relief the submitter sought through controlling water-borne contaminants, litter and sediments. In relation to that fifth bullet point, Mr Bryce also drew our attention to the relief sought in Submission 632[203] in the form of a new policy seeking that stormwater be managed "*to provide for public safety and where opportunities exist to maintain and enhance water quality".* Mr Bryce recommended that elements of this suggested policy be incorporated into the fifth bullet point of policy 27.2.5.12 and thereby also address what is now recommended Objective 3.2.4.4.

485. In addition, Mr Bryce recommended an amendment to the first bullet point to correct a grammatical issue with the way the introduction of the policy moves into the specific matter covered by that bullet point.

486. As with other policies, Mr Bryce recommended that the bullet point matters be converted to a numbered list.

---

[203] Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

487. We largely agree with Mr Bryce's recommendations on this policy, including his suggested reformatting in line with changes to previously policies. We think though that a further grammatical tweak is required to the first bullet point so it scans properly.

488. As regards to the fifth bullet point, we consider that with the amendments recommended by Mr Bryce, it goes part way to meeting the relief sought in Submission 117. That submitter did not appear to explain or support her submission and we do not think that we have an evidential basis to push this policy further towards treatment of stormwater in the absence of a proper quantification of costs and benefits, as required by section 32 of the Act.

489. In summary, therefore, and focussing on areas of suggested amendment, we recommend that the notified Policy 27.2.5.12 be renumbered 27.2.5.11 and amended to read:

"Ensure appropriate stormwater design and management by having regard to:

a. any viable alternative designs for stormwater management that minimise run-off and recognise stormwater as a resource through re-use in open space and landscape areas;…

.

e. the effectiveness of any methods proposed for the collection, reticulation and disposal of stormwater run-off, including opportunities to maintain and enhance water quality through the control of water-borne contaminants, litter and sediments, and the control of peak flow."

490. Mr Bryce recommended insertion of a revised form of Policy 27.2.4.3 at this point. We have already discussed the form of the notified policy and the submissions on it[204].

491. Mr Bryce did not recommend acceptance of the submissions on Policy 27.2.4.3 although we note that his Section 42A Report addressed a different submission to that in fact made in Submission 117 on this point (due presumably to an error in the summary of submissions).

492. Mr Bryce did recommend an addition to the policy to qualify it by reference to the acceptability of maintenance and operation requirements to Council if assets are to be vested.

493. The suggested addition itself raised questions in our mind that we discussed with Mr Wallace – seeking to ascertain what tests the Council would in fact employ to determine acceptability. As a result, Mr Bryce recommended a lengthy clarification be added to the policy as to the meaning of that term.

494. The end result, were Mr Bryce's recommendations to be accepted, would shift the policy a significant distance from where it started. Nor do we think that the additions suggested by Mr Bryce respond to the submissions on Policy 27.2.4.3.

495. Going back to those submissions, we agree with the suggestion in Submission 806 that the focus of the policy should not be on what the Council will or will not do. The focus should be on subdivision design, rather than the Council's actions.

496. We also think that Submitter 117 had a point when she observed that joint use may not always be desirable, on environmental grounds (i.e. a different point to the one Mr Bryce seeks to add). We do not think it would be helpful to add a generalised reference to appropriateness, but an effects-based test would address the point the submitter was making.

---

[204] Refer paragraph 359-361 above

497. While we understand that Mr Bryce's suggestions reflect a concern on the part of Council that this provision might be utilised by subdividers to try and off-load residual waste land onto Council, we do not consider that the policy would commit Council to accept vesting of such land where it is not fit for purpose or would impose unreasonable costs on the Council. However, if this is a concern, we recommend that it be addressed by a variation. We do not consider that the submissions on the policy provide a proper basis for the amendments Mr Bryce recommends.

498. Responding to those submissions, we recommend that the relocated Policy 27.2.4.3 be renumbered 27.2.5.12 and amended to read:

"Encourage subdivision design that includes the joint use of stormwater and flood management networks with open spaces and pedestrian/cycling transport corridors and recreational opportunities where these opportunities arise and will maintain the natural character and ecological values of wetlands and waterways."

499. Turning to wastewater policies, notified policy 27.2.5.13 read:

"Treating *and disposing of sewage is provided for in a manner that is consistent with maintaining public health and avoids or mitigates adverse effects on the environment."*

500. The only submission on the policy[205] sought amendments obviously designed to make the policy more succinct without altering its meaning. Mr Bryce recommended that the submission be accepted.

501. When we discussed this particular policy with Mr Bryce at the hearing, he agreed with a concern we expressed that an open-ended reference to avoiding or mitigating adverse effects might provide insufficient guidance to ensure adverse effects are minimised. Accordingly, Mr Bryce suggested in his reply evidence that the policy might explicitly state that adverse effects should be avoided in the first instance and, where this is not reasonably possible, minimised "*to an extent that is proportionate to the level of significance of the effects".*

502. While we consider Mr Bryce's suggested additions would improve the policy, given the limited ambit for amendment provided by Submission 632, we think that clarification of what the existing reference to avoiding or mitigating adverse effects should be taken to mean should more closely reflect the caselaw[206].

503. In summary, we recommend that notified Policy 27.2.5.13 be renumbered 27.2.5.14 and revised to read:

"Treat and dispose of sewage in a manner that:
a. maintains public health;
b. avoids adverse effects on the environment in the first instance; and
c. where effects on the environment cannot be reasonably avoided, mitigates those adverse effects to the extent practicable."

504. If the Council determines that greater certainty is required as to the level of mitigation provided under this policy, we recommend that it explore a variation to the PDP.

---

205 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

206 Refer for instance *Winstone Aggregates Ltd v Papakura District Council* A049/2002

505. Notified Policy 27.2.5.14 read:

"Ensure appropriate sewage treatment and disposal by having regard to:
- *The method of sewage treatment and disposal;*
- *The capacity of, and impacts on, the existing reticulated sewage treatment and disposal system;*
- *The location, capacity, construction and environmental effects of the proposed sewage treatment and disposal system."*

506. The only submission on this policy[207] sought its deletion. The submitter did not support this aspect of its submission in the evidence we heard (rather the contrary in fact) and Mr Bryce did not recommend any substantive change to the policy, much less its deletion. We agree.

507. Accordingly, we recommend that notified Policy 27.2.5.14 be renumbered 27.2.5.15 and reformatted to contain a list of numbered sub points starting in each case without a capital letter, but otherwise retained unamended.

508. Notified Policy 27.2.5.15 read:

"Ensure that the design and provision of any necessary infrastructure at the time of subdivision takes into account the requirements of future development on land in the vicinity."

509. The only submission on this policy[208] sought an addition to state that such upgrades would be credited against development contributions.

510. Mr Bryce recommended the submission be rejected. We agree. Given that development contributions are assessed under the Council's Development Contribution Policy promulgated under the Local Government Act, it is inappropriate that a policy in the PDP should seek to constrain how that development contribution policy is implemented. While we understand the concern developers might have that they might be required to "over spec" the infrastructure they install for the benefit of third parties, the policy is framed in a way that prompts consideration of future needs, rather than directing any particular outcome, thereby enabling negotiation of appropriate financial arrangements between the parties.

511. Accordingly, we recommend that notified Policy 27.2.5.15 be retained unamended, other than by renumbering it 27.2.5.16.

512. The following policy, 27.2.5.16 in the notified Chapter 27, related to energy supply and telecommunications. As notified, it read:

"To ensure adequate provision is made for the supply and installation of reticulated energy, including street lighting, and communication facilities for the anticipated land uses while:
- *Providing flexibility to cater for advances in telecommunication and computer media technology, particularly in remote locations;*
- *Ensure the method of reticulation is appropriate for the visual amenity values of the area by generally requiring services are underground;*
- *Have regard to the design, location and direction of lighting to avoid upward light spill, recognising the night sky is an element that contributes to the District's sense of place;*

---

207 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

208 Submission 453

- *Generally require connections to electricity supply and telecommunication systems to the boundary of the net area of the lot, other than lots for access, roads, utilities and reserves."*

513. This policy was supported by the telecommunication submitters. Substantive amendments were sought in Submission 635[209] which sought to qualify the reference to underground reticulation, so it would apply "*where technically and operationally feasible".* Submission 632[210] sought deletion of reference to underground reticulation and street lighting, along with amendments to generalise the reference to technology, soften the reference to amenity values, and shift the third bullet point into a separate policy. We have already discussed the last point, in the context of recommended Policy 27.2.5.5.

514. When we discussed this policy with Mr Bryce, he accepted that typically, telecommunication and electricity line services would not be undergrounded in rural environments and thus the second bullet point needed reconsideration. He also agreed with our suggestion that the range of relevant issues in deciding whether services should be undergrounded should extend to include landscape values.

These considerations prompted Mr Bryce to recommend that the second bullet point be amended to read:

"Ensure the method of reticulation is appropriate for the visual amenity and landscape values of the area by generally requiring services are underground and in the context of rural environments where this may not be practicable, infrastructure is sited in a manner that does not adversely impact upon visual amenity and landscape values of the receiving environment."

515. We discussed also with Mr Bryce the application of the fourth bullet point in rural environments where a residential building platform has been identified. Mr Bryce's advice was that typically in such cases, infrastructure connections would be to the building platform where there is one.

516. Mr Bryce also recommended specific reference be made in the fourth bullet point to services being supplied to residential building platforms.

517. Addressing these matters in turn, we agree that reference should be made to landscape values. We do not consider this a material change because the operative requirement (that reticulation is generally underground) is not altered, other than in the manner we are about to discuss.

518. We think that Mr Bryce is correct, and that some qualification of that position is required to recognise the impracticality of undergrounding telecommunication and electricity line services throughout the rural environment. Similarly, while we agree that there needs to be a limit on acceptance of over-ground utilities in the rural environment, we consider a policy of effectively no adverse impacts on visual amenity and landscape values would be too onerous given the generally high (if not outstanding) landscape values of almost the entire District. We recommend, therefore, a policy of minimising visual effects on the receiving environment.

519. As regards Mr Bryce's suggestion (responding constructively to the point we had raised) that the fourth bullet point extend the obligation to provide services from lot boundaries to residential building platforms (where they exist), upon reflection, we have determined that

209 Aurora Energy Limited

210 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

this would impose an obligation that the submissions on this policy would not justify. We remain of the view that this is a desirable amendment to Chapter 27 and thus we recommend that the Council institute a variation of Chapter 27 to insert Mr Bryce's recommended addition to the fourth bullet point reading:

"Where the subdivision provides for a residential building platform, the proposed connections to electricity supply and telecommunications systems shall be established to the residential building platform."

520. Accordingly, aside from numbering the bulleted sub-points of Policy 27.2.5.16 and starting each without a capital letter, renumbering it 27.2.5.17 and commencing the policy with the word "Ensure", the only amendments we recommend are to shift the third bullet point into Policy 27.2.5.5, amended as outlined above, and to amend the second sub-point so that it would read:

"ensure the method of reticulation is appropriate for the visual amenity and landscape values of the area by generally requiring services are underground and in the context of rural environments where this may not be practicable, infrastructure is sited in a manner that minimises adverse visual effects on the receiving environment."

521. The final two policies in this section of the PDP relate to easements. The first, notified Policy 27.2.5.17, read:

"Ensure that services, shared access and public access is identified and managed by the appropriate easement provisions."

522. The second, notified Policy 27.2.5.18, read:

"Ensure that easements are of an appropriate size, location and length for the intended use."

523. One submission[211] sought that both policies be deleted. Another submission[212] sought that they be retained. Mr Bryce recommended their retention because they give effect to the direction of notified Objective 27.2.5 by ensuring easements are provided and are of an appropriate size, location and length.

524. We agree with Mr Bryce's recommendation. We also agree with his suggestion (responding to a question we had) that the second policy might be amended to clarify its effect by adding "*of both* the *land and easement"* on the end. We do not regard that as a substantive change.

525. Accordingly, we recommend that notified Policies 27.2.5.17 and 27.2.5.18 be amended as above and renumbered to align with recommended changes above, but otherwise retained.

526. Having considered all of the policies recommended (27.2.5.1-18 inclusive), we consider that collectively they are the most appropriate way to achieve Objective 27.2.5 given the alternatives available to us.

4.7 Objective 27.2.6 and Policies Following

527. Objective 27.2.6 as notified, read:

---

211 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

212 Submission 635

"Cost of services to be met by subdividers."

528. It needs to be read together with the two supporting policies, the first of which (27.2.6.1) read:

"Require subdividers and developers to meet the costs of the provision of new services or the extension or upgrading of existing services (including head works), that are attributable to the effects of the subdivision or development, including where applicable:

- *Roading, walkways and cycling trails;*
- *Water supply;*
- *Sewage collection, treatment and disposal;*
- *Stormwater collection, treatment and disposal;*
- *Trade waste disposal;*
- *Provision of energy;*
- *Provision of telecommunications and computer media;*
- *Provision of reserves and reserve improvements."*

529. The second policy (27.2.6.2) read:

"Contributions will be in accordance with the Council's 10 Year Plan Development Contributions Policy."

530. Submission 632[213] sought that the objective and both policies be deleted. Submission 285 sought to qualify the objective so that the obligation on developers and subdividers would only arise when existing services were up to standard. Submission 600[214] supported the objective. Submission 719 supported both the objective and the first policy. Submission 632 sought in the alternative to amend Policy 27.2.6.2 to emphasise that development contributions were managed through the Local Government Act.

531. Mr Bryce recommended amendments to the policies to shift reference to the Development Contribution Policy into the start of Policy 27.2.6.1, delete the existing Policy 27.2.6.2 but otherwise to retain the objective and first policy.

532. His reasoning was that these provisions assist in making PDP users aware of the need for development contributions and that upgrading of existing infrastructure is a consequence of subdivision development activity.

533. We disagree. The Development Contribution Policy operates under the Local Government Act in parallel with the PDP. As we have discussed in the context of other policies referring to development contributions, retaining provisions purporting to direct when and how development contributions will be collected blurs that distinction and creates the possibility that those provisions might be read as creating an independent right to levy financial contributions.

534. Mr Bryce's explanation of the utility of the existing Objective 27.2.6 and the related policies suggested to us that their sole function is to operate as advice notes rather than objectives and policies.

---

213 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

214 Supported in FS1209; Opposed in FS1034

535. Given our recommendation that Section 27.1 be amended to cross reference the Development Contribution Policy and emphasise the need for subdivision applicants to be aware of it, and the existence of a separate provision (notified section 27.12) providing further clarification of the position, we consider that this objective and the related policies serve no useful purpose. We recommend that they be deleted.

4.8 Objective 27.2.7 and Policies Following

536. Notified objection 27.2.7 read:

"*Create esplanades where opportunities arise.*"

537. One submission sought its deletion[215]. Two submissions[216] supported the objective.

538. Mr Bryce did not support the deletion of the objective. In his view, it provided guidance on a relevant matter identified in sections 229 and 230 of the Act as to the purpose and meaning of Esplanade Reserves and Strips.

539. We agree in principle with Mr Bryce, but consider that the objective needs to be reframed. Starting with a verb, it expresses a course of action rather than an outcome. Accordingly, we recommend that the objective be renumbered 27.2.6 and amended to read:

"Esplanades created where opportunities arise."

540. We do not regard this as a substantive change. We consider the amended objective to be the most appropriate way to achieve the purpose of the Act as it relates to provision of esplanade reserves and strips.

541. Policy 27.2.7.1 as notified read:

"Create esplanades reserves or strips where opportunities exist, particularly where the subdivision is of large-scale or has an impact on the District's landscape. In particular, Council will encourage esplanades where they:

- *are important for public access or recreation, would link with existing or planned trails, walkways or cycles ways, or would create an opportunity for public access; have high actual or potential value with regard to the maintenance of indigenous biodiversity;*
- *comprise significant indigenous vegetation or significant habitats of indigenous fauna;*
- *are considered to comprise an integral part of an outstanding natural feature or landscape;*
- *would benefit from protection, in order to safeguard the life supporting capacity of the adjacent lake and river;*
- *would not put an inappropriate burden on the Council, in terms of future maintenance costs or issues related to natural hazards affecting the land."*

542. The only submission seeking substantive change to this policy[217] sought that it be significantly shortened to read:

"Create esplanades reserves or strips where they would provide nature conservation, natural character, natural hazard mitigation, infrastructural or recreational benefits.'

---

215 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

216 Submissions 373 and 378: Opposed in FS1049, FS1095 and FS1347

217 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

543. Mr Bryce recommended to us that Submission 632 be accepted in part – he thought that the amendments proposed made the broad policy clearer, but recommended that the six sub-points be retained as providing greater guidance.

544. We agree with Mr Bryce's recommendation. We think that the sub-points in the notified policy contained important signposts as to when esplanade reserves or strips should be a priority, or alternatively where, notwithstanding other benefits, there is good reason that they not be created. We therefore recommend that Policy 27.2.7.1 be renumbered 27.2.6.1, but otherwise largely be revised as recommended by Mr Bryce. The only additional amendments we propose are minor grammatical changes. The revised policy would therefore read:

"Create esplanade reserves or strips where they would provide nature conservation, natural character, natural hazard mitigation, infrastructural or recreational benefits. In particular, Council will encourage esplanades where they:

a. are important for public access or recreation, would link with existing or planned trails, walkways or cycles ways, or would create an opportunity for public access;
b. have high actual or potential value with regard to the maintenance of indigenous biodiversity;
c. comprise significant *indigenous vegetation or significant habitats and indigenous fauna;*
d. are considered to comprise an integral part of an outstanding natural feature or outstanding natural landscape;
e. would benefit from protection, in order to safeguard the life supporting capacity of the adjacent lake or river;
f. would not put an inappropriate burden on the Council, in terms of future maintenance costs or issues related to natural hazards affecting the land."

545. When we discussed esplanade reserves and strips with Mr Bryce, we identified that there appeared to be a gap in the policy coverage providing guidance as to the circumstances where an esplanade reserve or strip would otherwise be required under section 230 of the Act and a waiver is sought either to reduce the width of an esplanade reserve or to avoid the requirement to create an esplanade reserve or strip at all. Mr Bryce accepted that this was an apparent vacuum in the policies and undertook to cover the point in reply.

546. In his reply evidence, Mr Bryce suggested a new policy which would address these matters worded as follows:

"Avoid reducing the width of esplanade reserves or strips, or the waiving of the requirement to provide an esplanade reserve or strip, except where the following apply:

a. Safe public access and recreational use is already possible and can be maintained for the future;
b. It can be demonstrated that a full width esplanade reserve or strip is not required to maintain the natural functioning of adjoining rivers or lakes;
c. A reduced width in certain locations can be offset by an increase in width and other locations or areas, which would result in a positive public benefit in terms of access and recreation."

547. We have no issues with the form of the suggested new policy. We think it would be a desirable change to the notified Chapter 27 that would fill an evident policy gap.

548. However, we cannot identify any submission which would provide jurisdiction for making this change. In the Chair's 22 May 2017 Minute, this was identified as a point that would merit the

Council addressing by way of variation. The Chair's Minute also suggested that such a variation may also usefully provide guidance as to when the Council would prefer an esplanade strip as opposed to an esplanade reserve and identify the considerations that would come into play if a large lot were the subject of a subdivision.

549. Notified Policy 27.2.7.2 read:

"To use opportunities through the subdivision process to improve the level of protection for the natural character and nature conservation values of lakes and rivers, as provided for in section 230 of the Resource Management Act 1991."

550. The sole submission on this policy seeking change to it was that of submitter 632 proposing its deletion[218].

551. Mr Bryce did not recommend acceptance of that submission. His opinion was that the policy responded to matters raised under section 229-230 of the Act and therefore should be retained.

552. Given that the evidence for submitter 632 did not support the submission on this point, we have no basis to disagree with Mr Bryce. Accordingly, we recommend that notified Policy 27.2.7.2 be renumbered 27.2.6.2, but otherwise retained unamended, save only for minor grammatical changes (to delete the word "To" at the start of the policy and to refer to protection "*of*" the natural character and nature conservation values of lakes and rivers) and the substitute reference to "the Act".

553. Considering our recommended policies 27.2.6.1 and 27.2.6.2 collectively, we consider that these policies are the most appropriate means to achieve our recommended Objective 27.2.6 given the alternatives available to us.

4.9 Objective 27.2.8 and Policies Following

554. Notified Objective 27.2.8 read:

"Facilitate boundary adjustments, cross-lease and unit title subdivision, and where appropriate, provide exemptions from the requirement of esplanade reserves."

555. Submissions on this objective variously supported in its current form[219] sought that the reference to exemptions for esplanade reserves be deleted[220], sought recognition that boundary adjustments do not create a demand for services and should be treated as controlled activities[221], and sought the deletion of the objective[222].

556. Mr Bryce recommended acceptance of Submission 383 on the basis that the objective as notified reads more like a policy than an outcome statement. As such, in his view, it needed to be recast focussing on the outcome, which is provision for boundary adjustments, cross leases and unit title subdivisions. We agree with that approach.

---

218 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

219 Submission 370

220 Submission 383

221 Submission 806

222 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

557. We do not support deletion of the objective which would then provide no policy support for a more favourable rule framework than might otherwise be the case. As will be seen in due course, we support recognising the characteristics of boundary adjustments, cross leases and unit titles as either creating few or no environmental impacts (or demand for services – as Submission 806 identified) or as facilitating urban development within urban areas, and thereby assisting achievement of the strategic objectives of the Plan. For the same reason, we agree with Mr Bryce's proposed rejection of Submission 632 on this point.

558. In summary, therefore, we recommend that notified Objective 27.2.8 be renumbered 27.2.7 and revised to read:

"Boundary adjustments, cross-lease and unit title subdivisions are provided for."

559. We consider that this objective is the most appropriate way to achieve the purpose of the Act in this context, given the alternatives available to us.

560. Policy 27.2.8.1 as notified read:

"Enable minor cross-lease and unit title subdivision of existing units without the need to obtain resource consent where there is no potential for adverse effects associated with a change in boundary location."

561. The only submission specifically on this policy[223] sought its retention.

562. Mr Bryce, however, recommended an additional sentence be added to the policy noting that the intention is not to enable subdivision of approved residential building platforms in Rural and Rural Lifestyle Zones by this means. We support that clarification as an aspect of the general point discussed earlier regarding the need to be clear when policies apply only in urban environments. This is an example of an urban-focused policy. However, we think the point could be made rather more succinctly.

563. We also recommend a minor amendment to the notified version of Policy 27.2.8.1 to delete the word '*minor'*. We think that is unnecessary given the policy requirement that there be no potential for adverse effects.

564. In summary, therefore, we recommend that Policy 27.2.8.1 be renumbered 27.2.7.1 and revised to read:

"Enable cross-lease and unit title subdivision of existing units in urban areas without the need to obtain resource consent where there is no potential for adverse effects associated with the change in boundary location."

565. Policy 27.2.8.2 as notified, read:

"Ensure boundary adjustment, cross-lease and unit title subdivisions are appropriate with regard to:

a. *The location of the proposed boundary;*
b. *In rural areas, the location of boundaries with regard to approved residential building platforms, existing buildings, and vegetation patterns and existing or proposed accesses;*
c. *Boundary treatment;*

---

223 Submission 632: Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

d. *Easements for access and services."*

566. The only submission that sought amendment to this policy[224] focused on the fourth bullet point, seeking that it be altered to read:

"The location of existing or proposed accesses and easements for access and services."

567. Mr Bryce recommended acceptance of that submission on the basis that the second bullet point already refers to existing or proposed accesses and amendment to the fourth bullet point would provide more effective linkage between the two.

568. While we agree there is merit in referring to both existing and proposed accesses in the fourth bullet point (because the second bullet point is limited to rural areas), we think the point might be made more simply. We also think it would be a mistake to limit consideration just to the location. Unlike fee simple titles, easements depend for their efficacy on the extent of the rights created by the easement. The existing wording would already cover that and so, if it is expanded to specifically include reference to location, we consider that specific reference to the terms of any easements (or other arrangements for that matter) is also required.

569. In summary, we recommend that the policy be renumbered 27.2.7.2, the list converted to numbered sub-points with the first word in lower case (consistent with our recommendations regarding the formatting of other policies) and the fourth sub-point be amended to read: *"the location and terms of existing or proposed easements or other arrangements for access and services."*

570. Mr Bryce also suggested addition of a further policy under this heading relating to unit title, strata title or cross lease subdivisions of existing approved buildings with land use consents permitting multi-unit commercial or residential development including visitor accommodation development.

571. This suggested new policy was discussed in Mr Bryce's reply evidence[225]. This is a point we queried Mr Bryce about when he appeared at the hearing. As Mr Bryce noted, putting aside '*minor*' cross-lease and unit title subdivisions addressed in (now) Policy 27.2.7.1, only renumbered Policy 27.2.7.2 provides any specific reference to unit title subdivision and even then, the policy is weighted towards boundary adjustments. While we agree with Mr Bryce's view that unit title and cross-lease subdivisions are an important method for enabling the further intensification of urban areas provided for in the Plan's strategic objectives, we do not think that there is jurisdiction to recommend addressing this shortcoming through a new policy. Certainly, we have not identified a submission which would provide such jurisdiction and Mr Bryce's reply evidence suggests that there is no submission seeking a stand-alone policy of this kind.

572. This is another area where the Chair suggested in his 22 May 2017 Minute that a variation is warranted to correct a shortcoming in the notified PDP provisions.

573. During the course of the hearing, we discussed with the Council's representatives the absence of a policy framework for Structure Plans. This was discussed in Mr Bryce's reply evidence at section 9. Mr Bryce considered specifically the desirability of greater certainty as to what a structure plan is and what a structure plan must include in order to receive the benefit of

224 Submission 719

225 At paragraph 2.5

controlled subdivision activity status (as sought in the legal submissions of Ms Baker-Galloway).

574. Mr Bryce's evidence was that no submissions specifically sought introduction of a policy framework and definition to support the application of structure plans. Accordingly, while he supported the idea that policies might provide for structure plans, his conclusion was that there was no scope to do so in the current process.

575. We agree with that conclusion[226]. Accordingly, this also was included in the Chair's 22 May 2017 Minute, so that the detailed provisions of Chapter 27 that depend on the existence of structure plans might sit within an appropriate policy framework.

576. We consider the recommended policies as above are collectively the most appropriate way to achieve recommended objective 27.2.7, given the alternatives available to us.

577. Before leaving our discussion of the district-wide objectives and policies, we should note submission 238[227] that sought a new objective be inserted: *"Discourage subdivision adjacent to Urban Growth Boundaries"*.

578. Mr Bryce recommended rejection of the submission on the basis that the underlying point is already suitably addressed in Chapters 3 and 4. We agree. Given the coverage at a higher level, we see no value in an additional objective overlapping, but not identical to the provisions recommended in Chapters 3 and 4, particularly given that it would be unsupported by any policy in Chapter 27.

5. SECTION 27.7 - LOCATION–SPECIFIC OBJECTIVES AND POLICIES

5.1 General

579. We have already noted the general submissions seeking reconfiguration of Chapter 27, among other things, to shift the location-specific objectives and policies forward in Chapter 27 so that they follow the general objectives and policies. As above, we agree with Mr Bryce's recommendation that this reconfiguration would assist the clarity of the chapter and bring into line with other chapters of the PDP.

580. As Mr Bryce noted[228], what was section 27.7 contained location-specific objectives, policies "*and* provisions". The provisions in question either explicitly set out matters of discretion or identified relevant matters to be taken into account examples are notified Sections 27.7.3, 27.7.6.1, 27.7.7.7.4, 27.7.14.2, 27.7.18.1 and 27.7.20. We agree with Mr Bryce's observation that it is difficult to determine whether these are policies or rules, and like him, we consider that they are generally better shifted into a new table of location-specific provisions as part of the reconfiguration responding to the submissions on the point, in order to remove any uncertainty as to their purpose and status. We recommend revision of Chapter 27 accordingly.

581. Looking generally at the location-specific objectives and policies that remain, having shifted the text (including the section heading and introductory words that precede notified Objective 27.7.1) into a new Section 27.3, we consider that some further reformatting would assist the clarity of the PDP for the reader. Accordingly, rather than the subject matter being stated

---

226 While noting that later in this report, we recommend a limited definition of Structure Plans to remove the need to refer in each case to the entire range of documents serving the same purpose.

227 Opposed in FS1107, FS1157, FS1226, FS1234, FS1239, FS1241, FS1242, FS1248 and FS1249

228 Section 48A Report at 22.6

within the body of the objective, we recommend that in each case this be a heading that precedes the relevant objective and policies. Our recommended revised Chapter 27 shows this change, which we do not regard as substantive in nature.

5.2 Objectives 27.7.1 and 27.7.2, and Policies Following those objectives

582. Turning to the text of the objectives and policies, many were not the subject of submission and there is no aspect that we need to consider further. We propose, therefore, to address the location-specific objectives and policies on an exceptions basis.

583. Accordingly, the first provision that we need to mention is notified Objective 27.7.1 (renumbered 27.3.1) which relates to Peninsula Bay. Although Mr Bryce did not recommend any substantive amendments to it[229], we consider that some rewording is required to more clearly express it as an outcome, that is to say as an objective.

584. Accordingly, we recommend that the word "*ensure*" be deleted with the result that the objective would read:

"Effective public access is provided throughout the Peninsula Bay land."

585. We do not regard this as a substantive change. For the same reason, we recommend that notified Objective 27.7.2 (renumbered 27.3.2) related to Kirimoko be reworded to read:

"A liveable urban environment is created that achieves best practice in urban design; the protection and incorporation of landscape and environmental features into the design of the area; and high quality built form."

586. In his Section 42A Report, Mr Bryce discussed a submission[230] from the Council Parks Team seeking that notified Policy 27.7.2.8 (now 27.3.2.8) be revised so that rather than seeking minimisation of disturbance to existing native plant remnants, disturbance be avoided.

587. Mr Bryce recommended rejection of this submission on the basis that it is not necessary to appropriately give effect to the relevant objective and may not be achievable in all instances.

588. We heard no evidence from any other representative of Council that would provide a basis on which we might disagree with Mr Bryce. Accordingly, we recommend rejection of Submission 809 in this respect.

589. Policy 27.7.2.3 (renumbered 27.3.2.3), as notified, read:

"Ensure that urban development of the site is restricted to lower areas and areas of concealed topography, such as gullies (all zoned Low Density Residential) and that visually sensitive areas such as the spurs are left undeveloped (building line restriction area)."

590. The words in brackets are both unnecessary and out of place. The provision of a favourable zoning, or building line restrictions, as the case may be, are matters for the rules which implement the policy. We recommend that in each case, the words in brackets are deleted.

---

229 Mr Bryce did, however, recommend deletion of a cross reference to an ODP objective in the notified version of Section 27.7.1, referring to concerns about its validity. While we agree with that concern, the issue has been overtaken by the Stage 2 Variations.

230 Submission 809

The end result does not alter the meaning of the policy and therefore we regard it as a minor change within the scope of Clause 16(2).

5.3 Objective 27.7.4 and Policies Following

591. Notified Objective 27.7.4 (renumbered now 27.3.3) read as follows:

"Objective – Large Lot Residential Zone between Studholme Road and Meadowstone Drive – ensure protection of landscape and amenity values in recognition of the zone's low density character and transition with rural areas."

592. Mr Bryce recommended that this be reconfigured so that it is expressed as an outcome rather than a course of action. We agree both with the need to revise the objective and with the revised wording Mr Bryce suggests. Taking account of the insertion of a heading to identify the subject-matter of the objective, amended to reflect the recommendation of the Stream 6 Hearing Panel that the Large Lot Residential Zone be split into "A" and "B" zones, we recommend that this objective be reframed as:

"Landscape and amenity values of the zone's low density character and transition with rural areas be recognised and protected."

593. Submissions[231] sought that the word "*ridgelines"* in notified Policy 27.7.4.1 (now Policy 27.3.3.1) be substituted by the words "*skyline ridges".* Mr Bryce did not recommend acceptance of that submission and we agree. The submitters did not appear to support their submission and it is not apparent to us that the amended wording would result in a policy which more appropriately gives effect to the relevant objective.

594. Notified Policy 27.7.4.2. (renumbered 27.3.3.2)) read:

"Subdivision and development within land identified as 'Urban Landscape Protection' by the 'Wanaka Structure Plan 2007' shall have regard to the adverse effects of development and associated earthquakes on slopes, ridges and skylines."

595. We discussed with Mr Bryce the appropriateness of a cross reference to the Wanaka Structure Plan given the reasoning of the Council's position with respect to the Land Development and Subdivision Code of Practice. Like the Code of Practice, the Wanaka Structure Plan sits outside the PDP. It is also not a Structure Plan in the sense referred to in other PDP provisions in that it does not guide the development of specific areas. Rather, as Mr Bryce put it, it is an expression of the strategic intent of Council which has legal effect because its provisions are incorporated into the PDP.

596. Mr Bryce addressed the point in his reply evidence[232] and suggested that the best course was to delete reference to the Structure Plan and to describe the area concerned.

597. Mr Bryce also noted that there is a submission specifically seeking deletion of the relevant policy and the '*Urban Landscape Protection Line'* referred to in it[233].

598. Mr Bryce recommended that further specific policy direction for this area be considered as part of the residential hearing stream.

---

231 Submissions 65 and 74

232 N Bryce, Reply Statement at 2.23-2.26

233 Submission 335

599. The Hearing Panel on the Residential Zone Stream (Stream 6) has not recommended any consequential changes to this policy and we agree with Mr Bryce's recommendations as to how it might be amended.

600. It follows that we recommend that what is now Policy 27.3.3.2 be reworded as:

"Subdivision and development within land located on the north side of Studholme Road shall have regard to the adverse effects of development and associated earthworks on slopes, ridges and skylines."

5.4 Objective 27.7.5 and Policies Following

601. Notified Objective 27.7.5 read:

"Objective – Bobs Cove Rural Residential Zone (excluding sub-zone) – Recognise the special character of the Bob's Cove Rural Residential Zone."

602. Mr Bryce recommended a grammatical change so that this objective also reads as an outcome statement. While we would prefer an outcome statement that was somewhat clearer as to the nature of the outcome being sought, in the absence of any submission on the point, we do not consider a more substantive amendment is possible. Accordingly, we agree with Mr Bryce's suggestion, with the result that we recommend that the objective (renumbered as 27.3.4) be reworded as:

"The special character of the Bob's Cove Rural Residential Zone is recognised and provided for."

603. Notified Policy 27.7.5.1 (renumbered 27.3.4.1) read:

"Have regard to the need to provide for street lighting in the proposed subdivision. If street lighting is required in the proposed subdivision to satisfy the Council standards, then in order to maintain the rural character of the zone, the street lighting shall be low in height from the ground, of reduced lux spill and directed downwards to avoid adverse effects on the night sky."

604. Mr Bryce identified that this policy contained a level of duplication that could be resolved without altering the policy meaning.

605. We agree with the desirability of expressing this policy more succinctly. However, we consider Mr Bryce's revision inadvertently altered the meaning by omitting reference to "*required*" street lighting. That would imply that street lighting is required at all locations. We recommend a further revision of the wording to address that point. The only additional amendment we recommend is consequential on changes to other PDP provisions, recognising that the night sky is not affected by light on the ground. What is affected are views of the night sky. Accordingly, we recommend that what is now Policy 27.3.4.1 would read:

"In order to maintain the rural character of the Zone, any required street lighting shall be low in height from the ground, of reduced lux spill and directed downwards to avoid adverse effects on views of the night sky."

5.5 Objective 27.7.6 and Policies Following

606. Notified Objective 27.7.6 related to the Ferry Hill Rural Residential Sub-Zone. Both the objective and Policy 27.7.6.1 following it are proposed to be deleted (and replaced) in the Stage 2 Variations, so we need say no more about it.

5.6 Objective 27.7.7 and Policies Following

607. Notified Objective 27.7.7 and its associated policies related solely to the Makarora Rural Lifestyle Zone. As the Hearing Panel hearing the mapping submissions in the Upper Clutha (Stream 12) has recommended all the land which was proposed to be zoned Rural lifestyle at Makarora be zoned Rural[234], this objective and these policies can be deleted as a consequential amendment. Thus, we recommend their deletion.

5.7 Objective 27.7.8 and Policies Following

608. Notified Objective 27.7.8 (renumbered 27.3.5) relates to the Wyuna Station Rural Lifestyle Zone. Mr Bryce did not recommend any change to this policy, but consistent with other amendments he has recommended to objectives, we consider that some grammatical reformatting is required to express it more clearly as an outcome.

609. Accordingly, we recommend that this objective be revised to read:

"Provision for a deferred Rural Lifestyle Zone on the terrace to the east of, and immediately adjoining, the Glenorchy Township."

5.8 Objective 27.7.9 and Policies Following

610. Notified Objective 27.7.9 is also related to the Wyuna Station Rural Lifestyle Zone. Mr Bryce recommended that this objective be reworded to be expressed more as an outcome. Consistent to our approach in relation to other objectives, we agree with Mr Bryce both in this regard and in relation to his correction of a cross reference to what is now objective 27.3.5[235].

611. The only additional change required is a minor punctuation tweak. Accordingly, we recommend that what is now Objective 27.3.8, be reworded to read:

"Subject to Objective 27.3.5, rural living development is enabled in a way that maintains the visual amenity values that are experienced from the Glenorchy Township, Oban Street and the Glenorchy-Paradise Road"."

5.9 Objectives 27.7.10-13 Inclusive

612. Notified Objectives 27.7.10-13 inclusive were not actually objectives at all. In each case they were labelled "*Objective – Industrial B Zone"*. Under the label "*policies*" for each, there is no policy either, just a note that this was reserved for Stage 2 of the PDP review. In effect, these are merely placeholders that in our view serve no useful purpose. Mr Bryce initially recommended their deletion, but following a discussion we had with him, querying whether any submission had sought that relief, resiled on that view. We too have reflected on the position, and have concluded that while no submission sought that outcome, it nevertheless open to us to recommend that the '*objective'* and '*policies'* in each case be deleted. Precisely because these provisions do not say anything, we do not regard this as a substantive change.

---

234 Refer Report 16.17

235 Accepting in this regard submission 481

5.10 Objective 27.7.14 and Policies Following

613. Notified Objective 27.7.14 (renumbered Objective 27.3.7) read:

> *"Objective - Jacks Point Zone – Subdivision shall have regard to identified location-specific opportunities and constraints."*

614. Mr Bryce recommended that this objective be revised to read:

> *"Objective – Jacks Point Zone – Subdivision shall have regard to identified location specific opportunities and constraints identified within the Jacks Point Structure Plan located within Chapter 41."*

615. Mr Bryce did not explain the rationale for this change in his evidence proper. In his section 32 evaluation, he expressed the view that it was an administrative modification to cross refer the Structure Plan located in Chapter 41 that would result in efficiencies in PDP implementation.

616. Given that the first policy under this objective cross referred the objectives and policies in Chapter 41 that make extensive reference to the Jacks Point Structure Plan, we do not consider it a material change to clarify that the opportunities and constraints referred to are those identified within the Structure Plan, as indeed Mr Bryce advised was the intent.

617. We consider that the desired outcome could be expressed more succinctly as:

> *"Subdivision occurs consistent with the Jacks Point Structure Plan."*

618. As notified, Objective 27.7.14 was supported by 8 policies. Mr Bryce recommended the first notified policy be retained, the second (27.7.14.2) be transferred to the Rule governing compliant subdivision within the Jacks Point Zone (now 27.7.1) and the remaining six to the section he drafted (discussed below) providing assessment criteria.

619. We agree with those recommendations in the first two respects. However, the rule to which the suggested assessment criteria relate applied to non-compliance with standards for conservation areas within the Jacks Point Zone and the former policies apply to activity areas, not including those conservation areas. We consider the best approach is to retain them as policies supporting Objective 27.3.7, amended as required so that they read as policies. We regard the changes in wording and formatting required as minor changes within Clause 16(2) of the First Schedule.

620. Addressing the submissions on these policies, Submission 762[236] sought a new heading for Policy 27.7.14.2 recognising that it provided matters of discretion. This has effectively been granted through Mr Bryce's suggested reorganisation of provisions.

621. Submission 632[237] sought that Policy 27.7.14.5 related to subdivisions below 380m² on the Hanley Downs portion of the zone. While we accept the need for the relevant rule (now 27.7.5.2) to provide for smaller sections in that area, we consider that the policy guidance should start at a higher point.

---

236 Opposed in FS1217, FS1219, FS1252, FS1277, FS1283, and FS1316

237 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

622. Submission 632[238] also sought deletion of both Policies 27.7.14.7 and 27.7.14.8 related to cul-de-sacs and configuration of sites, parking, access and landscaping. Mr Bryce did not recommend deletion of these provisions. Mr Wells, giving evidence for the submitter, identified the first as having merit, but suggested it could be dealt with under more general provisions. He did not appear to address the latter submission specifically. Given that position, we prefer to be clearer as to the desired approach, and recommend retention of these provisions, but amended as above.

623. Mr Bryce recommended inclusion of two new policies in this section reading:

"Enable subdivision which provides for appropriate, integrated and orderly development in accordance with the Jacks Point Structure Plan located within Chapter 41.

The extent to which the subdivision achieves the matters of control listed under Rule 27.7.4 and as they relate to the Jacks Point Structure Plan located within Chapter 41."

624. We think the first suggested policy is unnecessary because the objectives and policies located within Chapter 41, and cross referred in renumbered Policy 27.3.7.1, already enable subdivision in accordance with the Structure Plan.

625. The second suggested policy is framed as an assessment criterion rather than a policy.

626. Accordingly, we do not recommend inclusion of either of the two new policies that Mr Bryce suggested.

5.11 Objective 27.7.17 and Policies Following

627. Notified Objective 27.7.17[239] related to Waterfall Park. There were no submissions specifically on this objective[240] and Mr Bryce did not recommend any change to it.

628. We consider that minor grammatical changes would better identify the outcome sought by this objective and that, for the same reasons as apply in relation to the Jacks Point objective just noted, it would be desirable to cross reference the Waterfall Park Structure Plan.

629. Accordingly, we recommend that Objective 27.7.17 be renumbered 27.3.8 and reworded to read:

"Subdivision that provides for a range of visitor, residential and recreational facilities, sympathetic to the natural setting and has regard to location specific opportunities and constraints identified within the Waterfall Park Structure Plan."

630. Mr Bryce recommended no change to notified policy 27.7.17.1 other than consequential renumbering. The policy refers to the Waterfall Park Structure Plan as being located within Chapter 42. As we will discuss later in this report in greater detail, we consider that all of the Structure Plans relevant to the subdivision rules and policies should be located in Chapter 27. Accordingly, we recommend that that cross reference be amended accordingly.

---

238 Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

239 There were no Objectives 27.7.15 and 27.7.16

240 Other than seeking that it be shifted to accompany the other objectives and policies in Chapter 27 (Submission 696)

631. Mr Bryce recommended a new policy under this objective framed in a similar manner to the second policy he suggested for the Jacks Point Zone. For the same reasons as above, we do not recommend inclusion of a policy that is framed as an assessment criterion.

5.12 Objective 27.7.19 and Policies Following

632. Notified Objective 27.7.19 related to the Millbrook Special Zone. There were no submissions on the wording of this objective[241] and Mr Bryce did not recommend any change to it other than renumbering it to reflect his suggested reorganisation of the chapter. For our part, aside from renumbering it 27.3.9 to reflect our recommendations as above, we recommend a minor grammatical change to more clearly express the objective as an outcome, so that it be worded:

"Subdivision that provides for resort development while having particular regard to landscape, heritage, ecological, water and air quality values."

633. Notified Policy 27.7.19.1 is framed in a similar manner to the parallel policy related to Waterfall Park. Mr Bryce did not recommend any change to it (other than consequential renumbering). For the same reasons as above, we recommend that the renumbered Policy 27.3.9.1 should cross reference the Millbrook Structure Plan located within Chapter 27.

634. As for Jacks Point and Waterfall Park, Mr Bryce recommended a new policy be inserted related to the extent to which the subdivision achieves the matters of control listed in the relevant rule. For the same reasons as above, we do not recommend inclusion of such a policy.

635. As a result of the recommendations of the Stream 13 Hearing Panel[242], an objective and some seven policies are included to address subdivision activities within a new (Coneburn Industrial) zone. These have been inserted in a new Section 27.3.10.

636. Similarly, two new objectives and related policies have been inserted as 27.3.11 and 27.3.12 governing subdivision in the West Meadows Drive area of Wanaka and the Frankton North area, consequent on the recommendations of the Stream 12 and 13 Hearing Panels[243] respectively.

5.13 Conclusion on Location and Zone-Specific Objectives and Policies

637. Looking overall at the location-specific objectives and policies, we have a concern that many of these provisions have been rolled over from the ODP with no apparent thought having been given to whether they remain appropriate. Many of the policies, in particular, relate to actions apparently taken in the past or referenced to such past actions. Renumbered Policy 27.3.1.1 refers, for instance, to actions being taken before any subdivision or development occurs within the Peninsula Bay Lower Density Suburban Residential Zone. Our understanding is that development of the Zone has already proceeded. We wonder whether that policy is effectively 'spent'. Similarly, Policy 27.3.7.1 seeks prohibition or deferral of development of the Wyuna Station Rural Lifestyle Zone until such time as one of three servicing options is undertaken. Mr Bryce confirmed to us that the intention is not that, by restating the existing policy, there should be an opportunity to move to a different wastewater disposal option, as appears to be the effect of restating the policy in the same form as appears in the ODP.

---

241 Although it appears Submission 696 may have been misdirected, referring variously to Objective 27.7.17, Policy 27.7.17.1 and Section 27.7.18.1, that all relate to Waterfall Park.

242 Refer Report 17-8 Part F

243 Refer Reports 16.2 at Section 2.11 and Report 17-6 Parts A, B and C

638. Given the paucity of submissions on this part of Chapter 27, it was beyond the scope of our inquiry to address these matters. However, we recommend that the Council undertake a complete review of the location-specific objectives and policies to determine whether they are necessary and appropriate having regard to development that may already have occurred within the respective zones. To the extent that the outcome of such a review is a finding that one or more of the objectives and/or policies needs to be amended or deleted, we recommend that this be part of a variation to the PDP.

639. We record, however, that we have considered each of the recommended objectives in this section of Chapter 27 and that, with the amendments and deletions recommended, the resulting objectives are the most appropriate way in which to achieve the purpose of the Act, given the alternatives available to us.

640. We further record that we have considered the policies in this section and again, having regard to the alternatives available to us, we consider that, in each case, the policies supporting the location-specific objectives recommended, are the most appropriate means to achieve those objectives.

6. SECTION 27.3 - OTHER PROVISIONS AND RULES

6.1 27.3.1 – District Wide Provisions

641. The purpose of notified Section 27.3 was evidently to provide clarification as to the relationship between Chapter 27 and the balance of the PDP, and to describe the inter-relationship of Chapter 27 with the ODP. Section 27.3.1 as notified outlined a number of district wide chapters of relevance to the application of Chapter 27.

642. The only submission on Section 27.3.1[244] sought that specific emphasis be given to Chapter 30 as it relates to subdivision use and development near the National Grid. Mr Bryce did not recommend acceptance of that submission on the basis that issues related to the National Grid were more properly identified in the substantive provisions of Chapter 27 and because drawing out Chapter 30 would give it too much emphasis when all the district-wide chapters need to be considered. We agree with Mr Bryce's analysis on both counts. Mr Bryce recommended only minor cosmetic changes to Section 27.3.1.

643. For our part, we thought that the distinction drawn between provisions within Stage 1 of the PDP and ODP provisions (or "Operative" provisions as Mr Bryce suggested) in Section 27.3.1 was unhelpful given that following resolution of any appeals on the PDP, its provisions will form part of the ODP. In addition, the chapter heading of Chapter 6 listed in the table following needs to be amended to reflect recommendations of the Hearing Panel hearing submissions on that chapter. Lastly, chapter headings affected by the Stage 2 Variations need to be noted in italics pending decisions as part of that process.

644. As a consequence, we recommend deletion of the second sentence of notified Section 27.3.1 (now renumbered 27.4.1), deletion of reference to provisions being in the ODP in the table following, and amendment of the reference to Chapter 6 (so that it is entitled *"Landscapes and Rural Character"*).

244 Submission 805

6.2 27.3.2 – Earthworks Associated with Subdivision

645. Notified Section 27.3.2 contained 'clarification' as to the status of earthworks associated with subdivision activities. The intention appeared to be that earthworks form part of the consideration of subdivision applications, but be considered in terms of matters of control and discretions contained in the District Wide Earthworks Chapter.

646. We identified this as raising a number of difficult issues. Fortunately perhaps, our need to grapple with those issues has been overtaken by the Stage 2 Variations which have proposed an amendment to 27.3.2. We need therefore address it no further.

6.3 27.3.3 – Zones Exempt from PDP and Subdivision Chapter

647. Section 27.3.3 of the notified PDP listed a number of zones under the heading:

*"*Zones *exempt from the Proposed District Plan and subdivision chapter."*

648. The first list (in notified Section 27.3.3.1) listed certain zones[245] which did not form part of the PDP Stage 1 and in respect of which the Subdivision Chapter does not apply. The second list (in notified Section 27.3.3.2) referred to the three special zones the subject of Chapters 41-43 of the PDP and stated that they were the exception and that the balance of the special zones within Chapter 12 of the ODP were excluded from the operation of the Subdivision Chapter.

649. In its Report 2, the Hearing Panel discussed the lack of clarity generally, if not confusion, as to the matters covered by the PDP, of which these provisions are but one example. The Hearing Panel suggested to counsel for the Council that rather than have provisions buried in the Subdivision Chapter explaining what matters were within the purview of the PDP and what matters were not was not helpful and that it would assist the reader if such clarification were provided in the opening sections of the PDP. The answer the Hearing Panel received from the Council's representatives was that the Council preferred not to make a statement as to what matters were covered by the PDP in the introductory sections of the PDP, because that would only get overtaken by subsequent plan changes, necessitating that the explanation would itself need to be changed. The advice we had from counsel was that Council preferred to provide such clarification by means of explanations on the Council website.

650. The same logic would suggest that Section 27.3.3 should be deleted, because it raises the same issues as a clarification in the introductory sections would have done.

651. We had other issues with this part of the Chapter. We do not think it is helpful to refer to the PDP: Stage 1 given that at the completion of this process, the final form of the PDP will then form part of the ODP. While we note the advice received subsequently[246] that Council's intention is that the provisions of the PDP, once operative, will be held in a separate volume of the District Plan applying to most but not all of the District, it will still not be correct to describe that volume as the "Proposed District Plan".

652. For the same reason, we do not think it is helpful to refer to Chapter 12 of the ODP given that, upon the PDP becoming operative, Chapter 12 will contain provisions related to Queenstown Town Centre, and not the special zones intended to be referred to by notified Section 27.3.3.2.

---

245 Frankton Flats A, Frankton Flats B, Remarkables Park, Mount Cardrona Station, Three Parks, Kingston Village Special Zone, Open Space Zone

246 Counsel for the Council's Memorandum dated 23 November 2016

653. Mr Bryce sought to resolve at least some of these issues by suggesting deletion of reference to the PDP Stage 1 in notified Section 27.3.3.1, but created new issues by suggesting insertion of a reference to Chapter 15 of the ODP.

654. Subsequently the provisions have been overtaken in part (as regards reference to the Open Space Zone) by the Stage 2 Variations.

655. The only submissions on this part of Chapter 27 sought variously an amendment to the heading[247] and insertion of a reference to a proposed new zone in notified provision 27.3.3.2[248]. This is not a promising basis for clarification of the complex position we have described above.

656. Our concerns in relation to this section were effectively overtaken by the advice we received[249] that Council had determined that the appropriate way to resolve the difficulties in determining what plan provisions apply to what land is to insert clarification by way of plan variation under clause 16A. The Council's resolution of 25 May 2017 (discussed in Report 1) withdrawing a number of the zones listed in notified 27.3.3.1 from the PDP is an additional consideration.

657. Against that background, we recommend that Section 27.3.3 be deleted from Chapter 27 in effect, so Council can start, in effect, with a 'blank slate'. We regard this as a minor non substantive change because, to the extent section 27.3.3 records that Chapter 27 does not apply to zones not part of the PDP, it does no more than state the position as we believe it to be in any event. We discuss this further in Section 8.1 below.

6.4 Section 27.11 – Natural Hazards

658. Section 27.11 discussed the role of the Natural Hazards Chapter of the District Plan. Because renumbered Section 27.4 operates as a 'catchall' of other relevant provisions in the PDP, we consider Section 27.11 should form part of the provisions referenced in Section 27.4. There was only one submission on Section 27.11[250], which sought that it reference section 106 of the Act. We are a little unclear as to the point of the submission given that Section 27.11 already does reference section 106.

659. Be that as it may, we recommend that notified Section 27.11 is shifted into a subsection of renumbered Section 27.4 (as 27.4.3), but otherwise be left unamended.

6.5 Conclusion

660. We have considered the provisions recommended for renumbered Section 27.4 as a whole. We consider that collectively, they are the most appropriate means to achieve the objectives of the PDP as they relate to subdivision and development, given the alternatives available to us in this context.

247 Submission 580
248 Submission 806
249 In counsel for the Council's 23 November 2016 Memorandum
250 Submission 806

7. SECTION 27.4 - RULES – SUBDIVISION

7.1 Introduction

661. Before commencing a review of the submissions on the rules of Chapter 27 as notified, we note that Mr Bryce suggested that consequent on reformatting of the rules he had suggested, there needed to be an initial introductory statement regarding the rules. We agree both with the need for explanation and the suggested text. Our recommended revised Chapter 27 shows the new text as Section 27.5.1.

662. We also consider that it is desirable to provide for the situation that might potentially arise when an activity falls within more than one rule. In such cases, unless stated otherwise in the rules, activity status should be determined by the most restrictive rule, and so we recommend the following be added:

"Where an activity falls within more than one rule unless stated otherwise, its status shall be determined by the most restrictive rule."

7.2 Boundary Adjustments

663. The next rule requiring consideration is notified Rule 27.6.1.1. This is a permitted activity rule for certain boundary adjustments. The only submissions that sought amendment to the notified rule were from the survey companies[251] seeking variously acknowledgement of the requirement for a Certificate of Compliance under section 223 of the Act and a minor grammatical change to improve the English.

664. Mr Bryce recommended acceptance of the former point and suggested also a clarification of the reference in the notified rule to a resource consent (to identify what type of resource consent is required). We accept both recommendations in substance, but we think both the wording and the formatting suggested by Mr Bryce needs a little massaging. Specifically, the cross reference should be to a *'land use consent'* so as to pick up on the language of section 87(a) of the Act and the formatting needs to make it clear that this rule relates to one activity that might arise in a number of different situations. The cross reference to section 223 needs to be framed more clearly as an advice note drawing attention to the fact that this is a collateral obligation. Lastly, we recommend that the minor grammatical change suggested in Submission 370 be accepted.

665. The end result is that we recommend that renumbered **Permitted Activity** Rule 27.5.2 be framed as follows:

"An adjustment to an existing cross-lease or unit title due to:

a. an alteration to the size of the lot by alterations to the building outline;
b. the conversion from cross-lease to unit title: or
c. the addition or relocation of an accessory building;

providing the activity complies with all other provisions of the District Plan or has obtained a land use consent.

Advice Note
In order to undertake such a subdivision, a Certificate of Compliance (s139 of the Act) will need to be obtained (see s223(1)(b))."

---

[251] Submissions 370 and 453

666. In his Section 42A Report, Mr Bryce noted a number of submissions[252] seeking provision for boundary adjustments not falling within notified Rule 27.6.1.1 as a controlled activity. Mr Bryce noted that under the notified Plan, such boundary adjustments would fall within the default discretionary rule already discussed. In Mr Bryce's view, boundary adjustments are an important and frequently utilised mechanism (he cited a statistic provided in the section 32 evaluation to the effect that of 677 subdivisions advanced between 2009 and 2015, 125 were boundary adjustments). Accordingly, Mr Bryce recommended inclusion of a new controlled activity rule for boundary adjustments. Mr Bryce felt, however, that boundary adjustments within the Arrowtown urban limits, and on sites containing heritage or other protected or scheduled items should be dealt with under a different rule with a greater level of discretion – he recommended a new restricted discretionary activity rule for such boundary adjustments.

667. We agree with Mr Bryce that there is a case for a less regulated approach to boundary adjustments than in the notified plan, that most boundary adjustments can appropriately be considered as controlled activities (subject to suitable conditions) and that a greater level of discretion is required for sites with identified sensitivity, or more generally in Arrowtown (but still short of full discretionary status).

668. Focussing on the new controlled activity rule, Mr Bryce largely recommended acceptance of the proposed matters of control suggested in the submissions subject to some drafting changes to express them more clearly. We discussed with Mr Bryce whether there needed to be an additional precondition requiring that lots be immediately adjoining each other to avoid the rule being used in situations that while technically able to be described as boundary adjustments, create additional issues. Mr Bryce agreed that that was a desirable additional precondition. We also consider that the situations proposed Rule 27.5.3 addresses might be expanded on to cover the situation where the existing lots already do not comply with the specified minimum lot areas. Subject to that point, we recommend inclusion of a new **Controlled Activity** rule numbered 27.5.3, with only minor additional rephrasing and reformatting from that suggested by Mr Bryce, reading as follows:

> *"For boundary adjustment subdivision activities where there are two or more existing lots which each have separate Certificates of Title, new lots may be created by subdivision for the purpose of an adjustment of the boundaries between the existing lots, provided:*
>
> *a. in the case of Rural, Gibbston Character and Rural Lifestyle Zones, any approved building platform is retained in its approved location;*
>
> *b. no additional or relocated residential building platform is identified and approved as part of a boundary adjustment within the Rural, Gibbston Character and Rural Lifestyle Zones;*
>
> *c. no additional separately saleable lots are created;*
>
> *d. the areas of the resultant lots either comply with the minimum lot size requirement for the zone (where applicable) or where any lot does not comply with an applicable minimum lot size requirement for the zone, the extent of such non-compliance is not increased; and*
>
> *e. lots must be immediately adjoining each other.*

[252] Submissions 532, 534, 535, 762, 763, 767, 806: Supported in FS1097, FS1157, FS1259, FS1267 and FS1322; Opposed in FS1068, FS1071, FS1217, FS1219, FS1252, FS1277, FS1283 and FS1316

Control is reserved to:

a. the location of the proposed boundaries;

b. boundary treatment;

c. easements for existing and proposed access and services."

669. Similarly, we largely accept Mr Bryce's recommendation of a new restricted discretionary activity rule. Amendment is, however, required to adjust the language recommended by Mr Bryce, to make it clear that this is indeed a restricted discretionary rule – reference to reservation of control is therefore not appropriate. The only additional changes we consider necessary are to separate the two situations where the rules apply (for clarity), to emphasise that the focus should be on heritage or other protected items identified on the PDP maps, to provide certainty, insertion of the same precondition regards boundary adjustments involving sites that are not adjacent as in Rule 27.5.3, and minor grammatical and formatting changes.

670. Accordingly, we recommend inclusion of a new **Restricted Discretionary Activity** rule numbered 27.5.4, worded as follows:

"For boundary adjustments that either:

a. involve any site that contains a heritage or other protected item identified on the District Plan maps; or

b. any boundary adjustment within the Urban Growth Boundary, of Arrowtown

where there are two or more existing lots which each have separate Certificates of Title, new lots may be created by subdivision for the purpose of an adjustment of the boundaries between the existing lots, provided:

- *a. no additional separately saleable lots are created;*
- *b. the areas of the resultant lots comply with the minimum lot size requirement of the zone;*
- *c. lots must be immediately adjoining each other.*

Discretion is restricted to:

a. the impact on the heritage values of the protected item;

b. the maintenance of the historic character of the Arrowtown Residential Historical Management Zone;

c. the location of the proposed boundaries;

d. boundary treatment;

e. easements for access and services."

671. Establishing rules governing boundary adjustments with conditions on their application requires consideration of the position should those conditions not be met. For boundary adjustments within the urban zones covered by the PDP, non-complying boundary adjustments will fall within the new default rule (25.5.7) discussed earlier, and will therefore be considered as restricted discretionary activities. While this is the same status as activities within Rule 25.5.4, there are a much more extensive list of matters over which discretion is reserved and so we do not view this as inappropriate. Likewise, non-complying boundary adjustment within the Rural Residential and Rural Lifestyle Zones will fall within the new Rule 25.5.8. Lastly, non-complying boundary adjustments within the Rural and Gibbston Character Zones will be considered as discretionary activities under Rule 27.5.11, reflecting the greater potential sensitivity of land in those zones.

7.3 Unit Title or Leasehold Subdivision

672. Mr Bryce also recommended a new controlled activity rule to cater for "*unit title, strata title or cross lease subdivision of a multi-unit commercial or residential* development *the subject of a land use consent".* This recommendation was in conjunction with Mr Bryce's suggestion of a new policy to follow renumbered 27.2.7.2 providing for such subdivisions. We have already concluded that there is no jurisdiction for us to recommend a new policy to this effect[253] and recommended a variation to address the issue. We do not, however, think that there are any jurisdictional impediments to inserting a rule to this effect given the numerous submissions seeking that all subdivision activities be controlled activities.

673. There are, however, some aspects of Mr Bryce's suggested rule that we consider require amendment. First, we do not consider that separate reference need be made to strata titles given that this has no clear meaning in terms of the PDP and, as a matter of property law, there is no meaningful distinction between a stratum title and a unit title[254].

674. Secondly, although Mr Bryce focussed on cross-leased subdivisions, we consider that the precise nature of the leasehold interest in question should not influence the status which is appropriate for such subdivisions.

675. Thirdly, Mr Bryce suggested that the Council reserve control over the effects of infrastructure provision. For the reasons discussed above in relation to the Aurora line network, we consider that the reservation of control needs to include effects "*on"* infrastructure provision as well as "*of"* infrastructure provision.

676. As previously, the rule should refer to an approved "*land use consent*". We have amended the description of the matters of control for consistency also.

677. Mr Bryce's recommended rule included a reference to fee simple subdivisions. We consider that the wording could be clarified as to what is meant by that, and to state more clearly what it is intended to apply to.

678. Lastly, Mr Bryce suggested a reference to lots containing an approved land use consent. A lot does not contain consents. Resource consents sit alongside property rights, which is why a land use consent is described as running with the land. We therefore recommend that the reference be to lots *"the subject of"* an approved land use consent.

679. In summary, therefore, we recommend inclusion of a new **Controlled Activity** rule numbered 27.5.5 reading as follows:

"Where a land use consent is approved for a multi-unit commercial or residential development, including visitor accommodation development, and a unit title or leasehold (including cross lease) subdivision is subsequently undertaken in accordance with the approved land use consent, provided:

a. all buildings must be in accordance with an approved land use consent;

b. all areas to be set aside for the exclusive use of each building or unit must be shown on the survey plan, in addition to any areas to be used for common access or parking or any other such purpose;

---

253 Refer paragraph 562 above

254 A stratum estate is an estate (in fee simple or leasehold) created under the Unit Titles Act 2010 – see Principles of Real Property Law, Hinde et at, 2nd edition 3.004C

c. all service connections and on-site infrastructure must be located within the boundary of the site they serve or have access provided by an appropriate legal mechanism.

Control is reserved to:

a. the effect of the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces;
b. the effects of and on infrastructure provision.

This rule does not apply to a subdivision of land creating a separate fee-simple title.

The intent is that it applies to subdivision of a lot the subject of an approved land use consent in order to create titles in accordance with that consent."

7.4 District Wide Subdivision Rules

680. Putting aside recommended Rule 25.5.6, that we will come to shortly, the next two rules in our recommended section 27.5 are Rules 27.5.7 and 27.5.8 discussed earlier[255].

681. Mr Bryce drew our attention in his Section 42A Report to a submission by Transpower New Zealand Ltd[256] seeking a new rule in the Utilities Chapter (Chapter 30) that would make subdivision of land within a defined distance either side of national grid lines a restricted discretionary activity, subject to a condition/standard requiring that all allotments identify a building platform for the principal building and any dwelling to be located outside the corridor. The submission further sought a default non-complying activity rule, to operate in conjunction with the restricted discretionary activity rule.

682. Mr Bryce recommended that this submission be considered in the context of Chapter 27 and we agree with that suggestion. We also note the relevance of the policy we have recommended above as 27.2.2.8, which in turn reflects the provisions of the Proposed RPS provisions related to regionally significant infrastructure and the NPSET 2008.

683. We agree with Mr Bryce that a rule framework is required to support these policy provisions and that the need to protect the operation of the national grid means that there must be provision for applications to be declined if required. That means in practice that the rules should at least be restricted discretionary in nature.

684. In relation to the framing of the rule, by Mr Bryce's reply, he had largely agreed with the suggestions made by Ms McLeod in relation to his initial draft attached to the Section 42A Report. For our part, we think that, aside from minor wording and formatting changes for consistency, two amendments are required to Mr Bryce's draft rule. The first is that Mr Bryce's draft refers to the "*National Grid Subdivision Corridor"*. We asked Ms McLeod about this and she saw no reason not to call the area in question just "*National Grid Corridor"*. This would have the practical advantage of enabling utilisation of the existing definition, which Transpower did not seek to substantively change.

685. The second amendment is to the specified condition/standard Transpower sought and Mr Bryce agreed that the condition/standard should have, with the result that the rule would apply "*where all allotments identify a building platform for the principal building and any dwelling to be* located *outside of the National Grid Yard".* This would mean that a subdivision in the vicinity of the National Grid lines not involving construction of any building or dwelling,

---

255 See the discussion at paragraphs 99-176 above

256 Submission 805: Opposed in FS1132

such as the creation of a reserve or a subdivision for utility purposes, would become a non-complying activity. We therefore recommend that the provision be turned around so it expresses the position on an exceptions basis.

686. Accordingly, we recommend inclusion of a new **Restricted Discretionary** rule numbered 27.5.10[257], worded as follows:

"Subdivision of land in any zone within the National Grid Corridor except where any allotment identifies a building platform to be located within the National Grid Yard.

Discretion is restricted to:

a. *impacts on the operation, maintenance, upgrade and development of the National Grid;*
b. *the ability of future development to comply with NZECP34:2001;*
c. *the location, design and use of any proposed building platform as it relates to the National Grid transmission line."*

687. The corollary of this rule is a further non-complying activity rule for subdivisions that do not comply with the standard. We accept Mr Bryce's recommendation as to its wording save that the cross reference should be to the National Grid Corridor and a consequential renumbering.

688. As a result, we recommend inclusion of a new **Non-Complying** activity rule numbered 27.5.24 worded:

"Any subdivision of land within the National Grid Corridor, which does not comply with Rule 27.5.10."

689. Mr Bryce's recommended set of rules next had a new restricted discretionary activity rule for subdivision of land within a defined distance from electricity sub-transmission lines, responding to the submissions of Aurora Energy Limited[258].

690. We have already addressed the point more generally, by recommending inclusion of a discretion over adverse effects on energy supply and telecommunication networks in the context of recommended Rules 27.5.7 and 27.5.8 and control over effects on infrastructure in Rule 27.5.5. Against this background, we do not regard a rule specifically applying to electricity sub-transmission lines as being required.

691. The next rule recommended by Mr Bryce is a discretionary activity rule governing subdivision activities in the Rural and Gibbston Character Zones. The need for this rule is a consequence of shifting from a discretionary default rule (as per notified rule 27.4.1). We have already addressed the need to treat subdivisions in the Rural and Gibbston Character Zones differently to subdivisions in other zones and so we do not need to go back over that ground (except in relation to the Ski Area Sub-Zones, which we will discuss shortly). Mr Bryce also recommended that an exception be made for subdivisions undertaken in accordance with Rule 27.5.5.

692. The evidence we heard from the representatives of some of the ski companies[259] was that in the existing ski areas, there might well be leasehold subdivisions of accommodation facilities. While it is difficult to contemplate a situation where multi-unit commercial residential developments would occur in the Rural Zone outside the ski areas, we think that the same

257 Leaving 27.5.9 available for a new rule proposed in the Stage 2 Variations.

258 Submission 635: Opposed in part in FS1301

259 Submissions 610 and 613

logic would apply to such subdivisions: provided the subdivision occurs in conjunction with an approved land use consent, it might properly be considered as a controlled activity.

693. Subdivisions under Rule 27.5.5 are not, however, the only potential exception to full discretionary activity status in the Rural and Gibbston Character Zones. Rules 27.5.2-4 also might apply. We therefore consider the exception needs to be more generic – "*unless otherwise provided for".* That formulation would also enable non-complying boundary adjustments in these zones to be addressed under Rule 27.5.11, in the manner we discussed above[260].

694. Turning to the broader submission made on behalf of submitters 610 and 613 that subdivision within the Ski Area Sub-Zones should be a controlled activity rather than discretionary, as for the balance of the Rural Zone, this was the subject of extensive legal submissions and planning evidence.

695. The argument for the Ski Company submitters, building on the case they advanced in the Stream 2 hearing related to the relevant provisions of Chapter 21, is that the PDP identifies the Ski Area Sub-Zones as an important area for growth and development by reason of their contribution to the District's economy and provides an enabling policy and rule framework. It was argued that the Ski Area Sub-Zones are quite different to the balance of Rural Zoned land and that their different purpose justifies a different subdivision status. Specific attention was given to the extent of modification which, in counsel's submission, justified the exclusion from the stringent policies applicable to ONLs and ONFs. The submitters also emphasised the importance of subdivision as a means to optimise ski area operations and to enable their continued prosperity. It appears from the evidence we heard that a major strategic initiative planned by the submitters is creation of ski villages with accommodation on the mountain. Subdivision is required, so we were told, to facilitate this although, as noted above, probably by way of lease rather than freehold subdivision.

696. While the Ski Area Sub-Zones are atypical in the context of the Rural Zone as a whole, we think it also needs to be recognised (as noted in the Hearing Panel's Report 3) that exclusion of the Ski Area Sub-Zones from the ONL classification process is something of an anomaly. They are clearly not sufficiently large to be landscapes in their own right and they have been developed (so far) in a manner which does not appear to have caused the broader landscapes within which they sit to cease to have the qualities justifying a classification as an ONL. We also think it needs to be borne in mind that minimum lot sizes are a key constraint in the Residential, Rural Residential and Rural Lifestyle Zones justifying a less restrictive rule regime for subdivision and development in those zones. The absence of a minimum lot size in the Rural Zone both enables flexibility in design and requires a greater level of discretion to be retained.

697. At the hearing, we explored with the representatives of the submitters whether subdivision on a more favourable basis might be limited to discrete parts of the Ski Area Sub-Zones (specifically, the ski bases). The thought that we had in mind was that in those parts of the Sub-Zone, there is an existing level of development and incremental subdivision and development within a defined area around the ski base facilities might be able to be provided for on a less restrictive basis.

698. However, when the submitters reappeared on 17 August accompanied by Mr McCrostie, he advised that while they were not looking to undertake subdivision and development across the entire ski area (that would of course defeat the whole purpose of a ski facility) there were

260 See paragraph 658 above

pods across the field where visitor accommodation, food and beverage operations and the like might be located, so it was not as simple as identifying a single discrete area within each Sub-Zone.

699. We discussed with the representatives of the submitters whether this conundrum might be addressed by a structure plan type approach and when they reappeared on 17 August, Mr Ferguson had clearly given considerable thought to this suggestion. He tabled suggested revised rules based on the subdivision being undertaken in accordance with a Landscape and Ecological Management Plan for the Sub-Zone, that additional feature justifying controlled activity status. It occurred to us that such an arrangement might raise issues of the kind that were addressed in the litigation on the Proposed Auckland Unitary Plan surrounding the use of framework plans[261]. Counsel for the submitters, Ms Baker-Galloway responded that the concept is one where an activity is consented, and an application contains the Landscape and Ecological Management Plan. Unlike the proposal considered by the Environment Court, it was not proposed that they be sequential.

700. We have discussed the Auckland Framework Plan cases in more detail in our Report 1. For present purposes, it is sufficient to say that while the approach advanced by Ms Baker-Galloway and Mr Ferguson might solve the legal hurdles identified in the framework plan cases (we assume that might be the case for the moment), it presents a more fundamental problem that is discussed in Report 1. If the Landscape and Ecological Management Plan is only approved as a condition of consent, it is not possible to identify in advance that the end result will be sufficiently acceptable that consent should be granted – that is to say, whether sufficient control is retained by controlled activity status. Mr Bryce came to the same view in his reply evidence. His opinion was that the approach advanced by Mr Ferguson "*falls short of a true structure plan response and therefore I question whether it offers the same level of certainty provided by the structure plan approach"*[262]. Mr Bryce also drew our attention to the jurisdictional issues created by the way in which the submitters' original submissions had been framed, limiting the scope of parallel amendments proposed to Chapter 21 to visitor accommodation.

701. We have concluded that Mr Bryce is correct, and the proposal proffered by Mr Ferguson on behalf of the submitters does not provide us with sufficient comfort to recommend controlled activity status. We consider that the solution for the ski companies is to pursue the course adopted in a number of other developments and proffer a true structure plan for the Ski Area Sub-Zones that might be incorporated in the PDP through a variation to it, with subdivision thereafter considered as a controlled activity under Rule 27.7.1.

702. In the absence of a Structure Plan within the District Plan, we think that any subdivision and development in the Ski Area Sub-Zones not falling within Rule 27.5.5 should remain discretionary.

703. In our assessment of costs and benefits of the competing alternatives we have had regard to Mr Bryce's view, as set out in his reply evidence[263], that Rule 27.5.5 is a more effective way of addressing the concern advanced on behalf of the submitters than the relief they suggest.

704. Lastly Mr Bryce's recommended rule had a typographical error in that it referred to the *"Rural General"* zone that needs to be corrected.

---

261 *Re Application for Declarations by Auckland Council* [2016] NZEnvC 056 and [2016] NZEnvC 65

262 N Bryce, Reply Statement at 2.11

263 N Bryce, Reply Statement at 2.14

705. In summary, we recommend inclusion of a new discretionary activity rule numbered 27.5.11 worded:

"All subdivision activities in the Rural and Gibbston Character Zones and Airport Zone - Wanaka, unless otherwise provided for."

706. Mr Bryce also recommended as separate discretionary activity rules, the subdivision of land containing heritage or other protected items, archaeological sites, heritage landscapes and significant natural areas. Previously these rules had been located, somewhat anomalously, within the section (27.5) that set out the standards for subdivision activities. Accordingly, we accept Mr Bryce's suggestion. The only recommended changes to his suggested rules are consequential on the recommendations of the Hearing Panel in relation to how heritage and archaeological items are treated, and a cross-referencing correction – Mr Bryce suggested boundary adjustments under Rule 27.5.2 be exempted, but we consider that it should refer to Restricted Discretionary Rule 27.5.4. Otherwise Rules 27.5.4 and 27.5.12 would overlap.

707. Accordingly, we recommend inclusion of four discretionary activity rules numbered 27.5.12-15 respectively reading:

"*The subdivision of land containing a heritage or other protected item scheduled in the District Plan. This rule does not apply to boundary adjustments under Rule 27.5.4.*

The subdivision of land identified on the planning maps as a Heritage Overlay Area.

The subdivision of a site containing a known archaeological site.

Subdivision that would alter, or create a new boundary within a Significant Natural Area scheduled in the District Plan."

708. Notified Rule 27.4.2(e) provided as a non-complying activity, where a subdivision occurs under the Unit Titles Act and the building in question is not completed. This needs to be read together with notified Rule 27.4.2(f) which indicated (notwithstanding that it sits under a heading stating that the specified rules are non-complying activities) that where a unit title subdivision is lodged concurrently with an application for building consent or land use consent, it should be considered as a discretionary activity.

709. Submission 166 sought that both Rules 27.4.2(e) and (f) should be deleted. The submission argued that they operate as a barrier to staged developments and that other statutory provisions protect the Council in relation to the issue of unit titles.

710. Mr Bryce did not support that relief. While we agree in substance with Mr Bryce, we do think that greater clarity could be provided as to the inter-relationship between the two rules (and indeed Rule 27.5.5).

711. Logically, the second, less restrictive rule should be stated first. Mr Bryce suggested only minor wording amendments. Aside from amending Mr Bryce's reference to a "land use resource consent" to refer to the correct statutory term (*'land use consent'*), we agree with Mr Bryce's recommendations. The revised **Discretionary Activity** rule (numbered 27.5.16) would therefore read:

"A Unit Titles Act subdivision lodged concurrently with an application for building consent, or land use consent."

712. Turning to the second rule, we recommend that notified Rule 27.4.2(e) be renumbered 27.5.20 and revised to read:

"A subdivision under the Unit Titles Act not falling within Rules 27.5.5 or 27.5.16 where the building is not completed (meaning the applicable Code of Compliance Certificate has not been issued), or building consent or land use consent has not been granted for the buildings."

713. The next rule we need to discuss relates to subdivision within the Jacks Point Zone. As notified, Rule 27.4.2(a) provided that subdivision within the Jacks Point Zone that did not comply with the Chapter 27 standards should be a discretionary activity. Mr Wells gave evidence on this point[264] seeking recognition of the particular situation created within the Hanley Downs part of the Jacks Point Zone, where more intensive development (more intensive that is than the standard of 380m² provided for in notified Section 27.5.1) is planned. He sought restricted discretionary activity status for that area. In Mr Bryce's reply evidence, he recommended acceptance of Mr Wells' suggestion. We concur. Mr Bryce recommended a site specific restricted discretionary activity rule related to subdivision within another part of the Jacks Point Zone (a Farm Preserve activity area). However, that activity area has been deleted from the revised Jacks Point Structure Plan and the accompanying recommended Chapter 41 provisions, and so the rule is no longer required. We also suggest consequential changes to reflect our recommendations as to the heading and content of subsequent sections and to standardise the numbering with the other rules.

714. In summary, therefore, we recommend the **Discretionary** activity rule providing for non-compliance with the Jacks Point standards should be numbered 27.5.17 and read:

"Within the Jacks Point Zone, subdivision that does not comply with the minimum lot areas specified in Part 27.6 and the zone and location specific rules in Part 27.7, excluding:

a. *In the R(HD) Activity Area, where the creation of lots less than 380m² shall be assessed* under *Rule 27.7.5.2 (as a restricted discretionary activity)."*

715. Mr Bryce recommended that the balance of what was notified Rule 27.4.2(a) be the subject of a separate non-complying activity rule and be amended to cross reference the Jacks Point rule just discussed. We agree both with that reformatting and recommend the rule be as suggested by Mr Bryce, subject only to correcting the cross-reference numbering and consequential changes reflecting recommended changes to section headings.

716. The recommended **Non-Complying** rule (numbered 27.5.19 to accommodate an additional discretionary activity rule we will discuss shortly) therefore reads:

"Subdivision that does not comply with the minimum lot areas specified in Part 27.6 with the exception of the Jacks Point Zone which is assessed pursuant to Rule 27.5.17."

717. The final discretionary activity rule in this part of Chapter 27 is consequential on to a new zone recommended by the Stream 13 Hearing Panel for the Coneburn Industrial area. Amended to reflect the revised terminology we have recommended, it reads:

---

[264] In relation to Submission 632: Supported in FS1097; Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

"*Within the Coneburn Industrial Zone Activity Area 2a, subdivision which does not comply with the minimum lot areas specified in Part 27.6."*

718. The next rule we need to consider is notified Rule 27.4.2(b) which identified as a non-complying activity the further subdivision of an allotment previously used to calculate a minimum average density in the Rural Lifestyle Zone or Rural Residential Zone.

719. Submission 350 sought deletion of this particular rule. The submission provides reasonably detailed reasons for the relief sought. It is argued that the rule has been carried over from legacy plans and is not based on achieving the objectives of the PDP or on achieving good environmental outcomes. The rule is described as a technicality which should not apply because the parent lot has been subdivided before. The reference point should be whether the objectives of the Rural Lifestyle and Rural Residential Zones are met. It is also supported on efficiency grounds. These various points might have carried more weight had Mr Jeff Brown, who gave evidence for this submitter, addressed them in his evidence.

720. Having said that, we consider that there is a problem with the way the rule is worded. The concern the rule seeks to address (we infer) is one of "*environmental creep"* if subdividers are permitted to obtain consents on one basis and then make further application, leveraging off the initial consent to obtain a better outcome.

721. Accordingly, where a subdivision has been approved with the maximum number of lots meeting the average density requirements in the relevant zone, the applicant should be discouraged from *"*having *another bite of the cherry"*. The test in the rule, however *("used to calculate the minimum average densities for subdivision"*) has wider application. In any subdivision in the Rural Lifestyle Zone, for instance, the average density will be calculated and compared to the average required (not less than 2 hectares). If the calculated average density is greater than 2 hectares, there may be room for a further subdivision in future with the average of the original subdivision remaining above 2 hectares. On the face of the matter, such a further subdivision would be a non-complying activity in terms of notified Rule 27.4.2(b). We do not consider that should be the case.

722. Another submission on this rule[265] sought deletion of reference to the Rural Residential Zone. The submission argues that minimum average densities are not relevant to the Rural Residential Zone.

723. The submission is not quite correct. While minimum average densities are not provided for in the Rural Residential Zone generally, either under the ODP or under the PDP, they are provided for in the Bob's Cove Sub-Zone. On this rather slender basis (and because specification of this as a non-complying activity in the balance of the Rural Residential Zone will impose no costs on subdividers if they have not had to meet an average density requirement), we recommend retention of reference in the rule (now numbered 27.5.21) to the Rural Residential Zone.

724. Reverting to the substantive issue we have identified with the reformatted rule Mr Bryce recommended, we consider it would be addressed if the Rule were worded as follows:

"The further subdivision of one or more allotments that if undertaken as part of a previous subdivision would have caused that previous subdivision to exceed the minimum average density requirements for subdivision in the Rural Lifestyle Zone or the Rural Residential Zone."

265 Submission 166

725. Notified Rule 27.4.2(c) provided that the subdivision of the building platform was a non-complying activity. Mr Bryce recommended a slight change of wording to meet the concern expressed in Submission 166 that the notified rule wording lacked clarity. We agree with Mr Bryce's suggestion and recommend retention of notified **Non-Complying** Rule 27.4.2(c), renumbered 27.5.22 and amended to read:

"The subdivision of land resulting in the division of a building platform."

726. Notified Rule 27.4.2(d) provided that the subdivision of a residential flat from the residential unit it is ancillary to was a non-complying activity except where this is permitted in the Low Density Residential Zone. Submission 453 suggested that this rule was unclear and needed clarification.

727. Mr Bryce discussed the point in his Section 42A Report and suggested that it could be made clearer. We agree with his reasoning and accordingly we recommend that notified **Non-Complying** Rule 27.4.2(d) be renumbered 27.5.23 and amended to read:

"The subdivision of a residential flat from a residential unit."

728. Mr Bryce recommended inclusion of a new non-complying activity rule consequential on his reorganisation of the chapter. The specific issue is that standards related to servicing and infrastructure were formerly located in Section 27.5.4, but have been shifted to Part 27.7. Non-compliance with the standards in Section 27.5 was a non-complying activity under notified Rule 27.4.2. The effect of Mr Bryce's recommended new rule is to retain that position unchanged. We agree with that recommendation, subject only to amending the terminology to reflect our recommendations as to the heading of Section 27.7. Accordingly, we likewise recommend a new **Non-Complying** rule numbered 27.5.25 reading:

"Subdivision that does not comply with the requirements related to servicing and infrastructure in Rule 27.7.13."

729. Finally, under this general heading, and out of abundant caution, we recommend a new rule to catch any subdivision not otherwise addressed by any of the rules we have recommended. While we have not identified any subdivision activity that is not in fact covered by the rules, either in Section 27.5 or 27.7. we think it is prudent to have a default rule. Discretionary status for such a rule will maintain the status quo under notified Rule 27.4.1 and, to that extent, we recommend that that rule be retained. As with Rule 27.4.1, a catchall rule should come first in the group of rules.

730. Accordingly, we recommend that **Discretionary** Rule 27.4.1 be renumbered 27.5.6 and revised to read:

"Any subdivision that does not fall within any rule in Part 27.5 or Part 27.7."

731. Considering the rules we have recommended in our revised section 27.5, we believe that collectively they are the most appropriate way to achieve the Chapter 27 objectives and to implement the policies under those objectives.

8. SECTION 27.5 - RULES –STANDARDS FOR SUBDIVISION ACTIVITIES

8.1 Rule 27.5.1 – Minimum Lot Sizes

732. A large number of submissions were made on notified Section 27.5.1 (renumbered 27.6.1), which set out the minimum lot area in specified zones. Most of these submissions were transferred for consideration in the relevant zone hearings given the obvious linkages between minimum densities and the outcomes sought to be achieved in each zone. This was not possible in relation to the parts of Rule 27.5.1 (as notified) specifying minimum densities in the Rural, Rural Lifestyle, Rural Residential and Gibbston Character Zone because, by the time that decision was made, the hearings of submissions on those zone provisions had already occurred. Submissions related to densities in the Rural Lifestyle Zone were, however, deferred as a result of the Council's decision to undertake a structure planning process in the Wakatipu Basin[266].

733. The Chair's direction provoked a degree of confusion on the part of submitters. Mr Ben Farrell gave evidence, and Mr Goldsmith made submissions for a group of submitter parties on the minimum average lot size in the Rural Lifestyle Zone in case that particular aspect had not been deferred along with the minimum lot size.

734. The minimum average density applied in the Rural Lifestyle Zone is inextricably connected to the minimum lot size. As we observed to Mr Goldsmith, it is necessary to know what the minimum lot size is before considering the minimum average, because the minimum average must necessarily be greater than the minimum if it is to serve any purpose. Accordingly, we think there is no value of entering into a discussion of the minimum average lot size separate from the minimum lot size and have proceeded on the basis that both should be deferred until the results of the Wakatipu Basin Structure Plan process are able to be considered.

735. The Stage 2 Variations now proposes rezoning of the Wakatipu Basin, with the result that there is no Rural Lifestyle Zoned land in that area. Accordingly, any consideration of minimum densities (and minimum average densities) within Rural Lifestyle Zoned land in the Wakatipu Basin will only need to be considered as a consequence of the decisions on the Stage 2 Variations altering that position.

736. As above[267], no submitter sought to be heard in relation to Rural Lifestyle Zone Minimum lot density requirements outside the Wakatipu Basin, and we thus have no evidence to contradict the Council position that the notified minimum densities are appropriate in the balance of the District.

737. Notified Rule 27.5.1 stated minimum lot areas for a number of zones that we had understood (based on advice from counsel for the Council) would be the subject of a subsequent stage of the District Plan review process – specifically the Township, Industrial A and B, Riverside and Hydro Generation Zone.

738. In his Section 42A Report, Mr Bryce recommended that those references be deleted. When we discussed the point with him, however, he could not identify for us any submission seeking that relief and in the legal submissions in reply for the Council, it was submitted that there was no jurisdiction to do so. The fact that some provisions of the PDP purport to apply to land not

266 Refer the Chair's procedural direction of 4 July 2016 discussed earlier

267 Refer Section 1.4 above

forming part of Stage 1 of the PDP review is problematic, to say the least. The key issues were canvassed in the Chair's Minute to the Council dated 12 June 2017[268] albeit in the context of notations on the planning maps.

739. The point of particular concern to us is whether members of the public would have thought to go past advice that Stage 2 zones were not part of the PDP process, looking for standards for those zones buried in Chapter 27. The fact that it appears the sole submission on the minimum lot standards in section 27.5.1 for the Stage 2 zones is by the Council itself tends to reinforce that concern. It is also somewhat ironic that the staff recommendation is that the Council's own submission be rejected as being out of scope as not being within Stage 1 of the PDP.

740. In a subsequent hearing, relating to Chapters 30, 35 and 36 (Stream 5), the Council submitted that it would be appropriate to transfer provisions purporting to set noise limits for zones not within Stage 1 of the PDP to Stage 2. The Stream 5 Hearing Panel noted a number of reasons why it did not agree with that course of action. It concluded that reference to non-Stage 1 zones in the relevant rule was in error and that those references could and should be deleted under Clause 16(2)[269]. We have come to the same conclusion. In summary, if the zones are not part of Stage 1, they remain part of the ODP, and nothing in the PDP can change the provisions of the ODP. Their removal is not a substantive change to the PDP.

741. As a result, a relatively small number of submissions on notified Rule 27.5.1 require consideration at this point.

742. Following the order in which submissions are discussed in the Section 42A Report, the first zone Mr Bryce discussed was the Rural Residential Zone. He noted a submission[270] seeking reinstatement of the ODP provisions governing any Rural Residential land at the north of Lake Hayes, which would require an 8000m² lot average. Mr Bryce recommended acceptance of that submission, but the land in question is proposed to be rezoned as part of the Stage 2 Variations. The submission will need to be reconsidered in that process.

743. The second zone discussed by Mr Bryce was the Rural Zone (mislabelled Rural General in the Section 42A Report). Mr Bryce noted two submissions[271] seeking a minimum lot size be specified for subdivisions within the Rural Zone and the Gibbston Character Zone and a minimum allotment size of 5 acres (2 hectares) in the Rural Zone respectively.

744. Mr Bryce recommended rejection of both submissions, referring to the reasoning of the section 32 evaluation to the effect that the absence of a minimum lot size prevents any '*development right*' arising in these zones and emphasising the desirability of maintaining the existing approach, based on landscape considerations.

745. We note that Mr MacColl did not seek to support NZTA's submission on this point and submitter 38 did not appear at the hearing to provide us with evidence that would cause us to reconsider the approach in the Section 32 Report supported by Mr Bryce.

746. Accordingly, we agree with Mr Bryce's recommendation that these submissions should be rejected.

---

268 Minute Concerning Annotations on Maps 12 June 2017

269 Report 8 at Section 18.1

270 Submission 26

271 Submissions 719 and 38: Supported in FS1109; Opposed in FS1097 and FS1155

747. The next zone Mr Bryce discussed was the Jacks Point Zone. He noted Submission 762[272] seeking that the final specified '*minimum lot area*' should be referenced to "*all other activity areas"*.

748. Mr Bryce recommended this amendment be made in aid of efficient and effective plan administration.

749. The Stream 9 Hearing Panel has, however, identified broader issues with these provisions. Specifically, neither FP area will exist following revision of the Jacks Point Structure Plan, and the cross reference to Rule 41.5.8 should apply to subdivision in Residential Activity Areas, rather than 'other' areas. Our recommended table shows these amendments.

750. Mr Bryce also noted[273] two submissions[274] seeking amendment to the activity table in notified Rule 27.5.1 so that LDRZ land within the Queenstown Airport Outer Control Noise Boundary should have a minimum lot area of 600m². Mr Bryce recommended that these submissions be accepted in order to maintain the status quo established by ODP Plan Change 35 and thereby protect the operation of an item of regionally significant infrastructure. We note specifically the emphasis given by the Proposed RPS in that regard.

751. We agree with Mr Bryce's recommendation with the result that in that part of the table related to the renamed Lower Density Suburban Residential Zone, additional text is inserted as follows:

"Within the Queenstown Airport Air Noise Boundary and Outer Control Boundary: 600m²."

752. We note that the Hearing Panel hearing submissions on the residential zones (Stream 6) has recommended[275] that the Large Lot Residential Zone be separated into two zones (Large Lot Residential Zone A and B respectively) and that the minimum densities in these zones be 2000m² and 4000m² respectively. We recommend consequential amendment of Rule 27.6.1 accordingly. Insertion of the Coneburn Industrial Zone and special provisions for the Rural Residential Zone at Camp Hill, as recommended by the Stream 13 Hearing Panel, has likewise created a need for consequential amendments to insert minimum lot sizes for those areas. The Stream 13 Panel has also recommended deletion of the Queenstown Heights Sub-Zone, and so minimum lot sizes are no longer required for that area.

753. Finally, a consequence of the Stream 8 Hearing Panel rezoning Wanaka Airport from Rural to Airport Zone and the recommendation of that Panel that the subdivision provisions applying to the Airport Zone at Wanaka mirror those applying to the Rural Zone[276], is that the reference to "Airport Mixed Use" needs to be changed to "Airport Zone". We have not had any recommendations for other changes to the minimum lot areas in other zones from Hearing Panels considering those matters.

---

272 Opposed in FS1217, FS1219, FS1252, FS1277, FS1283 and FS1316

273 Section 42A Report at 16.1

274 Submissions 271 and 433: Opposed in FS1097 and FS1117

275 Refer Report 9A at Section 16.1

276 Refer Report 11 at Section 61.1

754. Lastly, we record that the Stage 2 Variations have proposed deletion of some line items in renumbered section 27.6 (and addition of others). Our recommended Chapter 27 greys out the existing provisions proposed to be changed.

755. More generally, the format of (now) Rule 27.6.1 was the subject of criticism[277]. It was suggested that it be redrafted to be clearer. We agree with Mr Bryce's view that the table of minimum lot sizes is clear (or in reality, as clear as it is possible to be, given the need for district-wide provisions in this area). However, we recommend both a minor change to the description of average net site area in the opening words of the rule, and an Advice note referring the reader to the rules governing non-compliance with the minimum site areas to assist readability.

756. Notified Section 27.5.1 had 7 sub-rules followed by two further rules governing subdivision associated with infill development and subdivision associated with residential development on small sites in the (now) Lower Density Suburban Residential Zone. As part of the reorganisation of the chapter recommended by Mr Bryce, these provisions have been shifted either into our renumbered Section 27.5 or into the zone and location specific rules in renumbered Section 27.7. We agree that with one exception, they are more appropriately grouped with these other provisions and we will consider them in that context. The exception is notified Rule 27.5.1.3 which related to minimum size requirements (for access lots, utilities, roads and reserves) and which more properly should remain with renumbered 27.6.1.

757. This provision was the subject of a submission[278] that sought that it also state that lots created for the specified purposes shall not be required to identify a building platform. Mr Bryce recommended rejection of this submission on the basis that the requirement for a building platform (refer renumbered Rule 27.7.8) stated that it relates to allotments created for the purposes of containing residential activity. As Mr Bryce observed, the suggested addition is therefore unnecessary and we likewise recommend rejection of the submission.

758. The end result is, however, that a renumbered Section 27.6 is limited to minimum lot area standards and we recommend that the heading of the section be amended to reflect that, and therefore to read:

"Rules – Standards for Minimum Lot Areas."

759. We record that having considered the alternatives open to us on the few matters the subject of submission in renumbered 27.6.1, we believe that the recommended provisions represent the most appropriate way to achieve the Chapter 27 objectives, and the most appropriate way to implement the policies relevant to those objectives.

8.2 Zone and Location Specific Rules

760. In his Section 42A Report, Mr Bryce noted three submissions[279] that sought that subdivision undertaken in accordance with a Structure Plan or Spatial Layout Plan identified in the PDP be a controlled activity. Notified Rule 27.4.3 provided that it is was restricted discretionary activity. Mr Bryce supported controlled activity status on the basis that a Structure Plan/Spatial Layout Plan provides a level of certainty to both proponents and decision-makers

[277] Submission 631

[278] Submission 635

[279] Submissions 456, 632 and 696: Supported in FS1097; Opposed in FS1217, FS1219, FS1252, FS1275, FS1277, FS1283 and FS1316

as to what is expected in terms of subdivision design, and the fact that the Structure Plan/Spatial Layout Plan has been identified through a Plan Change process means that opportunities, constraints and effects of the future subdivision and land use activities have already been identified.

761. We agree that where a Structure Plan or similar document has been incorporated in the PDP there are good grounds for taking a less restricted regulatory approach to subdivision that is consistent with the Structure Plan.

762. Mr Bryce suggested a number of matters of control to accompany a new controlled activity rule in his Section 42A Report, that were further refined in his reply evidence. We have no issue in principle with the matters of control other than that the language should largely, parallel that discussed in Section 2.1, but we consider that the initial description of the activity recommended by Mr Bryce needs amendment in three respects. First, Mr Bryce suggested that the cross reference to a Structure Plan should test whether subdivision is undertaken "*in accordance with"* the document. We consider that requiring consistency with the document would be a better test given that Mr Bryce proposes that in each of the following rules dealing with areas that are currently the subject of a Structure Plan or like document, consistency with the document is a suggested matter of control.

763. Secondly, the suggested rule refers to Structure Plans, Spatial Layout Plans and Concept Development Plans, reflecting the range of different documents that are already identified and included in the District Plan. We think it would be more efficient if the term "*Structure Plan"* were defined to include documents that fulfil a similar function. Ideally, a new definition would also outline the minimum requirements for a 'Structure Plan' to be included in the PDP, but as discussed earlier, the policy gap in this regard will need to be filled by a variation.

764. Thirdly, we consider that it is not sufficient that a Structure Plan is "*identified"* in the PDP. We believe it should be "*included"* within the PDP so the key aspects of subdivision design are apparent to the readers of the Plan, and there can be no doubt as to whether the requirements for controlled activity status are met. As discussed shortly, there is also a technical problem with the approach in the notified PDP because Structure Plans do not meet the tests for incorporation by reference in Clause 30 of the First Schedule.

765. In summary, therefore, we recommend inclusion of a new controlled activity rule numbered 27.7.1, to replace notified Rule 27.4.3 that reads as follows:

"Subdivision consistent with a Structure Plan that is included in the District Plan.
Control is restricted to:

a. *subdivision design, and any consequential effects on the layout of lots and on lot sizes and dimensions*
b. *internal roading design and provision, and any consequential effects on the layout of lots, and on lot sizes and dimensions;*
c. *property access and roading;*
d. *esplanade provision;*
e. *the adequacy of on site measures to address the risk of natural and other hazards on land within the subdivision;*
f. *fire fighting water supply;*
g. *water supply;*
h. *stormwater design and disposal;*
i. *sewage treatment and disposal;*

j. energy supply and telecommunications, including adverse effects on energy supply and telecommunication networks;
k. open space and recreation;
l. ecological and natural values;
m. historic heritage;
n. easements;
o. any additional matters relevant to achievement of the objectives and policies in part 27.3 of this Chapter.

766. Associated with this Rule we recommend to the Stream 10 Hearing Panel that a new definition be inserted in Section 2 of the PDP worded as follows:

"Structure Plan means a plan included in the District Plan, and includes Spatial Development Plans, Concept Development Plans and other similarly titled documents."

767. Notified Section 27.7.3 is headed "*Kirimoko Structure Plan – Matters of Discretion for Restricted Discretionary Activities".*

768. Submission 656 sought enlargement of the discretion provided over earthworks and greater specification of aspects of subdivision design the subject of discretion.

769. Initially, Mr Bryce recommended acceptance of the submission[280].

770. By his reply evidence, Mr Bryce had come to the view that the specific matters of control needing to be considered in relation to the Kirimoko could be substantially reduced. Mr Bryce did not discuss in his reply evidence his reasons for coming to this conclusion, but we infer that some of the matters were considered redundant in the light of other recommended PDP provisions (particularly the matters of assessment Mr Bryce recommended be introduced as part of his reply evidence).

771. We agree with that and we think that Mr Bryce's recommended rule might be further pruned to remove duplication. In particular, given our recommendation that consistency with a structure plan should be a precondition to Rule 27.7.1, it is not necessary to refer to such consistency as an additional matter of control in this rule. Similarly, given that subdivision design is a matter of control under Rule 27.7.1, further reference to it is not required in this rule.

772. We also consider that some amendment of the language is required to reflect the fact that the rule is specifying matters of control rather than (as was the case for notified Section 27.7.3) matters of discretion, to which particular regard had to be had.

773. In summary, therefore, we recommend that section 27.7.3 be renumbered 27.7.2 and revised to read:

"In addition to those matters of control under Rule 27.7.1, any subdivision of the land shown on the Kirimoko Structure Plan included in Part 27.13, the following shall be additional matters of control:
a. *roading layout;*
b. *the provision and location of walkways in the green network;*
c. *the protection of native species as identified on the Structure Plan as green network."*

280 Section 42A Report at 22.12

774. Because this section of the PDP contains other provisions related to Kirimoko, we think it would be clearer if all of those provisions were collected under a single heading. We have therefore numbered the rule above 27.7.2.1 under the heading "27.7.2 – Kirimoko". We will discuss the balance of provisions under that heading shortly.

775. Rule 27.7.3.1 in Mr Bryce's revision of Chapter 27 (relocated from notified Policy 27.7.6.1) related to the Ferry Hill area. The Stage 2 Variations propose deletion of these provisions and so we need say no more about them

776. Mr Bryce recommended that the next provision in his reformatted section 27.7 relate to the Jacks Point Zone. By his reply evidence, Mr Bryce had recommended that the sole additional matter of control that needed to be referenced, consequential on other provisions he had recommended, was consistency with the Jacks Point Zone Structure Plan. For the reasons discussed above in relation to the Kirimoko area, it is not necessary to provide another rule solely for that purpose we do not therefore recommend inclusion of the rule suggested by Mr Bryce.

777. The next two rules Mr Bryce suggested in this part of the revised Chapter 27 related to the Peninsula Bay area and were derived from notified Section 27.8.2.1. As notified, that provision read:

"No subdivision or development shall take place within the Low Density Residential Zone at Peninsula Bay unless it is consistent with an Outline Development Master Plan that has been lodged with and approved by the Council."

778. The sole primary submission on Section 27.8.2.1 supported its continued inclusion[281]. While two further submissions[282] opposed that submission, given the permissible ambit of further submissions discussed in the Hearing Panel's Report 3, these further submissions do not take the matter further.

779. This rule needs to be read together with heading of Section 27.8 and Section 27.8.1 that preceded it.

780. The heading of Section 27.8 as notified was:

"Rules – Location Specific Standards."

781. Section 27.8.1 contained a general provision stating that activities not meeting the standards specified in Section 27.8 should be non-complying activities, unless otherwise specified.

782. Mr Bryce recommended that consequential on his recommended revision of the format of Chapter 27, Section 27.8.2.1 should be converted to two rules, one a controlled activity rule (for subdivision or development consistent with the Outline Development Master Plan) and the second, a non-complying rule (for development which is inconsistent with the Outline Development Master Plan).

783. Unlike the rules that we have been discussing however, the Outline Development Master Plan for Peninsula Bay is not contained in the PDP.

---

281 Submission 378

282 FS1049 and FS1095

784. Nor is it even clear whether this is an existing document or one that might be "*approved"* by the Council in future. The way that notified Section 27.8.2.1 is framed, however, suggests that even if an Outline Development Master Plan has already been approved, there might yet be a successor. Be that as it may, the reference in the notified PDP to this Outline Development Master Plan, and the suggestion that the activity status of future subdivision and development should be dependent on whether there is such a plan (and whether the subdivision or development in question is consistent with it), raises questions as to whether this is permissible in the light of the Environment Court decisions on declarations sought in relation to the use of framework plans in the context of the Proposed Auckland Unitary Plan[283] discussed in our Report 1.

785. Given the conclusions reached by the Hearing Panel in Report 1, this then requires us to determine what we can and should do with Section 27.8.2.1 of the notified PDP given that the only submission on it specifically seeks its retention.

786. Section 27.8.2.1 is framed in directive terms rather than as a standard in the ordinary sense of that term. From that point of view, it does not sit easily within the notified section 27.8.

787. Nor is it altogether clear to us what the rule status is intended to be for subdivision or development that is consistent with an approved Outline Development Master Plan. Mr Bryce has treated the Peninsula Bay "*Outline Development Master Plan"* as a Structure Plan, which might suggest that under the notified PDP, it fell within Rule 27.4.3. If that were the case, it would be a restricted discretionary activity with discretion restricted to matters specified in Part 27.7. Rule 27.4.3 referred, however, to a structure plan or spatial layout plan, which does not suggest an intention that the rule apply to all plans that might be considered to fall within a generic reference to structure plans. In addition, the only matters specified in Part 27.7 related to Peninsula Bay refer to provision of public access and are not framed as matters of discretion, so it would not seem to have been intended that Rule 27.4.3 would apply to the Peninsula Bay area on that ground also.

788. The end result therefore, is that we consider that under the notified PDP, subdivisions would fall within the default discretionary activity rule if consistent with an approved Outline Development Master Plan, and if not, then as non-complying activities.

789. Given our conclusion that subdivisions in most zones might appropriately be dealt with as restricted discretionary activities, we consider that the best outcome in the light of the Environment Court's guidance in the Auckland framework plan cases is that Section 27.8.2.1 be deleted as a consequential amendment to our acceptance (in part) of submissions seeking that all subdivision activities be controlled activities, and Mr Bryce's recommendation of two rules to be inserted in substitution in revised section 27.7 not be accepted. That will leave subdivision in the Peninsula Bay area as a restricted discretionary activity under our recommended Rule 27.5.7. If, in the future, the Council and/or the Peninsula Bay JV wish that further subdivision be considered as a controlled activity, then the Outline Development Master Plan applying to that area will need to be incorporated in the PDP by way of variation or plan change. Because, however, the end result is beneficial to the submitter, compared to the relief sought, we have classified the submission as 'Accepted in Part'.

790. The next provision recommended by Mr Bryce related to the Kirimoko area. The provisions Mr Bryce recommended are derived from notified Section 27.8.3.

---

283 *Re Application for declarations by Auckland Council* [2016] NZ EnvC 056 and [2016] NZ EnvC 65

791. Those provisions were the subject of a specific submission[284] that sought inclusion of an additional standard related to post development stormwater runoff (that would require that during a 1 in 100year event stormwater runoff is no greater than the pre-development situation).

792. Mr Bryce recommended rejection of that submission on the basis of the Council's engineering evidence (initially Mr Glasner, but adopted by Mr Wallace) that the Council's Code of Practice requires that post development stormwater runoff be no greater than pre-development runoff up to and including in a 1 in 20-year event. Mr Wallace's evidence was that designing stormwater runoff management systems for a 1 in 100 year event would create a significant level of over-design which would in turn add significantly to the Council's maintenance costs.

793. The submitter in question did not appear to support its submission with evidence that would contradict that provided by Council. On this basis, we agree with Mr Bryce's recommendation.

794. Mr Bryce therefore suggested only grammatical changes to frame the notified provisions more clearly as standards or conditions, failure to comply with which would properly cause the activity to default to non-complying status.

795. We agree with the suggested changes. The only additional change we recommend is to correct a typographical error (referring to the Rural General Zone), to amend the cross reference to the Structure Plan to be consistent with the language of 27.7.2.1 and (as discussed above) to relocate the rule to follow Rule 27.7.2.1. Accordingly, we recommend inclusion of new **Non-Complying** Rules 27.7.2.2-4 text, reading:
"Any subdivision that does not comply with the principal roading layout and reserve network depicted in the Kirimoko Structure Plan included in Part 27.13 including the creation of additional roads, and/or the creation of accessways for more than 2 properties.

Any subdivision of land zoned Rural proposed to create a block entirely within the Rural Zone to be held in a separate Certificate of Title;

Any subdivision of land described as Lots 3 to 7 and Lot 9 DP300734, and Lot 1 DP304817 (and any title derived therefrom) that creates more than one lot that has been included in its legal boundary land zoned Rural."

796. The next rule recommended by Mr Bryce related to the Bob's Cove Rural Residential Sub-Zone and was derived from notified Sections 27.8.5.1 and 27.8.5.2. Those provisions were not the subject of specific submission by any party and Mr Bryce recommended that they be reproduced unchanged save for the formatting necessary to express them more clearly as standards/conditions. We agree, and our recommended revised Chapter 27 includes Mr Bryce's provisions in a new Rule 27.7.3.

797. The next rule recommended by Mr Bryce related to the Ferry Hill Rural Residential Sub-Zone and was derived from notified Sections 27.8.6.1-8 inclusive. These provisions are proposed to be deleted in the Stage 2 Variations and so we need not consider them further.

798. The next rule recommended by Mr Bryce related to Ladies Mile and derived from notified Section 27.8.7.1. There were no specific submissions seeking change to these provisions and

284 Submission 656

Mr Bryce recommended that they be amended only to express them more clearly as standards or conditions, failure to comply with which might prompt a shift to non-complying status.

799. We agree, and our revised Chapter 27 shows these provisions as recommended Rule 27.7.4.

800. The next rule recommended by Mr Bryce related to Jacks Point and derived from notified Sections 27.8.9.1 and 27.8.9.2.

801. These provisions were the subject of two submissions. The first[285] sought minor changes to 27.8.9.2 by way of clarification rather than substantive change. Mr Bryce recommended acceptance in part with the suggestions made by the submitter, that were in practice subsumed within the reformatting that Mr Bryce recommended.

802. The second submission[286] sought that Rule 27.8.9.2 make provision, where discretion was restricted to traffic and access, to also include the ability to provide and support public transport services, infrastructure, and connections. Mr Bryce recommended rejection of this submission on the basis that as the rule in question relates to the Jacks Point Zone conservation lots, within the identified Farm Preservation Activity Area, the matters sought to be referenced by the submitter were not applicable.

803. Mr Bryce recommended retention of the existing provisions with consequential amendments reflecting the reformatting exercise he had undertaken in response to more general submissions discussed earlier.

804. Mr Bryce also recommended specific recognition of the Hanley Downs part of Jacks Point, accepting in this regard, Mr Wells evidence discussed earlier in the context of recommended Rule 27.5.17.

805. We largely agree with Mr Bryce's recommendations. Notified rule 27.8.9.2 is, however, no longer required following deletion of the FP1 Activity Area from the Jacks Point Structure Plan. It should be deleted as a consequential change. In addition, as well as consequential renumbering and reformatting, we recommend expanding the matters of discretion so that they are consistent with our recommendations in relation to Rule 27.7.1, and address the matters made relevant by recommended Policies 27.3.7.4 and 27.3.7.7. We also suggest amending the text to refer to the Jacks Point Structure Plan as being contained in Part 27.13 and insert a new Rule 27.7.5.3, reflecting a recommendation we have received from the Stream 13 Hearing Panel[287].

806. Mr Bryce next recommended a rule to govern subdivision within the Millbrook Resort Zone that is inconsistent with the Millbrook Resort Zone Structure Plan, reflecting his observation that there does not appear to be any rule governing non-compliance with that Structure Plan. Mr Bryce recommended that subdivision in this case be a discretionary activity. Given that operation of notified Rule 27.4.1 would have had that effect in any event, this is not a substantive change. We agree with Mr Bryce that it is helpful, however, to be specific in this case. Accordingly, we recommend inclusion of a new Rule 27.7.6 along the lines suggested by Mr Bryce. The only amendments we would suggest would be that the rule cross reference the Millbrook Resort Zone Structure Plan as located in Chapter 27 and correction of a minor typographical error.

---

285 Submission 762: Opposed in FS1217, FS1219, FS1252, FS1277, FS1283 and FS1316

286 Submission 798

287 Refer Report 17-8Part I

807. We should note that we recommend inclusion of three additional site/zone specific rules under this heading, the first two related to the Coneburn Industrial Zone and the Frankton North area and numbered 27.7.7 and 27.7.9 respectively, consequential on the recommendations of the Stream 13 Hearing Panel, and the last related to the West Meadows Drive area and numbered 27.7.8, reflecting recommendations from the Stream 12 Hearing Panel.

808. Lastly, and more generally, we note that many of the site-specific standards in this part of Chapter 27 do not fit easily into the structure we recommend on Mr Bryce's advice. We suspect they may be legacy provisions rolled over from the ODP. Renumbered Rule 27.7.4.1 a. for instance, was notified as a standard governing subdivision on Ladies Mile. It does not read as a standard and it would be difficult to apply as such. There were no submissions on it, and hence Mr Bryce (understandably) did not focus on it. Even if there had been a submission giving us some scope to amend (or delete) it, we were unsure what role it was intended to have. We recommend that the Council review the provisions in this section to identify any that are past there 'use-by' date, or that need reframing to meet their intended purpose.

8.3 Building Platform and Lot Dimensions

809. Mr Bryce next recommended inclusion of rules relocated from notified Rule 27.5.1.1 (related to building platforms) and 27.5.1.2 (related to site dimensions).

810. Addressing first notified Rule 27.5.1.1, this was the subject of one submission[288] seeking that the maximum dimensions of a building platform in the Rural Lifestyle Zone be specified to be 600m² (rather than 1000m²) as at present. Mr Bryce recommended rejection of that submission on the basis that flexibility as to building platform size is often required.

811. In our discussion of the restricted discretionary activity rule we have proposed for subdivision within the Rural Lifestyle Zone (27.5.8), we have recommended retention of a discretion over the size of building platforms. We regard that as a more appropriate solution than arbitrarily reducing the maximum building platform size in the Rural Lifestyle Zone, particularly given that the submitter did not appear to provide us with evidence that would have given us confidence that a reduced maximum building platform size would be appropriate in every instance.

812. Accordingly, we agree with Mr Bryce's recommendation that notified Rule 27.5.1.1 might be retained unamended, save only for relocating it in Section 27.7, and numbering it 27.7.10.

813. Turning to notified Rule 27.5.1.2, the only submissions on this provision[289] supported retention of particular aspects of the rule.

814. Mr Bryce recommended, however, deletion of specific reference to the Township Zone on the basis that it was not part of Stage 1 of the PDP. For the reasons discussed earlier, in relation to revised section 27.6, we agree that this is the appropriate outcome. The only other amendment to notified provision 27.5.1.2 recommended Is to insert the word *"lots"* rather than *"sites"* for clarity and to renumber it 27.7.11.

815. Before going on the next rule Mr Bryce recommended, we need to address the position if either of renumbered rules 27.7.8 and 27.7.9 are not complied with. Under the notified plan, this fell within Rule 27.4.2 as a non-complying activity.

---

288 Submission 367: Opposed in FS1150 and FS1325

289 Submission 208, 596, 775, 803

816. We have not identified any submission seeking to change that position. We therefore recommend a new Rule 27.7.12 be inserted as follows:

"Subdivision applications not complying with either Rule 27.7.10 or Rule 27.7.11 shall be non-complying activities."

8.4 Infill subdivision

817. The next rule Mr Bryce discussed related to subdivision associated with infill development which he recommended be relocated from notified Rule 27.5.2.

818. This rule was the subject of a number of submissions. Several submissions[290] sought that the definition of an established residential unit should turn on whether construction has reached the point of roof installation rather than whether a Building Code of Compliance certificate has been issued.

819. In addition, Submission 275 sought to amend 27.5.2 so that in the High Density Residential Zone the minimum lot size need not apply to any lots being created which contain a residential unit, provided that any vacant lots also being created do meet the minimum lot size. Lastly, Submissions 208 and 433[291] sought deletion of the rule.

820. In his Section 42A Report, Mr Bryce acknowledged that the submitters opposing recognition of a Building Code of Compliance Certificate as the sole determinant of whether a residential unit has been established had a point, given that the concept of Building Code of Compliance Certificates dates only from 1992, and therefore a large number of "*established"* residential units will not have such a certificate. He recommended that the rule be made more explicit that completion of construction to not less than the installation of the roof be an alternative to issue of a Building Code of Compliance Certificate as a means to define an established residential unit for the purposes of this rule. We agree with his recommendation in that regard.

821. Mr Bryce did not explicitly discuss Submission 275 in his Section 42A Report and the submitter did not appear to elaborate on the submission.

822. Reading the submission in context, it appears to us that the submission on this point is associated with a broader request for relief related to (and reducing) the minimum lot areas for the High Density Residential Zone[292]. We think that that is the appropriate context for consideration of the merits of the submission rather than broadening the ambit of this particular rule, which essentially sought to recognise the reality of existing lawful residential developments and provide that title boundaries might be brought into line with those developments.

823. The breadth of Submission 169 is also difficult to address in this context – particularly in the absence of any evidence from the submitter that might satisfy us that the effects of infill development can be addressed by conditions in all locations (and identifying appropriate areas of control).

---

290 Submissions 166, 169, 389 and 391

291 Opposed in FS1097 and FS1117

292 Submission 169 also appears to be linked to more wide-ranging relief, seeking controlled activity status for a single infill unit subdivision in any zone.

824. Deletion of the rule sought in Submission 433 was also part of broader relief; in this case, which sought to carry over the provisions of ODP Plan Change 35 into the PDP and thereby protect the ongoing operations of Queenstown Airport. As we will discuss shortly, Mr Bryce recommended an amendment to the following rule to address the submission. When the representatives of the QAC appeared before us, Ms O'Sullivan giving planning evidence for the submitter, supported that relief and did not provide evidence suggesting why it should be broadened to this particular rule. This accorded with our understanding of QAC's position which sought to avoid intensification of residential activities within the defined Airport noise boundaries. Given that this particular rule relies on dwellings already having been established, aligning the title position with the existing pattern of development would appear to have no effect on the airport's operations.

825. The reasons for Submission 208 indicated that the concern of that submitter was for maintenance of amenity in the High Density Residential Zone. Mr Bryce did not discuss the submission specifically and the submitter did not provide evidence to support its submission. In the absence of an evidential basis for the submission, we do not recommend deletion of this provision.

826. In summary, therefore, we accept Mr Bryce's recommended rule which is numbered 27.7.13 in our revised Chapter 27, save only for correction of internal cross reference numbering and amending the reference to the former Low Density Residential Zone.

827. The revised rule we recommended is therefore worded:

"The specified minimum allotment size in Rule 27.6.1, and minimum dimensions in Rule 27.7.9 shall not apply in the High Density Residential Zone, Medium Density Residential Zone and Lower Density Suburban Residential Zone where each allotment to be created, and the original allotment, all contain at least one established residential unit (established meaning a Building Code of Compliance Certificate has been issued or alternatively where a Building Code of Compliance Certificate has not been issued, construction shall be completed to not less than the installation of the roof)."

828. The next rule Mr Bryce discussed was derived from notified Rule 27.5.3.1 and related to circumstances where the minimum allotment size in the (now) Lower Density Suburban Residential Zone does not apply.

829. Submissions on it sought variously clarification of the interrelationship with Rule 27.5.2[293] (now 27.7.11), deletion and a more enabling approach generally[294], deletion[295], and revision to make the rule "*more practical"*[296].

830. Mr Bryce did not discuss the apparent overlap between Rules 27.5.2 and 27.5.3 (to the extent both applied to the Lower Density Suburban Residential Zone). We think there is a logic to the distinction between the rules given that Rule 27.5.2 applied in the three specified zones and addressed the situation where residential units actually exist, whereas Rule 27.5.3 was limited to the (now) Lower Density Suburban Residential Zone and addressed the situation where residential units were consented but not constructed.

---

293 Submission 169

294 Submission 166

295 Submission 433: Opposed in FS1097 and FS1117

296 Submission 453

831. We do not recommend acceptance of Submission 166. The submitter did not appear to amplify their submission and we consider that we have addressed the more general issues it poses elsewhere in this report.

832. The request for deletion by Submission 433 was addressed by Mr Bryce's recommendation that the rule not apply within the Airport noise boundaries defined in the Plan.

833. We agree with that approach although we consider it needs to be clearer that any reference to the Air Noise Boundary and Outer Control Boundary should be as defined in the planning maps.

834. Lastly, Mr Duncan White gave evidence in support the submissions of Patterson Pitts Partners (Wanaka) Limited[297]. He explained that the reference to more practical provisions related to the changes to the land transfer system (including the establishment of electronic titles for land) and the interrelationship of section 221 registrations with certification under section 224(c). For our part, we were grateful for the assistance provided by Mr White and his colleague Mr Botting on these matters. Mr Bryce recommended acceptance of the suggestions in the submission and we concur. Mr White raised other issues of the practical application of this rule. In particular, he queried whether it was appropriate for District Plan requirements like the maximum building height and the limitation of one residential unit per lot to be locked in by consent notices. He also noted the potential issues posed by changes of design requiring a cancellation or variation of the consent notice with consequent costs on the landowner. Lastly, Mr White queried the position if a consent or certificate of compliance has lapsed. Mr Bryce did not recommend additional changes to address these issues. In his reply evidence[298], he expressed his view that any additional costs associated with the need to vary a consent notice were outweighed by the benefits derived from investment certainty.

835. Many of the points about which Mr White expressed concern are in landowners' own hands to address. Certificates of compliance and land use consents might be granted for generic designs. How specifically or how widely an application for either is framed is a matter for a landowner. Similarly, if a landowner has a certificate of compliance or land use consent that is in danger of lapsing, they can apply to extend the lapse period under section 125 of the Act.

836. While Mr White had a point regarding the desirability of using consent notices only to bind the subdivider to planning requirements that require compliance on an ongoing basis, these particular requirements (building height and number of lots) are key to the effects of residential development on an ongoing basis. We therefore agree with Mr Bryce's recommendation in this regard.

837. The only additional amendments we recommend are a minor grammatical change (to refer to '*the'* residential unit(s), consistent with the first part of the rule) amendment of the zone name consequential on the Stream 6 Hearing Panel's Report, a clarification of the type of resource consent required, and some internal renumbering and reformatting for consistency.

838. In summary, therefore, we recommend that notified Rule 27.5.3 be renumbered 27.7.14 and amended to read:

"Subdivision associated with residential development on sites less than 450m² in the Lower Density Suburban Residential Zone.

297 Submission 453

298 N Bryce, Reply Statement at 10.4

27.7.14.1 In the Lower Density Suburban Residential Zone, the specified minimum allotment size in Rule 27.6.1 shall not apply in cases where the residential units are not established, providing:

a. *a certificate of compliance is issued for the residential unit(s) or,*
b. *a land use consent has been granted for the residential unit(s).*

In addition to any other relevant matters, pursuant to s221 of the Act, the consent holder shall register on the Computer Freehold Register of the applicable allotments:

a. that the construction of any residential unit shall be undertaken in accordance with the applicable certificate of compliance or land use consent (applies to the additional undeveloped lot to be created);
b. the maximum building height shall be 5.5m (applies to the additional undeveloped lot to be created);
c. there shall be not more than one residential unit per lot (applies to all lots).

27.7.14.2 Rule 27.7.14.1 shall not apply to the Lower Density Suburban Residential Zone within the Queenstown Airport Air Noise Boundary and Outer Control Boundary as shown on the planning maps."

8.5 Servicing and Infrastructure Requirements

839. The next rule Mr Bryce discussed are a series of provisions contained in notified Section 27.5.4 which was entitled "*Standards relating to servicing and infrastructure",* but which are in fact limited to water supplies. These provisions were the subject of submissions from the telecommunication companies[299] seeking insertion of a new standard regarding telecommunication reticulation and, in one case, electricity connections. Putting those matters aside for the moment, the only submissions on the existing provisions related to water supply supported them[300], although Submission 166 did seek clarification as to the Council's intention regarding what capacity potable water supply should be available to lots where no communal owned and operated water supply exists. The submission observed that the rule appeared to be at variance from current Council standards.

840. Mr Wallace provided the answer to that question: the current Council Code of Practice requires provision for 2100 litres per day, which covers both potable and irrigation water supply, and is designed for a reticulated system. Mr Wallace advised that where a reticulated system is not available, the minimum requirement is 1000 litres per day (as per the notified rule) with the subdivider needing to identify what supply will be available for irrigation separately.

841. Mr Bryce however recommended that provisions in the notified Rule 27.5.4.1 referring to zones not covered by Stage 1 of the PDP process be deleted. For the reasons already discussed, we concur and recommend those references be deleted pursuant to Clause 16(2). In the case of the reference to the Corner Shopping Centre Zone, this should be corrected to the Local Shopping Centre Zone on the same basis, as should the reference to the Airport Mixed Use Zone be changed to Airport Zone - Queenstown.

---

299 Submissions 179, 191, 421 and 781: Supported in FS1132; Opposed in FS1097, FS1117 and FS1164

300 Submissions 453, 586, 775 and 803

842. Apart from a minor grammatical change in the opening words of what was notified Rule 27.5.4.1, and some internal renumbering for consistency, the only substantive amendments we recommend are to make the first rule (providing that all lots must be connected to a reticulated water supply) subject to the third rule (which provides the position where no reticulated water supply exists) and to correct the references to the Millbrook Resort and Waterfall Park Zones.

843. In summary, therefore, we recommend that notified Rules 27.5.4.1-3 be renumbered 27.7.15.1-3 and amended to read:

> *"27.7.15.1 Subject to Rule 27.7.15.3, all lots, other than lots for access, roads, utilities and reserves except where irrigation is required, must be provided with a connection to a reticulated water supply laid to the boundary of the net area of the lot, as follows:*
>
> *To a Council or community owned and operated reticulated water supply:*
> *a. Residential, Business, Town Centre, Local Shopping Centre Zones and Airport Zone - Queenstown;*
> *b. Rural-Residential Zones at Wanaka, Lake Hawea, Albert Town, Luggate and Lake Hayes;*
> *c. Millbrook Resort Zone and Waterfall Park Zone.*
>
> *27.7.15.2 Where any reticulation for any of the above water supplies crosses private land, it should be accessible by way of easement to the nearest point of supply.*
>
> *27.7.15.3 Where no communal owned and operated water supply exists, all lots other than lots for access, roads, utilities and reserves, shall be provided with a potable water supply of at least 1000 litres per day per lot."*

844. Turning to infrastructure services other than water supplies, Mr Bryce drew our attention in his Section 42A Report to the interrelationship with renumbered Policy 27.2.5 which indicates an intention to generally require connections to electricity supply and telecommunication systems at the boundary of lots. He recommended a new standard related to provision of telecommunication reticulation to allotments in new subdivisions.

845. We discussed with Mr Bryce whether the suggested standard was consistent with the policy emphasis in recommended Policy 27.2.5.16 on providing flexibility to cater for advances in telecommunication and computer media technology. Mr Bryce's view was that it was broadly consistent. Mr Bryce also agreed with our suggestion that it was desirable to include an equivalent rule/requirement related to electricity.

846. The submissions from telecommunications companies sought to introduce an emphasis on telecommunication reticulation meeting the requirements of the network provider. We also note further submissions on this point seeking to emphasise the commercial nature of the arrangements between landowners and telecommunication service providers and the potential, given changing technology, for self-sufficiency[301].

847. In some ways, electricity supply is rather easier to address than telecommunications. Unless a property is '*off-grid',* there must be an electricity line to the boundary, and in our view, this should be a subdivision standard.

---

[301] Further submissions 1097, 1132, 1117 and 1164

848. With telecommunication technology increasingly offering connection options not involving hard wiring, this is somewhat more problematic. We are also wary of recommending rules that enable the telecommunication companies to leverage the position for their commercial advantage.

849. We have come to the view that while subdivision standards might legitimately provide for hard-wired telecommunication reticulation in urban environments and Rural Residential zoned land, in Rural Lifestyle, Gibbston Character and Rural zoned areas, greater flexibility is required.

850. In summary, we recommend amendments to the new rule suggested by Mr Bryce to split it into three under a new heading "*Telecommunications/Electricity",* numbered 27.7.15.4-6, and worded as follows:

"Electricity reticulation must be provided to all allotments in new subdivisions (other than lots for access, roads, utilities and reserves).

Telecommunication services must be available to all allotments in new subdivisions in the Rural Zone, Gibbston Character Zone and Rural Lifestyle Zone (other than lots for access, roads, utilities and reserves).

Telecommunication reticulation must be provided to all allotments in new subdivisions in zones other than the Rural Zone, Gibbston Character Zone and Rural Lifestyle Zone (other than lots for access, roads, utilities and reserves)."

851. Before leaving revised Section 27.7, we should address the heading for the whole section. Mr Bryce recommended that it be headed "*Rules – Zone and Location Specific Standards".* Many of the provisions in this section are not 'standards' in the ordinary sense of the word. We recommend that the heading be amended to "Zone and Location Specific Rules".

8.6 Exemptions

852. In Mr Bryce's recommended revised Chapter 27, the next section (numbered 27.8) was entitled "Rules – *Exemptions"* which was then amplified with a statement (numbered 27.8.1):

"The following activities are permitted and shall not require resource consent."

853. This initial statement was derived from notified Section 27.6.1. Consequent on Mr Bryce's recommendation (that we support) that Rule 27.6.1.1 be transferred into the rule table in Section 27.5, the only remaining provision from what was Section 27.6 related to the provision of esplanade reserves or strips.

854. The only submissions on Rule 27.6.1.2 supported the rule in its current form[302], but Submission 453 queried whether the rule should have its own heading.

855. While Mr Bryce did not feel the need to amend what was 26.6.1, we consider that the submission made a valid point. Notified Rule 27.6.1.2 did not describe a permitted activity not requiring a resource consent. What it did was identify exemptions from the requirement to provide an esplanade reserve or strip, and the heading of the rule should say that. The more

[302] See Submissions 453, 635 and 719

general heading might also usefully be clarified given that the section now identifies only one exemption.

856. Secondly, the language of notified Rule 27.6.1.2 was quite convoluted. Paraphrasing section 230(3) of the Act, it stated that unless provided otherwise in a rule of a District Plan, where any allotment of less than 4 hectares is created by a subdivision, an esplanade reserve is normally required to be set aside. The purpose of Rule 27.6.1.2 was clearly to make such provision and we consider that that might be stated much more clearly than it is at present. In addition, the cross reference to activities under former Rule 27.6.1.1 needs to be changed to refer to activities provided for in renumbered Rule 27.5.2.

857. In summary, therefore, we recommend that revised section 27.8 of the PDP be worded as follows:

"27.8 Rules – Esplanade Reserve Exemption

27.8.1 Esplanade reserves or strips shall not be required where a proposed subdivision arises solely due to the land being acquired or a lot being created for a road designation, utility or reserve, or in the case of activities authorised by Rule 27.5.2."

858. In Mr Bryce's revised recommended Chapter 27, two other provisions were suggested to be inserted within section 27.8 worded as follows:

"27.8.2 Industrial B Zone;
a. Reserved for Stage 2 of the District Plan review.

27.8.3 Riverside Stage 6 – Albert Town:
a. Reserved for Stage 2 of the District Plan review."

859. We suspect that these provisions were left in Mr Bryce's recommended Chapter 27 in error. Clearly they do not fit the suggested heading to Section 27.8 (Rules – Exemptions).

860. Nor do they actually say anything. At most they are placeholders. As such, we do not recommend they be included.

8.7 Assessment Criteria

861. The following section (27.9 in Mr Bryce's suggested revised Chapter 27) is a new section entitled "*Assessment Matters for Resource Consents"*.

862. The background to this particular part of the subdivision chapter was discussed in section 5 of Mr Bryce's reply evidence. As Mr Bryce noted, one of the legal submissions made by Mr Goldsmith[303] was to query whether Chapter 27 as notified created legal issues as a result of the extensive use of objectives and policies as the basis for assessment of subdivision applications, as opposed to using assessment criteria (as is the case under the ODP). Mr Bryce's reply evidence also recorded that Mr Goldsmith highlighted concerns that a number of the "*matters of discretion"* were framed in fact as assessment criteria.

863. We discussed with Mr Goldsmith the potential to employ the structure used within the Proposed Auckland Unitary Plan, which included assessment matters for controlled activity

[303] On behalf of GW Stalker Family Trust and Others (Submissions 430, 515, 523, 525, 530, 531, 535 and 537, FS1256)

and restricted discretionary activity rules within both urban and rural subdivision chapters as a means to supplement the objectives and policies. Mr Goldsmith thought that we might use the wording of that Plan, subject to confirming scope.

864. We asked Mr Bryce to consider these matters and to advise us whether, in his opinion, the understanding and implementation of Chapter 27 would be improved with insertion of appropriate assessment criteria. His conclusion was that this would be the case and he provided us with draft provisions which we might consider recommending. Given the time pressures Mr Bryce was under, this was a significant undertaking, and we express our thanks for his work on this aspect of his reply evidence, which we have found of particular assistance.

865. Mr Bryce noted that the suggested assessment criteria responded to requests in submissions both for clear guidance for Council planning officers processing applications[304] and to the large number of submissions seeking inclusion of the provisions of the ODP Chapter 15 in whole or in part that we have already discussed[305].

866. We also consider that inclusion of assessment criteria is consequential on our recommendation to accept Mr Bryce's recommendation and provide a more permissive rule regime for subdivisions than in the notified PDP (responding in that regard to the very large number of submissions seeking that outcome).

867. As Mr Bryce recorded, his recommended assessment criteria did not seek to reintroduce significant volumes of assessment matters reflective of those within the ODP, but rather sought to achieve an appropriate balance between effective guidance to plan users and administrators, while still seeking to ensure that the PDP is streamlined[306].

868. Mr Bryce also recommended adoption of an approach advanced within the Proposed Auckland Unitary Plan whereby relevant policies are cross referenced within the assessment matters. We agree with Mr Bryce that this approach is advantageous, because it provides an effective link between the policies and supporting methods.

869. Lastly, we note that inclusion of assessment criteria properly so called has enabled Mr Bryce to remove an unsatisfactory feature of the notified Chapter 27 commented on by Mr Goldsmith: *"assessment criteria"* which are mislabelled as matters of discretion or like provisions.

870. We do not intend to review all of the assessment criteria recommended by Mr Bryce in detail, but rather to identify where, in our view, Mr Bryce's recommendations need to be amended and/or supplemented.

871. The first point that we would note is that we consider it necessary to revise the headings Mr Bryce had suggested in order that the new Section 27.9 might have its own numbering system, albeit cross referenced to the rules to which each set of assessment criteria relate.

872. The second general set of amendments that we recommend is to amend the assessment criteria where necessary, to express each point more clearly as a question or issue to which Council staff should direct themselves.

---

304 Submission 370

305 Mr Goldsmith also directed us to those submissions as providing a jurisdictional basis for adopting the same approach as the Proposed Auckland Unitary Plan.

306 N Bryce Reply Statement at 5.8

873. In our renumbered Sections 27.9.3.1 and 27.9.3.2 (related to revised Rules 27.5.7 and 27.5.8 respectively) we have added assessment criteria as a consequential change reflecting the additional changes we have recommended to those rules to insert a discretion related to reverse sensitivity effects on infrastructure.

874. Similarly, we recommend amendment to delete assessment criteria recommended by Mr Bryce related to activities affecting electricity sub-transmission lines, reflecting our recommendation as above, that this not be the subject of a separate rule. We have made other more minor amendments to Mr Bryce's recommended assessment criteria to cross reference our recommended revisions to the policies and rules.

875. We consider that Mr Bryce's recommended assessment criteria for the Jacks Point Zone need amendment to reflect deletion of the rule related to subdivisions in the FP-1 area. As discussed in section 5.10 above, we recommend that most of the 'assessment criteria' recommended by Mr Bryce be returned to what is now section 27.3.7.

876. We also recommend use of the defined term "*Structure Plan"* that we have suggested to the Stream 10 Hearing Panel rather than seeking to describe all of the various plans of similar ilk.

877. Where we have recommended deletion of location-specific rules as above (or where they have been deleted by the Stage 2 Variations), we have not included assessment criteria Mr Bryce has suggested related to those rules.

878. Lastly, we have inserted a new set of assessment criteria recommended by the Stream 12 Hearing Panel in relation to the new Controlled Activity rule discussed above, applying to the West Meadows Drive area.

879. The end result, however, is that recommended Section 27.9 contains a set of assessment criteria that in our view will assist implementation of the objectives and policies and is the best way to implement those policies.

8.8 Notification

880. Turning to notification issues, this was dealt with in notified Section 27.9. As a result of the reorganisation of the Chapter, the parallel provisions are in Section 27.10 of our recommended version of the Chapter.

881. Relevant submissions included:
   a. A request that all subdivisions in the Lake Hawea area be notified[307];
   b. Deletion of provision creating potential for notification where an application site adjoins a state highway[308];
   c. Insertion of a requirement for restricted discretionary and discretionary subdivisions in the (now) Lower Density Suburban Residential Zone to be supported with affected party approval before they are considered on a non-notified basis[309];
   d. Addition of the Ski Area Sub-Zone as an additional category of non-notified applications[310];

307 Submission 272
308 Submission 275
309 Submission 427 and 406: Opposed in FS1261
310 Submissions 613 and 610

e. Addition of subdivision of sites within the Queenstown or Wanaka Airport air noise boundaries within the category of applications that are potentially notified[311];
f. Provision for notification where there is a need to assess natural hazard risk[312].

882. Mr Bryce recommended that consequent on his recommended amendments to the rules, the scope of applications that are directed not to be notified or limited–notified should be revised and limited to controlled activity boundary adjustments and to controlled and restricted discretionary activities, but that otherwise, the submissions on this part of the Chapter should be rejected.

883. Addressing the specific points of submission, Mr Bryce recommended rejection of Submission 272 on the basis that in cases to which renumbered Section 27.10.1 did not apply, notification would be addressed on a case by case basis[313]. We agree with Mr Bryce's recommendation. While, as the submission notes, public notification provides a public consultation process, the presumption in favour of notification has been removed from the Act and we have seen no evidence that would suggest that the costs of notification in every case, irrespective of the nature and scale of any environmental effects, is matched by the benefits of doing so.

884. As regards Submission 275, Mr Bryce recommended rejection of the submission, noting that it perpetuated an existing provision under the ODP and had the effect only of ensuring notification would be assessed on a case by case basis where sites adjoin or have access to a state highway. We agree with Mr Bryce's reasoning. Given the policy provisions related to reverse sensitivity effects on regionally significant infrastructure, we consider it is appropriate that notification decisions be assessed on their merits in this instance. However, the way in which these provisions have been reframed means that we categorise the submission as 'Accepted in Part'.

885. Mr Bryce recommended rejection of submissions 427 and 406 regarding subdivisions in the Low Density Residential Zone. In his view, a case by case assessment for subdivision applications not falling within the general provisions of renumbered Rule 27.10.1 was appropriate. We note also that Mr Bryce's recommended revisions to this section would have the result of accepting the submissions in part because discretionary applications within the (now) Lower Density Suburban Residential Zone would not fall within the general no notification rule. The submitters in this case did not appear to provide evidence as to why the renamed Lower Density Suburban Residential Zone should be treated differently to the balance of zones in the Plan, or to provide us with evidence as to the balance of costs and benefits were their relief to be accepted. In these circumstances, we agree with Mr Bryce's recommendation and recommend that the submissions be rejected.

886. Mr Bryce discussed the submissions seeking an exemption for subdivisions within the Ski Area Sub-Zones in somewhat greater detail in his Section 42A Report[314]. In his view, there is the potential for subdivision within the Ski Area Sub-Zones to create arbitrary lines within sensitive landscape settings and accordingly, a need for the effects of subdivision in the Sub-Zone to be considered on a case by case basis.

---

311 Submission 433: Opposed in FS1097 and FS1117

312 Submission 798

313 While this has changed since the hearing (with effect from 18 October 2017) with enactment of the Resource Legislation Amendment Act 2017, the transition provisions (refer section 12 of Schedule 12 of the Act) direct that the PDP First Schedule process must be completed as if the 2017 Amendment Act had not been enacted.

314 Section 42A Report at 23.4

887. Mr Ferguson gave planning evidence on behalf of the submitters. He noted that Mr Bryce's position appeared to be related to the issues surrounding the status of a subdivision within the Ski Area Sub-Zones. As already noted, Mr Ferguson gave evidence supporting controlled activity status for such subdivisions which, if accepted, would have had the effect of bringing such subdivisions within the ambit of the non-notification rule.

888. Mr Ferguson did not explore the position should we recommend (as we have done) that discretionary status for subdivisions within the Sub-Zone be retained.

889. We agree that there is a linkage between these matters. The same considerations that have prompted us to recommend rejection of the broader submissions on the status of subdivisions within Ski Area Sub-Zones suggest to us that notification decisions should be assessed on a case by case basis rather than being predetermined through operation of a non-notification rule.

890. In summary, we agree with Mr Bryce's recommendation and we recommend rejection of these submissions.

891. Mr Bryce also recommended rejection of the submission by Queenstown Airport Corporation seeking an exception for activities within the defined noise boundaries around Queenstown and Wanaka Airports.

892. In his opinion, the amendments to the PDP recommended to address potential reverse sensitivity effects on the Airport meant that those issues were already appropriately addressed. Mr Bryce noted in this regard that subdivisions in the vicinity of Wanaka Airport would in most circumstances be a discretionary activity anyway and accordingly could be notified on that basis. He invited QAC to respond to this matter at the hearing[315]. When QAC appeared before us, its Counsel advised that Ms O'Sullivan (the submitter's planning adviser) agreed that the relief sought was unnecessary and that the submitter no longer pursued the submission. Accordingly, we need take that particular point no further.

893. As regards the submission of Otago Regional Council[316], this poses a practical difficulty given that (as discussed in greater detail in Report 14) virtually every property in the District is subject to some level of natural hazard. We therefore have difficulty understanding how the submission could be granted other than by requiring notification of every application the Council receives. This would have obvious cost implications. ORC did not appear to suggest how its submission could practically be addressed and provided no section 32AA analysis upon which we could rely. Accordingly, we recommend the Regional Council's submission be rejected.

894. Considering the detail of Mr Bryce's recommendations, we consider that his recommended Rule 27.10.1 requires further amendment to be clear that boundary adjustments falling within Rule 27.5.4 fall outside the non-notification rule (presumably the reason why he suggested that specific reference be made to controlled activity boundary adjustments).

895. In addition, we do not think it is necessary to make specific reference in 27.10.2 to archaeological sites or listed heritage items, or to discretionary activities within the Jacks Point Zone. Consequent on Mr Bryce's recommended focus of the non-notification rule on

315 Refer Section 42A Report at 23.5.

316 Submission 798

controlled and restricted discretionary activities, those activities automatically fall outside the rule in any event.

896. We also think that the reference to the National Grid Line might be simplified, just to cross reference Rule 27.5.10.

897. Lastly, the existing reference to the Makarora Rural Lifestyle Zone can be deleted, consequent on the Stream 12 Hearing Panel's recommendation to rezone that land Rural.

898. More generally, while improved by Mr Bryce, we found the drafting of these provisions to be quite convoluted, with an initial rule, followed by two separate sets of exceptions. We think it can be simplified further.

899. In summary, we recommend that notified Section 27.9 be renumbered 27.10 and amended to read:

"Applications for all controlled and restricted discretionary activities shall not require the written approval of other persons and shall not be notified or limited notified except:

a. where the site adjoins or has access onto a State Highway;
b. where the Council is required to undertake statutory consultation with iwi;
c. where the application falls within the ambit of Rule 27.5.4;
d. where the application falls within the ambit of Rule 27.5.10 and the written approval of Transpower New Zealand Limited has not been obtained to the application.

8.9 Section 27.10 – Rules – General Provisions

900. Notified Section 27.10 was entitled "*Rules – General Provisions"*. The first such provision related to subdivisions with access onto State Highways. NZTA[317] made some technical suggestions as to how this rule should be framed that Mr Bryce recommended be accepted. We concur. The only additional amendment that we would recommend relates to the cross reference to the Designations Chapter. We consider that this should, for clarity, record that the designations chapter notes sections of State Highways that are limited access roads as at the date of notification of the PDP (August 2015).

901. The second general provision relates to "*esplanades".* The only submission on it[318] suggested correction of an internal cross reference. Mr Bryce recommended that that submission be accepted.

902. For our part, in addition to that correction, we think that both the heading and text of this rule would more correctly refer to esplanade reserves and strips rather than "*esplanades"*. We regard this as a minor matter falling within Clause 16(2).

903. Thirdly, consequent on the concern expressed to us by representatives of Aurora Energy Limited that the general public are not familiar with the legal obligations arising under the New Zealand Electrical Code of Practice for electrical safe distances, we consider it would be helpful if the existence of this Code of Practice were noted at this location.

904. Lastly, we consider that the heading of this section is incorrect. Mr Bryce agreed that they are not rules and suggested that the title might better be "G*eneral Provisions"*. For our part, we consider that "A*dvice Notes"* better captures the character of the provisions in question given

317 Submission 719
318 Submission 809

that they are in the nature of advice and are not intended to have independent regulatory effect.

905. In summary, therefore, we recommend that notified Section 27.10 be renumbered 27.11 and amended to read:

"Advice Notes

27.11.1 State Highways
Attention is drawn to the need to obtain a Section 93 notice from New Zealand Transport Agency for subdivisions with access onto State Highways that are declared Limited Access Roads (LAR). Refer to the Designations Chapter of the District Plan for sections of State Highways that are LAR as at August 2015. Where a designation will change the use, intensity or location of the access on the State Highway, subdividers should consult with the New Zealand Transport Agency.

27.11.2 Esplanade Reserves and Strips
The opportunities for the creation of esplanade reserves or strips are outlined in the objective and policies in Section 27.2.6. Unless otherwise stated, section 230 of the Act applies to the standards and process for creation of esplanade reserves and strips.

27.11.3 New Zealand Electrical Code of Practice for Electrical Safe Distances
Compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001) is mandatory under the Electricity Act 1992. All activities regulated by NZECP34:2001 including any activities that are otherwise permitted by the District Plan must comply with this legislation."

8.10 Section 27.12 – Financial Contributions

906. Notified Section 27.12 related to financial contributions. The only submissions on it supported the existing provisions, although Submission 166 queried the title. Mr Bryce did not recommend any change to it other than to alter the heading to read:

"Development and Financial Contributions"

907. We agree with that suggestion.

8.11 Section 27.13 – Structure Plans

908. Notified Section 27.13 contained the Ferry Hill Rural Residential Subzone Concept Development Plan and the Kirimoko Block Structure Plan. The only submissions on it supported the existing provisions. The Stage 2 Variations propose deletion of the Ferry Hill document. For our part, for the reasons discussed earlier, we consider that a copy of the other "*Structure Plans"* contained in the PDP and referenced in the objectives, policies and rules of Chapter 27 should be contained here. Accordingly, we recommend that the Structure Plans for the Jacks Point, Waterfall Park, Millbrook Resort, Coneburn Industrial Zones and West Meadows Drive (the latter two consequential on recommendations from the Stream 13 and Stream 12 Hearing Panels respectively) be inserted in this section of the Chapter.

909. We also recommend the section be labelled "Structure Plans".

8.12 Conclusions on Rules

910. Having considered all of the rules and other provisions of the PDP discussed above, we are of the belief that individually and collectively, the rules and other provisions recommended are the most appropriate provisions to implement the policies of Chapter 27 and thereby achieve the objectives both of Chapter 27 and, to the extent they are relevant, the objectives of the strategic chapters of the PDP.

9. SUMMARY OF RECOMMENDATIONS TO OTHER HEARING STREAMS

911. We also record that during the course of our deliberations, we determined that it would assist implementation of Chapter 27 if the definitions in Chapter 2 were amended in two respects:

a. Deletion of the existing definition of "*community facilities"* (refer Section 4.3 above)

b. Inclusion of a new definition of the term "Structure Plan" as follows:

"Structure Plan means a plan included in the District Plan, and includes Spatial Development Plans, Concept Development Plans and other similarly titled documents." (refer the discussion at Section 8.7 above).

912. These are matters for the Hearing Panel considering submissions on the definitions (Stream 10) to consider.

10. SUMMARY OF RECOMMENDATIONS

913. As already noted, we have attached our recommended version of Chapter 27 as a clean document in Appendix 1.

914. Appendix 2 contains our recommendations in respect of submissions in tabular form.

915. In addition, in the course of this Report, we have made a number of other recommendations for consideration of the Council. These are detailed in Appendix 3.

For the Hearing Panel

Denis Nugent, Chair
Dated: 4 April 2018