BEFORE THE ENVIRONMENT COURT

Decision No. [2013] NZEnvC 14

IN THE MATTER of the Resource Management Act 1991 (**the Act**) and of appeals under Clause 14 of the First Schedule of the Act

BETWEEN

QUEENSTOWN AIRPORT CORPORATION LIMITED

(ENV-2009-CHC-210)

TROJAN HOLDINGS LIMITED

(ENV-2009-CHC-211)

MANAPOURI BEECH INVESTMENTS LIMITED

(ENV-2009-CHC-212)

FOODSTUFFS (SOUTH ISLAND) LIMITED

(ENV-2009-CHC-214)

QUEENSTOWN CENTRAL LIMITED

(ENV-2009-CHC-215)

FM CUSTODIANS LIMITED

(ENV-2009-CHC-216)

AIR NEW ZEALAND LIMITED

(ENV-2009-CHC-221)

REMARKABLES PARK LIMITED AND SHOTOVER PARK LIMITED

(ENV-2009-CHC-222)

QUEENSTOWN LAKES COMMUNITY HOUSING TRUST

(ENV-2009-CHC-223)

Appellants

AND QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

Hearing: at Queenstown on 20-24 February, 27 April-2 March, 16-20 April, 30 April-3 May 2012

Resumed Hearing: at Christchurch on 7 November 2012

Court: Environment Judge J E Borthwick
Environment Commissioner R M Dunlop
Environment Commissioner D J Bunting

Appearances:
R M Wolt for Queenstown Airport Corporation Ltd
J R Castiglione and H L Lochan for Trojan Holdings Ltd and Progressive Enterprises Ltd
V J Robb for Manapouri Beech Investments Ltd and FM Custodians Ltd
A C Ritchie and L Semple for Foodstuffs (South Island) Ltd and Jacks Point Ltd
I M Gordon and J L Wass for Queenstown Central Ltd
J D K Gardner-Hopkins for Air New Zealand Ltd
Dr R J Somerville QC and J D Young for Shotover Park Ltd and Remarkables Park Ltd
D Cole (on 30 April and 2 May 2012) for Queenstown Lakes Community Housing Trust
J Macdonald and T J Surrey for Queenstown Lakes District Council

Appearances for Resumed Hearing on 7 November 2012:
J Crawford and A C Ritchie for Foodstuffs (South Island) Ltd
I M Gordon for Queenstown Central Ltd
Dr R J Somerville QC and J D Young for Shotover Park Ltd
M A Ray for Queenstown Lakes District Council
J A Gregory for New Zealand Transport Agency

Date of Decision: 12 February 2013

Date of Issue: 12 February 2013

INTERIM DECISION OF THE ENVIRONMENT COURT

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Contents

Part 1 Introduction

[1] By Plan Change 19 the Queenstown Lakes District Council proposes that approximately 69 hectares of rural land on the Frankton Flats be rezoned in the operative District Plan for urban development. This area is the "last remaining greenfields site within the Urban Growth Boundary of Queenstown".[1] More specifically, the plan change provides that land presently zoned Rural General in the operative District Plan be rezoned Frankton Flats (B) Zone for development in accordance with Plan provisions comprising text,[2] a Structure Plan and planning map.

[2] Plan Change 19 was notified by the District Council in 2007 and in October 2009 the hearing Commissioners appointed by the District Council released their

[1] QLDC Counsel Opening submission [20].
[2] Comprised primarily of issues, objectives, policies and implementation methods including rules.

decision on the plan change, recommending the District Council approve the plan change with amendments. The District Council decision to do so was subsequently appealed by eleven submitters to the plan change.

[3] Because of the complexity of the objectives and policies in dispute, and their relevance to determining rules and other implementation methods, the court has with the agreement of the parties focused in these proceedings exclusively on higher order matters.

Structure of the Interim Decision

[4] As noted above this is an Interim Decision addressing Plan Change 19's (**PC19**) higher order provisions including the resource management issues, objectives and policies. With few exceptions, the lower order rules, standards and methods are adjourned to a separate hearing pending resolution of the higher order provisions. Those lower order matters that are dealt with here have a pivotal role in the form and function of the new urban area.

[5] The decision is divided essentially into two halves. In the first half we:

(a) set out the relevant legal and planning context;
(b) make decisions on whether the court has jurisdiction to consider rezoning five parcels of land;
(c) decide what weight to give two decisions of the Environment Court to grant resource consent for land-use activities within the Zone;
(d) give our key findings of fact and predictions as to likely levels of demand for different land use activities to be enabled within the Zone in the foreseeable future.

[6] In the second half we determine the competing provisions favoured by one or more of the parties. We have distilled from the extensive materials presented by the parties the following topics for determination:

(a) the relevant resource management issues to be addressed by this plan change, and related to that, whether (and the extent to which) the Zone wide objectives and policies address those issues;

(b) based on the preceding matters, we resolve disputed objectives and policies for the form and function of individual Activity Areas, namely AA-A, AA-C, AA-C2, AA-D, AA-E1, AA-E2 including the (proposed new) AA-E3 and AA-E4;

(c) the disputed methods to implement objectives and policies for the Activity Areas as these may impact on the form and function of the urban area, in relation to the following:

  (i) Eastern Access Road (**EAR**);

  (ii) Trade Related Retail Overlay;

  (iii) Retail caps (applicable to AA-E2);

(d) the disputed methods to implement objectives and policies for Zone wide matters as may impact on the form and function of the urban area, in the following subject areas:

  (i) maximum height levels;

  (ii) views and viewshafts;

  (iii) affordable and community housing;

  (iv) Queenstown Airport matters;

  (v) waste water, stormwater and the water supply;

  (vi) traffic, including travel demand management, parking and pedestrian/cycle network; and

  (vii) any other discrete issues.

We have identified the principal issues for determination under of these topic headings. Given the breadth of matters in dispute, it has not been possible to neatly package up the issues under a single topic heading. That said, we have endeavoured to use a structure that will provide the greatest level of assistance to the parties when reading the Interim Decision.

Section 32 Analysis

[7] We have considered the District Council's report prepared under section 32 of the Act (produced in 2007) and found its contents to be of background relevance given the significant changes to PC19 following the hearing Commissioners' recommendations and secondly, the changes to the wider planning context. Many of the strategic reports referred to therein were before us in evidence from the District Council's witnesses.

The hearing Commissioners' recommendations

[8] Pursuant to section 290A of the Act we have read and considered the recommendations made by the hearing Commissioners to the District Council following their hearing into submissions made on the plan change. Where relevant we refer to their findings in this decision.

The Otago Regional Policy Statement and the Operative District Plan

[9] This plan change is required to give effect to (relevantly) the Otago Regional Policy statement and secondly, its proposed objectives are to join with the settled objectives in the District Plan to achieve the purpose of the Act.

[10] The planning witnesses were in agreement as to the relevant provisions of the Otago Regional Policy Statement and the operative District Plan.

[11] We do not set out the relevant provisions of the Otago Regional Policy Statement and the operative District Plan in a separate Part: to do so would add to what is already a very lengthy decision. We have been cognisant of these provisions at every step of our decision making, and where relevant mention is made of specific provisions within the body of the decision.

District Plan Nomenclature

[12] In this decision we refer to three principal draft versions of the Plan Change. The first of these followed the District Council's decision to accept the hearing Commissioners' recommendations. In this decision this version is referred to as **PC19(DV)**.

[13] A second version of the plan change we have called the "**Ferguson/Hutton**" version of the plan change. This draft was tabled in court on 22 February 2012 and is important because it contains the District Council's proposed amendments to the rules, standards and methods and although we are not deciding these matters, these provisions are an aid to our understanding of the plan change.

[14] Finally, and at the conclusion of the hearing each of the parties produced their own version of the plan change with the amendments they sought. We record that it is not practicable or particularly insightful to discuss the various permutations of this plan change as it has developed since the hearing Commissioners released their recommendations in 2009. Instead we have focused on where the District Council started (i.e. PC19(DV)) and where the parties have ended up.

General Approach to the Higher Order Provisions

[15] After the hearing commenced QLDC's planning witnesses applied, in supplementary evidence, much needed rigor to the structure and content of the plan change by reorganising and grouping its higher order provisions with reference to their Zone wide or Activity Area application. The higher order provisions for the six proposed Activity Areas were then streamlined and simplified by the deletion of up to (we estimate) a third of the plan change provisions (amongst other measures). As we approve of the new structure of the higher order provisions we use this document as the basis of our analysis, adopting its numerical referencing.[3] The plan change's new structure, with its policy emphasis on the function of the different Activity Areas, should assist in the administration of the District Plan and curtail the trend in some parts of Queenstown (such as the Glenda Drive Industrial Zone) for consent to be readily obtained for non-complying activities in the absence of a strong policy direction.[4] In saying that we have also considered the amendments proposed by Shotover Park Ltd and Remarkables Park Ltd (referred to as **SPL**) and QCL to the higher order provisions.

[16] In this Interim Decision we state the version of the contested provisions approved by the court and give reasons for doing so.

[3] Hutton, Third Supplementary Statement of Evidence, April 2012 and QLDC Closing Annexure 2.
[4] Transcript at 1577-8.

[17] The parties will observe that a number of provisions have been amended by the court but not in a manner proposed by any witness. In part this responds to the District Council's advice through its planning witness Ms Hutton that further restructuring of plan change policies may be appropriate following the court's confirmation of the Structure Plan.[5] These changes are contained in boxed text at the end of each Part. The amendments made fall into the following categories:

(a) standardising the language used for equivalent policies for various Activity Areas;
(b) correcting grammar, tense and the like;
(c) reorganising by grouping related sets of policies;
(d) ensuring each policy concerns a single subject matter (i.e. not multiple subject matters);
(e) deleting redundant wording; and
(f) ensuring consistent use of terms.

Directions as to the higher order provisions

[18] The District Council having conferred with the parties is directed to:

(a) amend the Structure Plan to give effect to the Interim Decision;
(b) comment on the court's revised wording of the provisions;
(c) respond to the court's directions on specific provisions, including the requirement for additional objectives/policies to give effect to the plan change; and
(d) address any omissions in the Interim Decision (given the extensive challenges made it is possible that we have overlooked some matters);

- by filing a comprehensive reporting memorandum by **5 April 2013**.

[19] QAC is subject also to specific directions in Part 16: Queenstown Airport.

[5] Hutton, Third supplementary Statement of Evidence, April 2012 [42].

[20] Subject to the parties' responses at [18] and [19], further mediation/expert conferencing may be directed in relation to the higher order provisions, or if necessary set down for hearing.

Attached documents to this decision

[21] Attached to this decision as Annexure 1 is a copy of a plan showing the subject land (also referred to in this decision as the Structure Plan area (**SPA**)). The abbreviations used in this decision are set out in the Glossary attached as Annexure 2. The parties proposed Structure Plans are attached in Annexure 3 (including the Structure Plan in the notified plan change, the Structure Plan as modified by the District Council's hearing Commissioners and the final Structure Plan promulgated by the District Council responding to the appeals).

Related Proceedings

[22] This Interim Decision is issued in conjunction with other Interim Decisions by the court for the following related proceedings:

(a) Private Plan Change 35 and an associated Notice of Requirement (**NOR**) altering Designation 2 for Aerodrome Purposes (Queenstown Airport) and initiated by the Queenstown Airport Company (**QAC**). The Plan Change is relevant as its provisions apply to land in the Structure Plan area. The NOR is relevant as Designation 2 adjoins the Structure Plan area. Summarised, PC35 amends District-wide objectives and policies for Airport noise management and the management of urban growth to maintain the Airport's operational capacity. Related measures include amendments to the location of the existing air noise boundary (**ANB**) and outer control boundary (**OCB**); the revision of objectives, policies, rules to safeguard the Airport from reverse sensitivity effects of development in zones subject to aircraft noise; and QAC's obligations for providing noise mitigation assistance in defined circumstances to impacted properties. The NOR amends the conditions that attach to Designation 2 and provides,

amongst other things, for a Noise Management Plan. The court released its Interim Decision on these proceedings in September 2012;[6]

(b) integrated NORs by the NZ Transport Agency and District Council for work on SH6 and proposed local roads within the Structure Plan area respectively to enable and support development of the Zone. (The Environment Court released consent orders in August 2012); and

(c) Queenstown Airport's NOR referred directly by the Minister to the Court to extend Aerodrome Purposes Designation 2 by approximately 19.1 hectares on the southern side of the Airport. (The Environment Court released an Interim Decision[7] on these proceedings in September 2012 and its decision is now under appeal to the High Court).

[23] The above proceedings, together with other unrelated changes affecting both the Zone and within the wider district, impacted considerably on the plan change, and it follows the parties' preparation for the hearing. The changes are discussed elsewhere but for now the court wishes to formally acknowledge the complex context in which the appeals against PC19(DV) is set and the parties' efforts to respond to this.

The Location of the Plan Change

[24] The subject land is bounded by SH6 to the north, the Queenstown Airport to the south, the existing Glenda Drive industrial area to the east and Queenstown Events Centre (public open space and recreation facilities) to the west as shown on Annexure 1.

[25] The land is largely devoid of natural features and flat albeit with a modest fall to the south west and south east.[8] A water course, in the form of an irrigation race, drains from higher land to the north across SH6 to the west of Glenda Drive. There are some extant, mature shelter belts and hedge rows but no distinctive vegetation requiring recognition in the plan change. Grant Road towards the west edge of the Structure Plan area is formed for much of its length while other existing roads, either unformed or

[6] [2012] NZEnvC 195.
[7] [2012] NZEnvC 206.
[8] Greater detail is provided under the sections on stormwater management and maximum height controls.

formed to a more basic standard, are to be stopped. Apart from an existing dwelling or two, the most significant built elements are farm buildings plus a fruit/vegetable outlet and nursery/garden centre on the south side of SH6 immediately west of the Glenda Drive industrial area.

[26] By way of further context it is relevant to note the following, additional features in the wider environment:[9]

(a) Quail Rise is an existing residential development north east of the Structure Plan area on the opposite side of the highway, and we were told is the subject of a privately initiated plan change;

(b) the Shotover River is located immediately to the east of the Glenda Drive industrial area at a lower elevation, together with the District Council oxidation ponds and SH6 Shotover River Bridge;

(c) the 120 hectares residential Shotover Country Private Plan Change area on the River's true left bank near its confluence with the Kawarau River;

(d) the Airport runway extension safety area constructed on fill at the east end of the runway. The fill is to also carry the proposed EAR, which is planned to link land south of the Airport with SH6 via the Structure Plan area;

(e) the approximately 150 hectares Remarkables Park Special Zone (**RPZ**) located on the southern side of Queenstown Airport adjoining the Kawarau River. RPZ is being developed progressively for a mix of urban activities including residential, visitor accommodation, recreational, community, education, commercial and retail activities in accordance with a structure plan. The RPZ contains the largest shopping centre outside the Queenstown central business district (**CBD**) with a further 30,000m^2 retail development enabled by the recently operative PC34;[10]

[9] Hutton EiC Annex 12.
[10] Heath Updated Evidence 3.2.2012 New Table 11 and Transcript at 924 line 13.

(f) the existing Frankton suburban area which comprises a mix of dwellings, community facilities, open space and a small shopping centre on the corner of SHs 6/6A; and

(g) the partially excavated Frankton Flats Special (A) Zone (**FF(A) Zone**) owned by Queenstown Gateway Limited, located on the south side of SH6 immediately west of Grant Road comprising 6.8hectares.[11] The stated purpose of the FF(A) Zone is to enable the development of a new shopping centre for retailing,[12] offices, educational, visitor and residential accommodation and leisure activities.[13] A land use consent was issued in April 2011 for building site works, street layout, open space network and earthworks to establish a shopping centre precinct.[14] The consent does not provide for buildings. Notably, the consent authorises work for car parking purposes on land within the Structure Plan area that is owned by the District Council, designated for the Events Centre[15] and subject to an agreement to occupy in favour of Queenstown Gateway.[16] Part of this land is recorded on the District Council's November 2012 Structure Plan as zoned for "urban village" purposes (AA-C1). Since the hearing concluded, the court has become aware that a non-complying land use activity consent issued in August 2012 for a shopping centre in the FF(A) Zone and that judicial review proceedings have been lodged in respect of the application's non-notification.[17]

Overview of Plan Change 19 and activities enabled

[27] It is intended that PC19 enable ".... the growth of the Queenstown area to be consolidated within the last un-zoned greenfields site [inside] the identified urban

[11] Serjeant Rebuttal Attachments C and D.
[12] Potential GFA estimated at 25,000 – 42,000m^2 by Heath Updated Evidence 3.2, 2012 New Table 11 and Second Joint Statement of Economists/Retail Experts 21.11.11 [39].
[13] Operative District Plan 12.18.1.
[14] J Brown Rebuttal Annex 2.
[15] Refer District Planning Map 33, District Plan Designation 29 and J Brown Rebuttal Annex 2 Drawing Five Mile Overall Development Staging Plan.
[16] Transcript at 1645–1647.
[17] *Shotover Park Ltd v Queenstown Lakes District Council, Lakes Environmental Ltd, Queenstown Gateway Ltd and Queenstown Gateway (5M) Ltd* CIV-2012-425-648.

boundary".[18] The plan change allows for industry and mixed use development at relatively high densities ordered around a planned road network and constraints on development imposed by the Airport. The District Council's broad approach in these regards was not greatly disputed by the parties who, with two possible exceptions,[19] have land interests in the Structure Plan area. There were, however, significant differences between some of the parties and between them and the District Council over the location and built form of the different land uses to be enabled.

[28] As stated above, PC19 applies a Frankton Flats Special (B) Zone (**FF(B) Zone**) to the Structure Plan. The Zone has the following elements:

(a) the Structure Plan text that identifies resource management issues[20] and sets overarching objectives and policies for the area's strategic development and relationship with other parts of the district. These provisions are complemented by further objectives, policies and rules for different Activity Areas (or sub-zones) the location of which are shown on a Structure Plan map. It was proposed by the District Council that the Activity Area boundaries be based on such factors as its assessment of future land requirements for different activities, urban form considerations taking account of existing and planned future development, the Queenstown Airport noise outer control boundary,[21] a network of required roads and existing cadastral boundaries. Maximum building heights are set by reference to offset lines parallel with SH6, which have the effect of providing for a stepped height regime rising from 6.5m sixty-five metres from the highway.[22] Other notable features include "vistas" and "viewshafts" required to retain and/or create views to surrounding landscapes, a Trade Related Retail Overlay and a Road Frontage Control Overlay along the proposed EAR;

[18] Ms Hutton EiC [3.6]. We understand that the term "urban boundary" refers to strategic limits to urban growth set in Proposed Plan Change 30 and subject to appeal.
[19] Air New Zealand Ltd and Queenstown Lakes Community Trust.
[20] Visual amenity, sustainable development, high quality urban development, integrating land use with transportation and transport networks.
[21] Determined by PC35 and the court's Interim Decision on same.
[22] This regime applies only to land west of FM Custodians Ltd and Manapouri Beech Ltd.

(b) a Structure Plan map that depicts various of the previously described provisions. As we describe below, many of the aforementioned provisions were disputed strongly between the parties including the activities to be enabled in different Activity Areas and the boundaries for such. The District Council's preferred Structure Plan evolved through a number of iterations both before and during the court hearing in response to the appellants' cases and the hearing process. Attached in Annexure 3 is the November 2012 Structure Plan which accompanied the District Council's closing submissions. It proposes the following Activity Areas;[23]

(c) Activity Area (**AA-A**) – a 2.31 hectare 50m deep area of open space extending along much of the SH frontage east from Grant Road to be maintained as a landscaped buffer to development;

(d) Activity Area (**AA-C1**) – a 4.17 hectare irregular shaped area south of AA-A with frontage to both a proposed *mainstreet* (also known as Road 8) and Grant Road. Its purpose being to enable a range of retail, commercial, residential and visitor accommodation activities that form a *village core* centred on "a new mainstreet environment that complements and integrates with the adjacent Frankton Flats Special Zone";[24]

(e) Activity Area C2 (**AA-C2**) – a 5.96 hectare irregular shaped area adjacent to the preceding Activity Areas and bisected by the *mainstreet* required to extend from Grant Road to the EAR. Its purpose being to enable an environment conducive to the development of a residential neighbourhood populated by retail, commercial and visitor accommodation "limited to smaller scale convenience stores, workplaces and developments";[25]

(f) Activity Area D (**AA-D**) – a 7.95 hectare area in the south west sector of the Structure Plan area bounded by Grant Road to the west, proposed EAR to the east and Airport to the south. Its purpose being to provide for extensive industrial and yard based activities "needed to support economic growth within the Queenstown district".[26] The Ferguson/Hutton version of the plan change explains that "The District is extremely short on industrial

[23] Areas as shown on the QLDC SP Map May 2012 attached as Annex 1 to counsel's 11 June 2012 Closing submissions.
[24] PC19(DV) policy 7.1.
[25] Ibid policy 7.2.
[26] Ibid policy 8.1.

land and land dedicated to undertake yard-based activities. This … places pressure on existing land resources, pushing up prices and it may force some of these activities out of the District".[27] Yard space is expected to predominate over buildings;

(g) Activity Area E1 (**AA-E1**) – a 20.39 hectare area located on the east side of the structure plan area adjoining the existing Glenda Drive industrial area to the east and, in part, the proposed EAR to the west. Mr D Mead, a planning witness called by the District Council, described this Activity Area as "... an extension of the Glenda Drive industrial area providing for employment-based activities that cannot locate in town centre or business area environments due to their amenity effects";[28]

(h) Activity Area E2 (**AA-E2**) – a contiguous 9.37 hectare area with two principal geographic parts. Namely an area 50m wide either side of the EAR extending south from AA-A to Road 5. And a second part extending west from the EAR across Grant Road onto land within the structure plan area designated for Events Centre purposes. Mr Mead envisaged the Activity Area acting as a transition between the residentially focused precinct (AA-C2) to the west and north and the industrial and yard-based uses to the east (AA-E1) and south (AA-D).[29] Along the EAR corridor, development is to present a cohesive street scene on both sides of the EAR (in terms of the road design, development and building typologies) while shifting from a mixed business/residential area to the north to a more industrially focused area to the south. Mr Mead further explained that "In the western E2 ... development that interfaces with the Events Centre is to be laid out in a way that provides opportunities to form visual and physical linkages between the Events Centre and the employment and residential activities located in PC19. A business type environment is anticipated with a range of office, services, workplaces and mid-sized retail (500 – 1,000m^2 GFA/unit)". Residential activities are also contemplated above the ground floor outside the OCB; and

[27] Ferguson/Hutton version of the plan change J-9.
[28] Mead Third Supplementary Statement [26(d)].
[29] Ibid [26(e)].

(i) Activity Area E4 – a contiguous 1.62 hectare area in the north east sector of the Structure Plan area subdivided into two separately owned lots with a shared licensed crossing point to SH6. Mr Mead's evidence was that this Activity Area is concerned to maintain and enhance a predominantly treed environment along the SH corridor as an entry experience to the Queenstown urban area. He envisaged that buildings would be a secondary element in the landscape unless of a very high architectural merit capable of acting as an entry statement.[30] Proposed policy 9.1 anticipates "predominantly light industrial, service, and business activities along with related retail sales aligned to construction and trade service activities …".[31]

The requirements of the RMA when preparing a district plan

[29] PC19 was publicly notified in July 2007 with the District Council's first instance decisions on submissions given in October 2009. As appeals must be determined on the law when the plan change was notified the applicable statute is the Resource Management Amendment Act 2005. In addition to the decision by the territorial authority on appeal[32] the matters the court is required to consider are (relevantly):[33]

(a) whether the plan change is in accordance with the District Council's functions under section 31, the provisions of Part 2 and the District Council's duty under section 32;[34]

(b) whether the plan change gives effect to any relevant national policy statement, the Otago Regional Policy Statement[35] and is not inconsistent with an operative regional plan;[36]

[30] Ibid [26(f)].
[31] QLDC PC19 provisions 11 May 2012 (incorporating Hutton and Mead amendments proposed in April 2011 evidence) at Annex 2 to counsel's 11.6.2012 Closing submissions. We believe April 2011 should read 2012.
[32] Section 290A.
[33] Guided by *High Country Rosehip Orchards Ltd v Mackenzie District Council* [2011] NZEnvC 387 at [19].
[34] Sections 72 and 74(1).
[35] Section 75(3)(b) and (c).
[36] Section 75(4)(b).

(c) each proposed objective is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act (i.e. the section 32 test for objectives);[37]

(d) with regard to policies and methods (including rules if relevant in this Interim Decision on higher order provisions):

(i) the policies are to implement the objectives, and the rules (if any) are to implement the policies;[38]

(ii) each proposed policy or method (including each rule) is to be examined having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives[39] of the district plan taking into account:

- the benefits and costs of the proposed policies and methods (including rules); and

- the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other matters;[40]

(e) whether the rules (if relevant in this Interim Decision) have regard to the actual or potential effect on the environment of activities;[41]

(f) whether regard has been had to any relevant management plan prepared under another Act[42] and disregard trade competition.[43]

[30] We were not referred to any National Policy Statement or Regional Plan. We have considered the provisions of the Events Centre Plan, a management plan, and have taken this into account only to the extent that it is relevant to the determination of higher order provisions.

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[37] Section 32(3)(a).
[38] Section 75(1)(b) and (c) and also section 76(1).
[39] Section 32(3)(a).
[40] Section 32(4).
[41] Section 76(3).
[42] Section 74(2)(b)(i).
[43] Section 74(3).

[31] In approaching our decision we have kept in mind the recent decision of Gendall J in *Rational Transport Society Inc v BOI and NZTA*[44] where the meaning of "most appropriate" in section 32 of the Act was considered. Holding "most appropriate" does not mean *superior* Gendall J said at [45]:

> Section 32 requires a value judgment as to what on balance, is the most appropriate, when measured against the relevant objectives. "Appropriate" means suitable, and there is no need to place any gloss upon that word by incorporating that it be superior.

[32] We have considered the extent to which each sub-zone's objective(s) and policies achieve the purpose of the Act. This has been done both singularly for each sub-zone and together with the other Zone-wide objective(s) and policies for this Plan Change and for the settled operatives for the District Plan. In these proceedings it is particularly important that the Plan Change's higher order provisions be considered as a *complete package* (to coin a phrase from *Orewa Land Ltd v Auckland Council* at [37-38]).

[33] In the next Part we address complex issues around whether the relief sought by three parties on appeal is within the court's jurisdiction.

[44] *Rational Transport Society Inc v Board of Inquiry Appointed under Section 149J of the Resource Management Act and anor* High Court Wellington Registry. CIV-2011-485-002259 at [45ff].

Part 2 Jurisdiction

[34] An issue has arisen as to whether the amendments proposed by three parties, and supported by the District Council, are within the scope of any notice of appeal or submissions made on the plan change. This issue concerns relief sought by:

- Queenstown Central Ltd (**QCL**);
- FM Custodians Limited (**FMC**); and
- Manapouri Beech Investments Ltd.

[35] The three parties are successors-in-title to Five Mile Holdings Ltd. Five Mile Holdings filed submissions and further submissions on PC19 and then appealed the District Council's decision on the plan change. In addition Manapouri and FMC each filed their own appeals. While we refer to the Five Mile Holding submission and appeal, that company (now in liquidation) did not appear before us.

[36] As the six week hearing progressed, the court became increasingly concerned to understand the source of its jurisdiction to approve some of the amendments supported by these parties. The fact that the parties proposed significant amendments from the PC19(DV) decision is perhaps unsurprising given the extensive changes to the planning context as briefly outlined in Part 1 of this Interim Decision. We remain concerned, however, that the court does not have jurisdiction to approve the changes to the following Activity Areas:

- rezoning AA-C1 west of Grant Road;
- expanding AA-C1 within Activity Area C;
- rezoning AA- E2 west of Grant Road;
- rezoning AA-C2 and AA-D land located east of Grant Road and north of Road 5; and
- approving AA-E4.

The law

[37] The scope of an appeal is governed by clause 14(1)[45] of the First Schedule to the Act which provides:

> (1) A person who made a submission on a proposed policy statement or plan may appeal to the Environment Court in respect of—
>
> (a) a provision included in the proposed policy statement or plan; or
>
> (b) a provision that the decision on submissions proposes to include in the policy statement or plan; or
>
> (c) a matter excluded from the proposed policy statement or plan; or
>
> (d) a provision that the decision on submissions proposes to exclude from the policy statement or plan.
>
> (2) However, a person may appeal under sub-clause (1) only if the person referred to the provision or the matter in the person's submission on the proposed policy statement or plan.

[38] If an appeal complies with clause 14, the Environment Court is required by clause 15 of the First Schedule to hold a hearing into the provision or matter referred to it. In order for the Environment Court to consider proposed relief there must first be an appeal on the relevant matter or provision; the Environment Court cannot make changes to a plan where the changes fall outside the scope of a relevant appeal or, alternatively, does not fit within the criteria specified in sections 292 and 293 of the Act.[46] Nor can the scope of the appeal be extended by a request for consequential relief.[47]

[39] A court may reject the relief sought on appeal on the basis that it goes beyond the submission or the plan change.[48] The underlying purpose of the submission process is to ensure that the local authority and all other potentially interested parties are sufficiently informed about the relief sought by the submitter.

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[45] The provisions of the Act as they existed prior to 30 September 2009; that is prior to the enablement of the Resource Management (Simplifying and Streamlining) Amendment Act 2009.
[46] *Westfield and ors v Hamilton District Council* [2004] NZRMA 566 at [72].
[47] *Shaw and Halswater Holdings Ltd and anor v Selwyn District Council* Environment Court Decision No: C183/2000, 26 October 2000 at [12].
[48] *Shaw and Halswater Holdings Ltd and anor v Selwyn District Council* High Court Christchurch AP 41/00, Chisholm J. 19 March 2001 at [17].

[40] Ultimately these matters come down to procedural fairness and to quote Fisher J again in *Westfield (New Zealand) Ltd v Hamilton City Council* at [74]:

> ... Procedural fairness extends to the public as well as to the submitter and the territorial authority. Adequate notice must be given to those who might seek to take an active part in the hearing before the Environment Court if they know or ought to foresee what the Environment Court may do as a result of the reference. This is implicit in ss 292 and 293. The effect of those provisions is to provide an opportunity for others to join the hearing if proposed changes would *not* have been within the reasonable contemplation of those who saw the scope of the original reference.

[41] When considering relief sought in a notice of appeal or indeed the submission, we have taken care to avoid an unduly legalistic approach: these issues come down to a question of degree. With these principles in mind we turn next to consider the relief sought by QCL, with the support of the District Council, in these proceedings.

Relief sought in Five Mile Holding submissions and notice of appeal

[42] SPL contests the court's jurisdiction to approve the amendments sought by QCL (as successor in title to Five Mile Holdings) and supported by QLDC in three respects:

(a) to rezone part of AA-D to "AA-E2 (Grant Road)" at a location **east** of Grant Road;
(b) to rezone part of AA-D to "AA-E2 (Grant Road)" at a location **west** of Grant Road; and
(c) to extend AA-C1.

[43] SPL submits the proposed changes are beyond the court's jurisdiction because there are no submissions on the plan change or relief sought on appeal. SPL opposes the court exercising its discretion under section 293 of the Act to direct the District Council to include these provisions in the District Plan.

[44] Before giving our findings in relation to jurisdiction we set out briefly the relevant plan change provision under PC19(DV).

Five Mile Holdings – Submission on the notified plan change

[45] In its submission on the notified version of PC19 Five Mile Holdings requested the Structure Plan in the notified plan change be removed and replaced with an alternative plan. This plan shows AA-C located immediately east of Grant Road and extending into land zoned AA-D and AA-E in the notified plan change. Under PC19(DV), following the District Council's hearing, this land became AA-C2 and AA-D.

[46] Five Mile Holdings' submission on the notified plan change commences "Five Mile Holdings plans to build a new balanced community comprised of residential, accommodation, educational, commercial, light industrial and retail activities ..." and goes on to say that this will be "a truly urban environment which can provide for up to 10,000 people, accommodation for a further 5,000, new educational facilities, small business, industry, commerce and shopping facilities".[49] Elsewhere the submission refers to the zone as being a "whole new town".[50]

[47] While seeking extensive changes to the related policies,[51] Five Mile Holdings supported the objective for AA-C which is "to create an area to act as a village centre comprising commercial, educational and residential and visitor accommodation while providing high amenity and useable and liveable public realm (Activity Area C)".

Five Mile Holdings – Notice of appeal

[48] Five Mile Holdings appealed the District Council's decision on the plan change and its notice of appeal is expressly limited by the extent to which PC19(DV) affects its land. At the time the appeal was filed, Five Mile Holdings owned several parcels of land within PC19. In the notice of appeal these land holdings are grouped into three areas in respect of which different outcomes are sought. These land groupings are referred to in the notice of appeal as "Ancillary Eastern Land", "Land West of Grant Road" and finally, "Five Mile Stage 2". We refer to "Ancillary Eastern Land" as the FMC site, as the land areas are co-extensive.

[49] Submission on PC19 at [2].
[50] Submission on PC19 at [17].
[51] Submission on PC19 at [7].

[49] While its submission on the plan change identified a parcel of land immediately south of FF(A)Z on the western side of Grant Road and proposed that it be included within AA-C, this land is excluded from the notice of appeal.[52]

FMC site

[50] In respect of the FMC site, FMC seeks all of this area be zoned AA-E1 and secondly, that the Structure Plan in PC19(DV) be amended to provide a required road from the EAR to connect to the site.[53]

Land West of Grant Road

[51] On appeal Five Mile Holdings sought to amend the Structure Plan by excluding four parcels of land located west of Grant Road.[54] Grant Road was originally intended to be the boundary between the FF(A) Zone and PC19 and these four parcels had been included in the plan change in anticipation of Grant Road being realigned.[55]

[52] As the road is not to be realigned, on 17 February 2010 the District Council partially withdrew PC19. The partial withdrawal of the plan change addresses this relief.[56]

Five Mile Holdings Stage 2

[53] The balance of the appeal concerns the majority of land owned by Five Mile Holdings.[57] In the notified plan change this land was zoned Activity Areas A, B, C, D and E.[58]

[54] PC19(DV) incorporates the proposed Activity Area B (a low intensity development area) into AA-C.[59] This decision is not appealed.

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[52] Notice of appeal at [5(b)] and the attached structure plan.
[53] Notice of appeal at [22-27, 28-32]. Also 5.b(iii) gives the legal description for this land shown as "Z" on Attachment A.
[54] Notice of appeal at [5.b(i)] describes the legal title for this land and shown as "X" on Attachment A.
[55] Notice of appeal at [9-15].
[56] Edmonds EiC at [5.8-5.9] and Annexure 3 for the plan change as amended by the District Council's decision to withdraw the Land West of Grant Road.
[57] Notice of appeal at [5.b(ii)] gives the legal description for this land which is shown as "Y" on Attachment A.
[58] Notified plan change, structure plan for Frankton Flats Special Zone B.
[59] District Council decision on PC19 at [3.9.10, 3.10.24].

[55] PC19(DV) divides Activity Area C into two sub-zones; AA-C1 and AA-C2. In the notice of appeal Five Mile Holdings opposed the creation of the two sub-zones, and supported a single Area C as notified.[60] It also considered AA-C1 fundamentally flawed in that PC19(DV) had not resolved whether AA-C1 is to provide for a small village development designed to service PC19 or a larger town centre designed to service a wider area. As a consequence, it pleads certain provisions are irreconcilable.

[56] Five Mile Holdings sought a decision "whether" retail activities in AA-C1 and C2 should be designed, sized and located to create a village to service the PC19 zone or should be designed, located and sized to be a larger town centre and form part of the Frankton Flats Special Zone (we understand this to mean the FF(A) Zone).[61]

[57] The relief front foots the appeal proposing two alternative options for resolving this perceived conflict:

(a) Option 1 – Village

That Area C1 be amalgamated with Area C2 into a single Area C, that provision be made for development of an appropriately sized village retail development to be designed, sized and located as part of the ODP process for Area C, and that appropriate amendments be made to all PC19 provisions relating to this issue.

(b) Option 2 – Town Centre

That Area C1 remain, that restrictions on large format retail within Area C1 be removed, that Area C1 be developed through its own separate ODP process as part of and complementary to the adjoining Frankton Flats Special Zone to create a town centre for the wider area, and that appropriate amendments be made to all PC19 provisions relevant to this issue.

[58] The notified plan change did not refer to categories of retail activity. Instead there are two primary categories of commercial activity (differentiated by floor area). A third category addresses commercial activity that is ancillary to permitted or controlled activities.[62] The terms "commercial activity" and "retail sales, retail and retailing" are defined in the District Plan. The definition of "commercial activities" is broad enough to encompass "retail sales, retail and retailing". PC19(DV) replaced the two primary

[60] Notice of appeal at [37].
[61] Notice of appeal at [45].
[62] Notified PC19, rule 12.1.9.3.6, Table 1.

categories of "commercial activities" with a range of retail activities. In the notice of appeal Five Mile Holdings seeks to amend Table 1, rule 12.20.3.6 that *inter alia* "other retail" activities are permitted within AA-C1.[63]

Issue: ***Does the court have jurisdiction to approve QCL's relief in relation to Activity Area C?***

[59] QCL (with QLDC's support) propose expanding AA-C1 in two ways:

(a) by reconfiguring AA-C1 and AA-C2; and

(b) rezoning AA-C2 west of Grant Road.

[60] As noted, Five Mile Holdings' notice of appeal seeks either a combined Area C or to retain the separate C1/C2 sub-zones and to define more specifically the function of the AA-C1. The notice of appeal somewhat ambiguously refers to supporting a single Area C "as originally notified",[64] but focuses the relief on PC19(DV) AA-C1 and AA-C2 which (now) encompasses a differently configured area of land. (QCL pursued on appeal the town centre option (option 2)).

[61] In one key respect the notice of appeal departs significantly from the submission made by Five Mile Holdings on the notified plan change. On appeal, Five Mile Holdings no longer pursues the extension of Activity Area C over all of its land holdings. We can find no reference in the Commissioners' decision that this outcome was supported by QCL at the District Council hearing.

[62] SPL submits QCL relies on an isolated reference to "commercial activities" in Five Mile Holdings' submission on PC19 to support its position on appeal, and observes that even then the submission is not concerned with "commercial activities", rather the narrower category of "commercial activities greater than 500m^2". We find the narrow scope of Five Mile Holdings' submission on the plan change unsurprising given that AA-C as notified is permissive of a wide range of commercial activities restricted only by floor area.

[63] Notice of appeal at [102.c].
[64] Notice of appeal at [37].

[63] SPL further submits Five Mile Holdings did not seek in its notice of appeal to expand AA-C1, rather the relief in [57] is concerned with the function of any retail offer.[65] For reasons which we later discuss the terms "village centre" and "town-centre" may refer to the related concepts of form or function of the new urban area, its scale or both. These are not terms limited to the consideration of the spatial extent of either centre, or the associated retail offer, although could be understood and applied this way. We come back to this later in the decision. However, as these terms are interpreted or applied, we find the proposed reconfiguration of AA-C1 pursued by QCL by way of relief to be within the scope of the notice of appeal as it is clearly consequential relief addressing the form and function of this area, which is an issue brought squarely before the court.

Reconfiguring AA-C2 and AA-C2

[64] We have no hesitation in finding jurisdiction under the Five Mile Holdings' notice of appeal to consider the relief proposed by QCL (with QLDC's support) to reconfigure AA-C1 and AA-C2 land. This finding includes the expansion of AA-C1 land into AA-C2.

Rezoning AA-C2 west of Grant Road

[65] QCL and QLDC also propose expanding AA-C1 to include a small area west of Grant Road. Zoned AA-C2 in PC19(DV) this land is owned by QLDC.[66] While this area was included within Five Mile Holdings' submission on the plan change, it was excluded in the notice of appeal as it is not land owned by that company. On that basis we find that there is no jurisdiction to consider the same.[67] However, we return to this proposed zoning later in Part 8: Activity Area C1 when we consider whether we should exercise our discretion under section 293 and make directions in relation to this expanded relief.

[65] SPL Closing submissions at [6.17-6.20].
[66] Hutton EiC Appendix 7, Map Showing Ownership of Land within the Plan Change Area.
[67] Five Mile Holdings' notice of appeal at [5(b)] and Plan A.

Issue: ***Does the court have jurisdiction to approve QCL's relief in relation to Activity Area E2?***

[66] PC19(DV) made substantial changes to Activity Area E (an area of industrial, trade service and mixed business activities) dividing it into two sub-zones; AA-E1 and AA-E2. Under PC19(DV) the Commissioners rezoned land formerly owned by Five Mile Holdings located east and west of Grant Road from AA-E to AA-C2 and AA-D.

[67] In these proceedings QCL and QLDC propose a new Activity Area, AA-E2 on land partly zoned AA-C2 and AA-D. QCL goes further than QLDC dividing this area into sub-zones "AA-E2 (Grant Road)" and "AA-E2 (EAR)", reflecting slightly different proposed roles.

[68] QCL proposes a new objective for the AA-E2 (Grant Road) sub-zone (objective 14) as follows:

> To ensure a high quality building design and streetscape in the E2 – Grant Road area that provides a mixed use commercial area in support of and integrated with the Frankton Flats Special zone (A) and the Frankton Flats C1 area.[68]

[69] The explanation and reasons for the objective and policies records that this area adjoins the urban centre of Frankton Flats and provides an opportunity to agglomerate those large format retail (**LFR**) activities that provide convenience.[69]

[70] The following policies shed more light on what is intended in this proposed sub-zone:[70]

> 14.1 To enable an E2 Activity Area south of the C1 and Frankton Flats Special Zone (A) that provides for convenient and complementary office, service and retail activities (inside the OCB).
>
> 14.2 To manage the floor area of any large format retail activities so as to ensure that traffic generation does not adversely affect the functioning and amenity of Grant Road and proposed mainstreet environment within the C1 land.

[68] Edmonds Supplementary Statement April 2012 at 50.
[69] Edmonds Supplementary Statement April 2012, annotated plan, J-12.
[70] Ibid page 50.

[71] The matrix of activities proposed by QCL for this area is as follows:[71]

Activity Area E2 – Grant Road		
Retail (GFA: 1000 m^2+)	Limited discretionary[72]	Retail is defined in the District plan – the area limit is not.
Office	Permitted	Defined in the District Plan
Light Industrial	Permitted	Not Defined

As noted QLDC also supports the partial rezoning of AA-D and AA-C2 land west of Grant Road, but not the creation of a sub-zone. Instead the land is to be rezoned AA-E2 with slightly more activities under QLDC's conception of the Activity Area than compared with QCL.

Discussion and findings in relation to Activity Area E2

[72] We have considered the proposed AA-E2 zone (both west and east of Grant Road) and the activities the sub-zone would enable, with the outcomes sought in Five Mile Holdings' notice of appeal and its original submission. To recap – the AA-E2 (Grant Road) sub-zone is a new mixed use commercial area accommodating office, retail and light industrial activities.

AA- E2 east of Grant Road

[73] When considered as a whole, we find that there is no appeal on any provision or matter seeking the partial rezoning of land AA-D and AA-C2 land located east of Grant Road and north of Required Road 5 extending towards the EAR. And secondly, there is no appeal seeking to extend a combined Area C into AA-D which (arguably) would have laid the foundation for an alternative AA-E2 zone.

[74] The evidence-in-chief of QCL planner Mr J Edmonds lends support to our finding that Five Mile Holdings did not contest the AA-D zoning. In his evidence-in-chief Mr Edmonds supports the necessity for the AA-D zone (describing it as an area set

[71] QCL Memorandum Matrix of Activities within Plan Change 19, dated 3 May 2012.
[72] Limited discretionary in relation to cumulative retail floor area (max. 8,000 m^2) in the Activity Area, as well as site specific building footprint (min. 1,000 m^2).

aside for yard-based retailing, although we note that it is not exclusively so).[73] He discusses the shape of the AA-C1 proposing that it be extended north to increase and regularise its shape.[74] However, his evidence was the proposed zone boundary for AA-C2 and AA-D should remain unaltered from PC19(DV).[75]

[75] It is the QLDC, by way of the August 2011 Supplementary Statement of evidence from its planning witness, Mr D Mead, which addresses for the first time the rezoning as a possible outcome in these proceedings. The driver for this is a demand for large format retail activities located outside of town centres (specifically Mr Mead refers to AA-C1 in this context).[76] Mr Mead did not identify this land use demand in his earlier September 2010 evidence-in-chief when he supported the retention of the boundaries at AA-D and AA-C2.[77] Both Mr Mead's evidence-in-chief and 2011 Supplementary Statement were written before the District Council's decision in November 2011 approving PC34, which provides for 30,000m^2 of retail activity in the Remarkables Park Zone. From what we can tell, Mr Mead did not revisit his conclusions in light of PC34.

[76] Having taken a wide view of the appeal and the submission on the notified plan change, we find that the proposed rezoning of land east of Grant Road cannot fairly be said to be a consequence of any relief sought in the notice of appeal. That is so notwithstanding that the proposed sub-zone has some merit in addressing the interface between AA-C2 and AA-D. We conclude we have no jurisdiction to consider the proposal to rezone land east of AA-E2. We address QCL's section 293 application later in Part 10 of this decision.

AA-E2 west of Grant Road

[77] QCL (with QLDC's support) propose rezoning land owned by QLDC located west of Grant Road from AA-D to AA-E2. Five Mile Holdings did not appeal the zoning of land located west of Grant Road and as its appeal excludes land outside of its

[73] Edmonds EiC at [7.9, 8.16].
[74] Edmonds EiC at [9.9.6, 9.9.12].
[75] Edmonds EiC at Tab 1.
[76] Mead Supplementary Statement August 2012 at [50-55].
[77] Mead EiC at [10.3].

ownership we find there is no jurisdiction or the court to consider the same. Again we return to this in Part 13: Activity Area D.

[78] We address next the relief pursued in the Environment Court by Manapouri Beech Investments Ltd and FM (Custodians) Ltd. While these companies filed separate appeals, it is convenient to address their relief together as each proposes that a new sub-zone apply to their land.

Issue: ***Does the court have jurisdiction to approve the relief sought by Manapouri Beech Investments Ltd?***

[79] The plan change (as notified) proposed the Manapouri site be zoned Activity Area A (a landscape buffer area).

[80] Five Mile Holdings' submission on the notified plan change addressed the plan change as a whole. Five Mile Holdings sought as relief, *inter alia,* to include land now owned by FMC and Manapouri Beech site within Activity Area C.

[81] Manapouri in its own submission on the plan change sought that the objectives and policies be amended to acknowledge the existing development and commercial activities on this site.[78] More specifically, it sought that the plan change be amended to provide as follows:

(a) building and commercial activities are controlled activities;
(b) residential activity is a permitted activity;
(c) that a garden centre, and its associated activities, is provided for as a permitted activity; and
(d) existing access to the Manapouri site off SH6 is retained and not adversely affected by new roading links.

[82] In a further submission Five Mile Holdings supported the relief sought by Manapouri Beech on the notified plan change.

[78] Submission dated 3 August 2007 at [7].

[83] The hearing Commissioners, accepting in part the submission to rezone this land, amended the zoning in PC19(DV) to include this land in AA-E1. The objectives and policies underpinning AA-E1 are discussed elsewhere in this decision. For now we broadly describe the AA-E1 as an industrial and yard-based sub-zone.

[84] Manapouri appealed the decision and in its notice of appeal Manapouri seeks (relevantly) to amend the plan change so that:

(a) rule 12.19.1.1(b) is amended to enable a licensed cafe no more than $60m^2$ in area ancillary to the Garden Centre as a permitted activity;
(b) residential activities above ground floor level within the appellant's site are controlled activities;
(c) offices within the appellant's site are controlled activities;
(d) that rule 12.20.5.1(xiv) is amended to enable access to the appellant's site; and
(e) such alternative or consequential relief to the plan change provisions considered necessary or appropriate to address the issues and concerns raised in this appeal.

[85] The reasons given for its appeal focus on access to the site,[79] the existing garden centre and intended future cafe[80] and the activity status for offices and residential activities.[81] Referring specially to the rules for residential and office activities, the notice of appeal states that the rules are inconsistent with the findings in the plan change decision in respect of the classification of these activities in AA-E1. The appellant goes on to say:

> The decision states that Activity Area E1 [at 3.3.8] "*provides for buildings, commercial, and even some residential activities, which we consider would be appropriate in this environment*, and that [at 3.9.29] *this final Activity Area is intended to be a light industrial, mixed business area providing for outcomes*

[79] Notice of appeal at [8.f-h].
[80] Notice of appeal at [8.a-c].
[81] Notice of appeal at [8.d-e].

including some similar to those that have been developed in the Glenda Drive Estate".[82]

Issue: ***Does the court have jurisdiction to approve the relief sought by FM Custodians Ltd?***

[86] Under PC19(DV) the FMC site is the subject of two Activity Areas; being AA-A and AA-E1.

[87] FMC appealed those parts of the District Council's decision that relate to its site. In its notice appeal, FMC seeks by way of relief to extend AA-E1 to the state highway thus to include the whole of the site and secondly, for connection to the site by a required road. FMC pleads that AA-E1, as opposed to Activity Area C, would meet its concerns.

Relief sought during the Environment Court hearing by Manapouri Beech and FMC

[88] In the Environment Court Manapouri Beech Ltd, together with FMC, seek their land be rezoned Activity Area E4 (**AA-E4**). AA-E4 is a new sub-zone and the objective for this area was given as follows:

> To enable Activity Area E4 to develop as a mixed use industry, service and office environment, including trade and home improvement retail, with a high standard of amenity alongside State Highway 6.[83]

[89] The proposed policies flesh out what is intended here most relevantly:

> 12.1 To enable predominately industrial, service and office activities along with related retail sales aligned to construction and trade service activities within Activity Area E4;
>
> ...
>
> 12.3 To restrict retailing within the Trade Retail Overlay to large format retail activities.[84]

[90] The explanation and principal reasons for adoption inform us:

> The trade retail overlay indentifies area suitable for the provision of trade orientated retail that will be characterised by large format, space extensive or destination specific activities.[85]

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[82] Notice of appeal at [8.d].
[83] Manapouri/FMC annotated plan change, 1 June 2012, objective 12, at [J-12].
[84] Manapouri/FMC annotated plan change, 1 June 2012 at [J-13].
[85] Manapouri/FMC annotated plan change, 1 June 2012 at [J-13].

[91] Rule 12.20.3.7, and in particular Table 1, is to be amended by changing the status of several activities and by introducing Trade and Home Improvement Retail, the ambiguously worded "commercial activities (excluding home occupations) ancillary to any permitted or controlled activity and not otherwise stated" and finally, residential activities (above ground).

Discussion and findings

[92] What is proposed by Manapouri and FMC, both in content and emphasis, is an entirely new sub-zone. The extended relief pursued during the course of these proceedings goes well beyond the subject matter and relief of both appeals.

[93] In the case of FMC, the relief now proposed is inconsistent with the notice of appeal which seeks to confirm AA-E1. While Manapouri's relief in the notice of appeal is broader than FMC, its focus was on enabling a narrow range of activities.

[94] In reaching this decision we have had regard to the Manapouri's pleading at [8(d)] of the notice of appeal where it asserts that the rules in PC19(DV) are inconsistent with the classification of the land AA-E1.[86] To support this ground of appeal Manapouri cites two quotations from the Commissioners' decision which we find are taken out of context. Manapouri does not identify that at paragraph [3.3.8] of the hearing Commissioners' decision the discussion concerns site specific controls that are to apply to Manapouri's site and the second paragraph at [3.9.29] concerns Activity Area E – which includes both AA-E1 and AA-E2. Putting that to one side, the issue raised on appeal concerns whether the rules in PC19(DV) implement the objective and policies for AA-E1. What Manapouri does not do is challenge the underlying sub-zone.[87]

[95] During the course of the proceedings, the court raised with counsel its concerns that relief sought by Manapouri Beech Ltd and FMC was beyond its jurisdiction. At the direction of the court, Manapouri and FMC filed a summary of their appeal identifying the source of jurisdiction. In the key aspects of AA-E4 Manapouri and FMC rely on

[86] Notice of appeal at [8.d].
[87] Notice of appeal at [8.e].

their pleading for alternative or consequential relief.[88] We find that "alternative" or "consequential" relief must relate to the grounds of appeal and cannot be relied on to extend the nature and extent of relief sought beyond the scope of an appeal. In closing submissions counsel for Manapouri Beech and FMC responding to the court's concerns, stated that no party has raised any jurisdictional issues concerning the scope of the proposed changes now sought.[89] That is aside the point; the parties cannot confer by agreement jurisdiction on the court. Approval of a new sub-zone in this manner would result in considerable procedural unfairness to the public in general, who have not had an opportunity to submit on the same.

[96] Again we come back to these appeals when we consider whether jurisdiction exists under section 293 to direct the District Council to amend the District Plan.

Appeals filed by other parties

[97] We have considered whether jurisdiction to approve Manapouri and FMC's relief arises in relation to submissions or appeals filed by other parties. Two appeals are relevant; SPL and Five Mile Holdings.

[98] In an endeavour to harmonise the relief sought in SPL's appeal with the relief sought by FMC and Manapouri, SPL proposed to extend AA-E3 to include FMC and Manapouri land. As the SPL appeal is confined to its own land interests we find this relief to be beyond the jurisdiction of the court.

[99] The Five Mile Holdings' appeal seeks that the entire FMC site be zoned AA-E1. This ground of appeal does not include the Manapouri site, as it is zoned AA-E1.

[100] We find no jurisdiction arises to approve the relief sought by Manapouri and FMC under SPL and Five Mile Holdings' appeals.

Outcome

[101] To summarise, the court does not have jurisdiction to grant the relief sought by:

[88] *Plan Change 19 – Appeal Summary Manapouri Beech Investments Ltd* at [7] and Plan Change 19 – Appeal Summary FM Custodians Limited at [1, 2 and 4].
[89] Manapouri/FMC Closing submissions at [3.1].

(a) QLDC and QCL amendment that land west of Grant Road zoned AA-C2 in PC19(DV) be rezoned AA-C1;

(b) QLDC and QCL amendment that land west of Grant Road zoned AA-D in PC19(DV) be rezoned AA-E2;

(c) QLDC and QCL amendment that land east of Grant Road and north of proposed Road 5 extending towards the EAR zoned AA-D/AA-C2 in PC19 (DV) be rezoned AA-E2;

(d) QLDC and QCL amendment that the Manapouri/FMC land fronting SH6 in AA-A and/or AA-E1 in PC19(DV) be rezoned AA-E4;

(e) SPL amendment that the Manapouri/FMC land fronting SH6 zoned AA-A and/or AA-E1 in PC19(DV) be rezoned AA-E3.

[102] The court has jurisdiction to consider the extension of AA-C1 and reconfiguration of AA-C2 on land formerly owned by Five Mile Holdings. The findings in [101(a) – (e)] and [102] provide the starting point for our deliberations on related aspects of the PC19 appeals.

Part 3 Weighting to be given to recent Environment Court decisions

Introduction

[103] Following the completion of PC19 hearings the Environment Court (differently constituted) heard and granted two land use consents to develop land located in SPL's proposed AA-E3 zone. Both decisions have been appealed to the High Court. As a consequence of this, a Minute was released where we expressed our tentative view that while the decisions are relevant, and a matter to which we can have regard, as they are under appeal little or no weight should be attached to them.[90] We sought further submissions from the parties and, at Foodstuffs and SPL's request, the hearing was resumed on 7 November 2012. The resumption of the hearing has delayed the release of this Interim Decision.

[104] Four parties indicated that they wished to be heard, being:

- Foodstuffs (South Island) Ltd;
- Queenstown Lakes District Council;
- Queenstown Central Ltd; and
- Shotover Park Ltd and Remarkables Park Ltd.

[105] The appearances of Air New Zealand Ltd, FM Custodians Ltd, Manapouri Beech Investments Ltd and Queenstown Airport Corporation Ltd were excused; these parties having agreed to abide the decision of the court. Appearances for NZ Transport Agency,[91] Progressive Enterprises Ltd and Trojan Holdings Ltd were entered, however, as counsel had a watching brief only, they did not participate at the resumed hearing.

Foodstuffs (South Island) Ltd v Queenstown Lakes District Council[92]

[106] In its decision dated 6 July 2012 the Environment Court allowed an appeal by Foodstuffs against a decision by the QLDC declining an application for resource consent

[90] Minute dated 14 September 2012.
[91] NZ Transport Agency also filed a memorandum dated 25 September 2012, which we have considered.
[92] [2012] NZEnvC 135.

to construct and operate a supermarket and fuel facility. The Foodstuff's site is zoned Rural General under the operative Queenstown Lakes District Plan and AA-E2 and AA-E1 under PC19(DV). The application was assessed overall as a non-complying activity. The decision to grant consent has been appealed by QCL to the High Court.

Cross Roads Properties Ltd v Queenstown Lakes District Council[93]

[107] In its decision dated 23 August 2012 the Environment Court granted an application directly referred to the court to construct and operate a trade retail store (a Mega Mitre 10). The subject site is zoned Rural General under the operative Queenstown Lakes District Plan and AA-E1 under PC19(DV). The application was also assessed (overall) as a non-complying activity under the operative District Plan and PC19(DV). The decision to grant consent has been appealed by QCL and QLDC to the High Court.

Constraints on exercising the consents

[108] The grants of consent to Foodstuffs and Cross Road Properties Ltd are the subject of Interim Decisions with the Environment Court yet to release its final decision addressing, *inter alia*, conditions of consent.

[109] Subject to final decisions of the Environment Court, it is common ground that the consents cannot be exercised until a third consent is obtained to subdivide land. SPL lodged a subdivision application with the District Council in 2009. The application was placed on hold following a request for further information by the District Council. From the bar we were told SPL intends shortly to provide the information sought by the District Council and once that is done it will request that the District Council make a notification decision on the application.

[110] The exercise of consents granted by the Environment Court is contingent upon the upgrade of the District Council's potable water supply, storm and waste-water disposal systems. From the bar counsel advised these services would be upgraded on a "just in time" basis (which is also our understanding from evidence given on behalf of

[93] [2012] NZEnvC 177.

the District Council earlier in the proceedings). The District Council has yet to apply to the Regional Council for a discharge permit to manage the disposal of stormwater and while that application has not been filed we were told the catchment management plan (which a discharge permit would give effect) is being developed by the District Council.

[111] Similarly, the roading infrastructure must also be first developed (in particular, Road 2, the EAR and the upgrade of SH6). The timing of the SH6 and the EAR up to the Road 2 intersection is uncertain as there is no agreement with the relevant landowners that land may be taken for this purpose. In addition, there are roads to be stopped, agreement for which has yet to be secured by the District Council so proceedings may yet issue under the Public Works Act.

The submissions

By Foodstuffs and SPL

[112] Citing *Brooklynne Holdings Ltd v QLDC*[94] and *QLDC v Hawthorn Estate Ltd*[95] Foodstuffs submits that as it intends implementing its consent, the consent should be considered as forming part of the environment.[96] Neither section 116 of the Resource Management Act nor alternatively an appeal to the High Court, operates (without more) as a stay of proceedings.[97] The fact the appeals exist does not lessen the weight to be given to the consents.

[113] Foodstuffs asserts that there is commonality of issues in *Foodstuffs v QLDC* and the PC19 proceedings and because of this we should give significant weight to factual findings in *Foodstuffs v QLDC* concerning (a) landscape, (b) industrial land supply, (c) the amenity of the neighbourhood – particularly on the EAR and Road 2, and (d) urban structure. These same issues are to be considered by this court under sections 5, 7, 31 and 74 of the RMA.[98]

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[94] [2010] NZEnvC 187 at [33-34].
[95] [2006] NZRMA 424.
[96] Memorandum dated 26 September 2012 at [2].
[97] Foodstuffs Submissions dated 26 September 2012 at [3] and further submissions dated 12 October 2012 at [3.5-3.7].
[98] SPL Submissions filed on 26 September 2012 at [3.4] and 7 November 2012 at [3.3].

[114] Further, SPL and Foodstuffs submit decisions made on the following topics should be accorded significant weight:

(a) the court's findings in *Foodstuffs v QLDC* at [193, 194, 224, 254 and 283] in relation to AA-C2, assuming this Activity Area were to extend to the EAR as proposed by SPL in the PC19 proceedings and opposed by QLDC/QCL;

(b) the court's findings in *Foodstuffs v QLDC* at [192] concerning the sleeving of retail activity along the EAR if car-parking is not allowed as proposed by SPL in the PC19 proceedings and opposed by QLDC/QCL; and

(c) the court's findings in *Cross Roads Properties Ltd v QLDC* at [176] in relation to a "trade retail centre" south of Road 2.

[115] SPL, citing a line of case authority, submits that while this court is not bound by decisions of other Environment Court divisions, and is free to consider each case on its own facts and merits, the court is entitled to take into account decisions made in *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* on similar facts. When deciding whether to consider the decision of another division, and the weight to be given to the findings made therein, this court must act reasonably and rationally.[99] Failure to do so may be regarded as giving rise or contributing to irrationality in the result of the process. If this court were to come to contrary findings of fact or law than *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* then we should give reasons for our contrary decisions.

[116] Disputing the District Council's submission that an appeal or direct referral of a resource consent application is more narrowly focused than these plan change proceedings, SPL submits the Environment Court in *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* addressed the "very issues" to be determined on the plan change appeals including sections 31(1)(a), 32(3) and (4), 74(2) and Part 2 of the Act; there are no gaps in the analysis or evaluation of the relevant evidence; the Environment Court's decisions address the relevant potential adverse effects of land and the objectives and policies of the operative District Plan and PC19(DV).[100]

[99] SPL Submissions filed on 26 September 2012 at [2.9].
[100] SPL Memorandum dated 12 October 2012 at [1.7-1.8].

[117] Foodstuffs submits that this court has two options, either:

(a) give "adequate" weight to [the] Environment Court's decision to grant consent to Foodstuffs; or
(b) await the outcome of the High Court proceedings.

[118] Foodstuffs warns that while this division is not bound by the Environment Court's decisions,[101] failure to consider the decision to grant consent "appropriately" would likely be the subject of a further appeal to the High Court.[102]

[119] When pressed on the relevance of the decisions, counsel for Foodstuffs and SPL submit consents granted to *Foodstuffs* and *Cross Roads Properties Ltd* would alter the environment in such a way that zoning of AA-E3 is now more appropriate than any other zoning option.[103]

By QLDC and QCL

[120] Not unsurprisingly QLDC and QCL resist the submissions made by Foodstuffs and SPL. QLDC submits that the decisions to be made by this court on PC19 and the decisions by the Environment Court in *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* applied different statutory criteria and consider different versions of the statutory planning documents. Given the High Court appeals this court is not in a position to determine whether the consents will likely be implemented.

The issues

[121] While submitting that the decisions of *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* are relevant (and we agree that they are), SPL and Foodstuffs gave scant regard to the *relevance* of the decisions to these proceedings. In the end two themes emerged:

(a) whether the grants of consent are relevant to an assessment of the environment?

[101] Foodstuffs Submission dated 7 November 2012 at [m].
[102] Foodstuffs Memorandum dated 12 October 2012 at [4.9].
[103] Transcript at 121 and 126.

(b) is the implementation of the consents relevant to an evaluation under section 31(1)(a) and section 32(3) generally and in particular, the efficiency and effectiveness of policies, rules and other methods which may anticipate a different environmental outcome?

Issue: ***Whether the grants of consent are relevant to an assessment of the environment?***

[122] In a plan change proceeding, a grant of consent may be relevant to an assessment of the environment, which we find would include the future environment as it may be modified by the implementation of resource consents held at the time the plan change request is determined and in circumstances where those consents are likely to be implemented. Unlike *Hawthorn Estate Ltd*[104] (cited to us by SPL and Foodstuffs) this court is not concerned with how the environment may be modified by the utilisation of rights to carry out permitted activities under the District Plan. Indeed the proposed modification of the existing environment is the subject matter of these plan change proceedings. *Hawthorn Estate Ltd* is therefore distinguishable on its facts.

[123] The likelihood of the consents being implemented is a question of fact and this is difficult to determine, but not because these particular consents are contingent upon the gaining of other consents and approvals. (While this will take time we were told of no compelling reason why these would not ultimately be forthcoming).

[124] Rather, the question is difficult because it involves speculation as to the outcome of the High Court appeals. Subject to the High Court's decisions, it may be open to the other division of the Environment Court to confirm the grants of consent with or without modification or (possibly) to reject the applications.[105] Given this, we are not in a position to determine the likelihood that these consents will be implemented.

[125] But even if we are wrong in finding this, any consent granted to the Foodstuffs and Cross Roads Properties Ltd may be exercised. This is so notwithstanding that the underlying zoning does not permit the activities authorised (and after all it was on this basis that they were granted). While Foodstuffs (South Island) Ltd and Cross Roads

[104] [2006] NZRMA 424.
[105] Conceivably the court might also approve one and decline the other.

Properties Ltd may consider it preferable that the underlying zoning is enabling of the consents held, this would not preclude the exercise of their consents (see section 9 of the Act).

Issue: ***Is the implementation of the consents relevant to an evaluation under section 31(1)(a) and section 32(3) generally, and in particular the efficiency and effectiveness of policies, rules and other methods which may anticipate a different environmental outcome?***

[126] The consideration of unimplemented resource consents as forming part of the future environment is important when we come to consider the integrated management of the effects of use, development or protection of land. Section 31(1)(a) provides:

> Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
>
> (a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.

The resource consents are also relevant under section 32 (which we summarised earlier).

[127] However, for the following reasons we reject Foodstuffs and SPL submission that the Environment Court findings (and obiter) are either relevant to issues for determination before this court and secondly, are matters to which significant weight attaches:

(a) the court in *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* does not purport to determine any issue in these proceedings;[106]

(b) the "factual findings" relied upon by SPL and Foodstuffs are conclusions given in their own policy context; namely PC19(DV);

(c) in contrast with *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC,* the evidence before this court, from largely different witnesses, sought different policy outcomes from PC19(DV);

(d) the issues considered and factual findings made in *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* are not the same as in these

[106] *Foodstuffs v QLDC* at [45] and *Cross Roads Properties Ltd v QLDC* at [158].

proceedings albeit that they may be grouped under the same topic headings with reference to sections 5, 7, 31 and 74; and

(e) to the extent that the matters at [114] above address relief sought by the parties in these proceedings, and are not provisions in PC19(DV), the comments are obiter.

[128] We find that there is nothing *inevitable* (as suggested) about the grant of consents to Foodstuffs and Cross Road Properties Ltd and the consequential approval of AA-E3 in these proceedings. The AA-E3 zone is enabling of a wide range of activities, including a supermarket and trade retailing. The Environment Court in *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* did not consider SPL's proposed AA-E3 zone.

[129] We have concluded that sections 31 and 32 considerations, in particular the efficiency and effectiveness of policies, rules and methods, do not (in this case) support a submission that significant weight should be given to the Environment Court's findings. Firstly, and for reasons that we give later, we have determined that the land east and west of the EAR should be subject to its own ODP process. Secondly, while there are differences in the range of activities provided for within the different sub-zones supported by QCL/QLDC and by SPL, and differences also in the road frontage controls proposed by these parties, not dissimilar outcomes in terms of achieving an acceptable urban design response would potentially arise on the balance of the AA-E2 (being the land not subject to Foodstuffs' consent application).[107]

[130] The artifice in the SPL and Foodstuffs submission is this; in *Cross Roads Properties Ltd v QLDC* the court also found, for urban design and landscape reasons, large format trade related retail should be confined to the south of Road 2, whereas SPL in these proceedings sought a zoning enabling of these activities both north and south of the Road.[108] We are not prepared to alter the weight given to different findings (obiter) of the Environment Court in *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* to suit SPL and Foodstuffs. If we are to give significant weight to the factual findings made in *Cross Roads Properties Ltd v QLDC* then we would partially reject

[107] J Brown Supplementary Statement October 2011 at [30].
[108] At [175].

AA-E3 (and reject AA-E4) as they provide for these activities north of Road 2. That is not an outcome SPL or Foodstuffs would support.

Outcome

[131] While we find that the Environment Court decisions *Foodstuffs (South Island) Ltd v QLDC* and *Cross Roads Properties Ltd v QLDC* are relevant, we are unable to assess whether the consents (if upheld) will be implemented and therefore decline to consider the consents as forming part of the environment.

[132] We decline to defer our Interim Decision pending the release of the High Court's decisions on the consent appeals as the High Court decisions are not, in our view, determinative of PC19.

Part 4 Land use demand

[133] We commence this Part by recording our concern with the inconsistent use of terms (including terms that are poorly defined or undefined) in key documents including the 2006 Commercial Land Needs Analysis, PC19(DV), the operative District Plan and also the evidence of some of the witnesses. We appreciate that the witnesses have not had an easy task. That said, key concepts such as commercial, business, industrial and mixed-use zones were poorly described (if they are described at all) either by the relevant witnesses or in the planning documents. As a consequence, these concepts took on different meanings for different parties subject to their end goal of land development. Added to this is the complication of the proposed categorisation of sectors of retail activity for the purpose of defining new zones.

The 2006 Commercial Land Needs Analysis (the 2006 Report)[109]

[134] Having heard and considered all of the evidence we could be forgiven for thinking that these proceedings primarily concern the provision for retail activity; and that conclusion would be quite wrong.

[135] The 2006 Report prepared on behalf of the District Council identified a diverse range of land use requirements.[110] The provision of land activities that cannot be located in town centre environments was seen as important for the district's on-going development.[111] The 2006 Report forecast that by 2026 there would be demand for 60 hectares of future urban land, of which 28-30 hectares was required for a mixed business area(s) and 30 hectares for yard-based and transportation activities.[112]

[136] The 2006 Report highlighted the shortage of land for commercial uses (business and industrial), describing the need in the following way:

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[109] The 2006 Report was commissioned by the District Council to assess future commercial and industrial land needs. The Report, together with a number of other reports, informed the contents of the notified plan change.

[110] While referred to extensively in evidence a full copy of this report was not produced, being a public document we obtained the same from the District Council's website and considered the evidence in its context.

[111] 2006 Report at [2].

[112] 2006 Report at [2,53].

> ... the district is now facing imminent constraints on the supply of land zoned for commercial uses, particularly for non-town centre based employment activities (business and industrial activities). The current stock of vacant commercial zoned land in the district is likely to be fully developed soon. While new commercial areas are being planned, and there are opportunities for redevelopment of some existing employment areas for more intensive use, it will be necessary to identify additional land for town centre, mixed use, business and industrial activities.

[137] As a consequence the District Council sought advice on the amount of commercial land needed to sustain the growth of the local economy to 2026. Mr D Mead, the author of the 2006 Report and also QLDC's policy planning and retail analyst in these proceedings, commented:

> It is apparent that the District does not have an industrial base, and that most activities seek a town centre or mixed business location. The District Plan reflects this, with the Business and Industrial zones being very similar in nature. Within this overall picture, there are a range of transport and yard-based activities that service the local economy and which are likely to be "squeezed out" over time by rising land values should the current approach continue. While these activities could be located in Cromwell, their absence from the district is likely to harm the functioning of the local economy.[113]

[138] From 2026 the District Council expects there to be a severe shortage of land to accommodate housing,[114] with a forecast demand for 6,000 dwelling units between 2006 and 2029.[115] The 2006 Report recommended restraining the dispersal of activities from the town centres, such as to the Gorge Road business area and Glenda Drive industrial area, as this trend has the potential to undermine the role of the town centres. The report also recommends limiting retail in the business area to retail associated with manufacturing and building, construction, hardware and the like.

[139] The 2006 Report does not separately assess demand for community facilities, and assumes that where these are privately provided then they would be located within commercial land. Nor does it undertake any retail floorspace demand modelling.

[140] At the time of notification the District Council described the purpose of PC19 in the following terms:

[113] Commercial Land Needs – Queenstown Lakes District, August 2006 by David Mead.
[114] Mead EiC at [4.13].
[115] Mead EiC (3 September 2010) at [4.1].

> The purpose of this plan change is to provide for the comprehensive rezoning of the land known as the Frankton Flats to enable the following activities:
>
> - educational;
> - residential;
> - visitor accommodation;
> - commercial;
> - industrial;
> - business;
> - recreational activities;
> - providing for future growth demand of the district within the urban boundary in a mixed use zone that affords high amenity values and visual and physical coherence, open space and reserves, while maintaining views of the surrounding outstanding natural landscape.

[141] The Commissioners appointed by the District Council to hear and decide submissions on PC19 echoed this provision for land. The provision of land was to fulfill two purposes:

> One relates to the provision of industrial and business development land intended to ensure that the community is able to meet its needs for the foreseeable future. The other relates to a desire to zone the land for mixed use and residential purposes in a manner whereby the density and mix achieved will result in a form characteristically distinct from other settlement patterns in the District to date.[116]

[142] The goals indentified by the Commissioners have not changed and the location and manner of enablement for a range of land uses is a key issue in these proceedings. We accept the District Council's fundamental proposition that Queenstown/Wakatipu will face significant constraints over the next twenty years in its ability to accommodate industrial and business activities.[117]

[143] During these proceedings Mr Mead confirmed there was continuing demand for 60 hectares of land located outside of the town centres over the next twenty years.[118] For yard-based and transportation activities (which we understand from the 2006 Report

[116] QLDC Decision at [101].
[117] Mead EiC at [4.11].
[118] The District Plan provides that there are three town centres located at Queenstown, Arrowtown and Wanaka. SPL contends that the commercial area at the Remarkables Park Zone is also a town centre.

to be categories of industrial activities) PC19(DV) enabled up to 50% of growth demand.[119] While some workers may be accommodated within existing centres – these predominately retail focused centres are not suitable for the entire range of land use activities.[120]

[144] Mr J Heath, on behalf of SPL, gave similar evidence in his high level assessment of future business land requirements. The key points of his evidence being that over the next 15 years the Queenstown/Wakatipu's employment count (excluding retail) is predicted to increase by 37% (or 7,950). Growth demand for commercial and industrial land in the three local catchments (Queenstown/Wakatipu, Cromwell and Wanaka) is in the order of 31 hectares (net) and 66 hectares (net) respectively, of which Queenstown/Wakatipu could accommodate up to 60% of commercial growth and 50% of industrial growth. Mr Heath observes that the estimate of commercial land demand does not automatically translate into an additional land requirement given that much of the forecast demand can be met within Queenstown's CBD and the Remarkables Park Zone which would "lower the commercial land requirement in PC19".[121] While he does not define the terms "industrial" and "commercial" (and we are not sure whether these terms have the same meaning as given in the operative District Plan), retail activity is clearly excluded from his analysis.

[145] Save to the extent that there may be a demand for retail floorspace that is unmet by existing and planned zones, we understand overall that the 2006 Commercial Land Use Needs Analysis is not seriously challenged by the parties' witnesses. Mr Heath strongly reinforces two key strategic elements of the plan change; namely that economic growth be enabled through the provision of appropriately located and efficiently utilised industrial and commercial land.[122]

[119] Mead EiC (3 September 2010) at [10.3]. At [4.17] of the EiC Mead wrongly describes the mixed business areas as "industrial activities" and omits reference to the transportation activities when discussing yard-based activities.
[120] Mead EiC at [4.12].
[121] Heath EiC at 30-33.
[122] Heath EiC at [84].

Planning horizon

[146] A key issue for determination concerns the appropriate planning horizon for activities enabled through this plan change. While submissions and evidence focus on retail activities, all activities are relevant. Mr Mead describes this as the main resource management issue to be addressed in these proceedings.[123] We agree with him – this is a pivotal issue as its outcome informs many of our other determinations.

[147] SPL's retail analysts (Messrs M Tansley and T Heath) support a 10 or 15 year planning horizon respectively, with further retail development to be staged beyond that timeframe. While Mr Mead agrees with them that retail supply will exceed demand "by a reasonable margin" for the next 10 years,[124] he, along with QCL's economist and retail analysts (Messrs M Copeland and J Long) support a 20 year planning horizon as they say retail supply and demand will balance over that period with retail development becoming increasingly constrained by urban form.

The evidence

[148] Messrs Tansley and Heath support a 10 or 15 year planning horizon for retail supply respectively, but agree that a 20 year time-frame is generally desirable for land use planning.[125] And, when making predictions about growth in demand for LFR, they do so for a 20 year planning period.[126]

[149] Mr Heath supports a 15 year retail supply planning horizon saying this is warranted because a significant portion of market growth in the area is driven by projected growth in international visitors; which he says is a fickle and uncertain market.[127] Projections beyond 2026 he regards as highly speculative and untrustworthy and cannot be relied upon for longer term planning purposes.[128] In supporting a 15 year planning horizon, Mr Heath placed weight on the Ministry of Economic Development's five year forecast "Tourism national forecast 2011 to 2016 – update". The update

[123] Mead Supplementary (February 2012) at [56].
[124] Mead Supplementary (February 2012) at [51].
[125] First Joint Witness Statement (economists and retail experts) at [2].
[126] Large Format Retail or LFR is retail activity that is defined in relation to its building typology and in this case includes Trade and Home Improvement Retail and "No-Frills" retail.
[127] Heath Updated EiC at [24].
[128] Heath Updated EiC at [24].

records a lower actual start point for future visitor numbers with the growth rate also being lower than that previously predicted. Although not referred to in his evidence the update contains an advisory note that it should be used with great caution. Mr Heath concludes the weaker growth outlook for residential and visitor projections are at a scale which will materially change retail demand forecasting for the district and consequently the level of retail provision and land required to meet retail needs.[129]

[150] Mr Tansley supports a 10 year retail supply planning horizon as he is concerned that changes to trading patterns cumulative on development of the Frankton Flats Special (A) Zone have the potential to adversely affect the CBD and Remarkables Park Zone. That is because PC19 (we understand the decision version) "posits Frankton Flats as the more or less unlimited future retail area of Queenstown". In his opinion if the plan change is approved commercial activity in the CBD and RPZ will decline over the next decade, with the decline being irreversible in the CBD.[130] Mr Tansley faintly suggests that any uncertainty in forecasting could be addressed by staging retail development.[131]

[151] Mr Copeland, together with Messrs Mead and Long, support a twenty year planning horizon.[132] Mr Copeland's evidence was that uncertainty in forecasting does not go away simply because there is a shorter planning period. A planning period of ten years is too short given the lead time for the establishment of retail and other activities. He is critical of Messrs Heath and Tansley for not considering the likely market response to increasing the supply of land. This includes the potential for market competition having the effect of exerting downward pressure on rents and prices, or to suppress future price increases.[133] This potential is important where retail floor space rates and prices in Queenstown are amongst the highest in the country and was commented upon by the hearing Commissioners with reference to the small pool of major developers in Queenstown.[134] It was not possible, nor in his view desirable, for

[129] Heath Updated EiC at [47-51].
[130] Tansley Updated EiC at [7.6.1 - .2].
[131] Transcript at 898.
[132] Second Joint Witness Statement (economist and retail experts) at [45(e)].
[133] Copeland Supplementary (3 February 2012) at [37].
[134] Copeland Supplementary (3 February 2012) at [36], Transcript at 990, Commissioners' decision on PC19(DV) at [3.7.4].

the District Council (or this court) to exactly match future retail land supply to future retail supply market demand requirements.[135]

[152] Messrs Copeland, Mead and Long do not accept Mr Heath's evidence that there had been a decline in international visitor numbers to Queenstown. Mr Copeland referred to Queenstown Airport Company Ltd's annual report for the year ending June 2011 which states total passenger numbers were up 14% on the previous year, international passenger movements were up 50% and domestic passenger movements up 8% (domestic passengers also include international passengers flying internally within New Zealand). He referred to the uncontested evidence given in the Environment Court hearing on the PC35 appeals which forecast growth over the next 27 years in passenger movements on domestic aircraft of 5% per annum and growth of 8% per annum of international aircraft.[136] The Ministry of Economic Development's updated report on the Queenstown Regional Tourism Organisation Area records growth in guest nights over the last 6 years at an average annual rate of 1.5%,[137] although visitor guest nights in 2011 were down on 2010 (2010 nights were at an all time high). Mr Long reports guest nights remained above pre-recession levels and that Queenstown was continuing to attract around 10% share of international spending within New Zealand.[138]

Discussion and findings

[153] We prefer the forecasts given by Messrs Copeland and Long as to visitor numbers and spending. They considered a number of sources and while the projections evidence indicates some volatility, visitor numbers and spending are predicted to continue to grow overall. Having regard to all these sources, we find that Statistics New Zealand's medium growth household prediction referred to in Mr Long's evidence to be reasonable, likewise Mr Mead's 2011 household growth projection. We accept Mr Long's evidence that QLDC's projection represents its views on growth, including infrastructure and services (which may limit growth), irrespective of the state of the economy.[139] There is no reliable evidence upon which the court can conclude that any

[135] Copeland Supplementary (3 February 2012) at [36].
[136] G Akehurst for QAC, EiC admitted by consent in PC35.
[137] Copeland Supplementary (3 February 2012) at [33] and Transcript at 1020.
[138] Long Supplementary (28 February 2012) Appendix A at [1.4].
[139] Long Corrected Supplementary Evidence 3 February 2012 at [20].

decline in international visitor numbers before 2011 is a structural change in the marketplace and on that basis we conclude that a 20 year planning period is appropriate.

[154] We are disturbed that no explanation was proffered by SPL's retail analysts as to why they could support a 20 year planning horizon for LFR, including Trade and Home Improvement retail and No-Frills retail, but only a 10 or 15 year planning horizon for general merchandising. We consider the demand for LFR must be related to growth in tourism (both domestic and international) and to a greater extent growth in households for the Queenstown/Wakatipu area. Given this, Mr Heath's support (and in Mr Tansley's case, his cautious support) for a longer planning horizon for LFR but not for general merchandising is incongruous.[140] This is particularly so given that the retail offer from Trade and Home Improvement can include a significant general merchandise component and, we understood, No-Frills retailing was general merchandising.

[155] We set out next our findings in relation to the existing retail floorspace supply, including un-built supply, leakage of existing retail demand and future retail demand.

Built retail floorspace supply

[156] The economist and retail experts estimate total built retail, shop-front (non-retail) and service floorspace for Queenstown/Wakatipu is 140,000m^2.[141] Their agreed existing floorspace supply within Queenstown is summarised in Table 1.[142]

[157] We make two observations concerning Table 1. First the estimates in Table 1 are presented as a running total. Thus retail is divided into core retail and non-core retail, although the reason for this division is not given. Shop-front (non-retail) and service activities are not defined but appear to be categories of "commercial activity" which, along with retail, is defined in the District Plan. During the course of the hearing examples of shop-front (non-retail) included personal services,[143] travel and recreation, booking agents and real estate offices.[144] An example of "services" was given in the second Joint Witness Statement where there is specific reference to commercial services

[140] Tansley Updated EiC Appendix 4 at [8.8]. Heath Updated EiC at [30-31 and 41].
[141] Second Joint Witness Statement (economist and retail experts) at [21-23]. MEL is source of data.
[142] Second Joint Witness Statement (economist and retail experts) at [21].
[143] Transcript at 761.
[144] Transcript at 872.

such as a bank,[145] and during the hearing reference was made to offices.[146] We understood that service activities are not necessarily reliant on street frontage to attract customers. Thus shop front (non-retail) and service activities appear to fall into the category of "commercial activities" as defined in the operative District Plan.

[158] Existing floorspace supply supports a retail spend of $410M per annum (for both core and non-core retail).[147] At an aggregate level the Queenstown/Wakatipu area does not exhibit any signs of significant over or under provision of retail floorspace, relative to assessed turnover. However, at a sub-category level this is different and (relevantly) there is a likely undersupply in hardware/DIY, supermarket, household goods, department stores and lower priced apparel stores.[148]

Table 1

Existing Floorspace Supply (categories not mutually exclusive)

Type of floorspace	Amount (m^2)
Core retail (depicted as supermarket plus general merchandise)	50,020
Core retail plus food and beverage	83,600
Shop front (non-retail) floorspace	108,680
Total retail and service floorspace	140,000

Un-built retail floorspace

[159] The economist and retail experts were in broad agreement on the likely retail development within the next 20 years at different existing zones and consented developments in Queenstown. While floor space supply at some locations could allow even higher levels of retail development, greater development was considered unlikely within the 20 year planning timeframe. Our findings on the likely retail development over the next 20 years is summarised in Table 2. Again, and this is not entirely clear from the evidence, we understood these estimates do not include shop-front (non-retail)

[145] Second Joint Witness Statement (economist and retail experts) at [45(b)].
[146] Transcript at 761.
[147] Second Joint Witness Statement (economists and retail experts) at [23]. The figures in Table 1 are a running total with each row adding floorspace from a new retail sector.
[148] Second Joint Witness Statement (economists and retail experts) at [25].

or service sectors referred to in Table 1. The estimates do not take into account retail development within PC19.

Table 2[149]

Likely Retail Development over 20 years within existing zones

Area	Likely retail development
FF(A)	25,000m^2 [150]
Remarkables Park (Area 5)	3,100m^2
Remarkables Park (PC34)	20,000m^2 [151]
Remarkables Park (Area 3)	5,000m^2
CBD	negligible – 5,000m^2 [152]
Other (Frankton Corner, Arrowtown, Jacks Pt etc)	2,500m^2 [153]

[160] SPL, in closing submissions, included in its calculation of supply proposed retail activity in PC41 and PC43. While noting that these plan changes involve an inconsequential increase in floorspace capacity, as we are not certain of their status and they are comfortably within any credible margin of error, we have not taken them into consideration.[154] Further, as Mr Heath's evidence on the likely retail development of FF(A) Zone, given on behalf of SPL, was inconsistent and being unable to resolve these differences, we have adopted the estimate given by the other witnesses.

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[149] Unless otherwise stated the figures used are those stated in the table at [38] of Second Joint Witness Statement (economist and retail experts), in particular the first and third columns of that table.

[150] Heath, Transcript at 973, says longer term the retail activity is likely to be higher that 25,000m^2 and estimates up to 42,000m^2 if a two storeyed mall was developed. In the Second Joint Witness Statement at [39] he suggests this will occur if PC19 (decisions version) is approved. However, at Transcript 945 25,000m^2 was given by Heath as a reasonable estimate of floorspace development within 20 years. Mr Tansley, also an SPL witness, at [42] of the Second Joint Witness Statement predicts only 25,000m^2 will be achieved.

[151] While PC34 has capacity for 30,000m^2 gfa, Messrs Heath and Tansley agreed that within the next 20 years the likely floorspace development would be 20,000m^2. See Transcript at 994 (Heath) and at 885 (Tansley). This estimate differs from the floorspace capacity estimate of 30 – 50,000m^2 gfa at [42] of the Second Joint Witness Statement (economists and retail experts), and referred to at [5.69] in SPL Closing submissions. This higher estimate concerns PC34 which had yet to be decided by the District Council at the time of the second expert conference. PC34 approved a total capacity of 30,000m^2 gfa for retail activity; this capacity has not been appealed.

[152] Second Joint Witness Statement at [38-39] and Transcript at 961, Heath – while nearly built out there is potential for retail activity to displace other commercial activity within the CBD.

[153] SPL Closing submissions at [5.69] referred to 3,500m^2. We are unsure where this higher figure came from.

[154] SPL Closing submission at [5.69], PC41 and PC43 has potential capacity of 500m^2 and 750m^2 respectively.

[161] From Table 2 we find that the total likely floorspace development of existing zoned land for retail activities to be between 55,600 to 60,600m^2 gfa over the next 20 years.

Leakage of existing retail demand

[162] While the experts' projections of retail demand and supply assume no leakage to other areas,[155] all agreed that there is leakage of domestic retail spending out of the catchment to centres in Invercargill, Dunedin, Timaru and Christchurch.[156] Leakage refers to retail spending that takes place outside the district of residence. The experts did not agree on the amount of retail spending captured by Queenstown from other centres or the significance of this.

[163] Mr Tansley attributed 10% of general merchandising sales (**gm**) within Queenstown to be by Wanaka residents and businesses.[157] The ME Spatial report tabled by SPL at the Council's hearing into PC34 (and referred to extensively in evidence by witnesses in these proceedings) estimates leakage to be 6%. This report also states Queenstown residents undertake up to 26% of their spending out of town.[158]

[164] Leakage of retail spending from Queenstown is likely to be reduced by the development of retail floor space at FF(A) Zone and RPZ and if confirmed, then by the development of PC19. We accept the experts' advice that PC19 is unlikely to have a significant cumulative effect on retail trading patterns at Wanaka, Cromwell or Alexandra town centres given the distance from Queenstown of these centres.[159]

[165] While the question of leakage is relevant to the floorspace demand that it supports in Queenstown, we find any leakage adjustments cumulative upon this plan change are at best marginal and we do not consider leakage is an issue warranting any degree of weight in these proceedings.

[155] Second Joint Witness Statement (economists and retail experts) at [15].
[156] First Joint Witness Statement (economists and retail experts) at [1].
[157] Tansley Updated EiC at [6.2.3].
[158] Long Supplementary (28 February 2012) at [46-49].
[159] Second Joint Witness Statement (economists and retail experts) at [67].

Future Retail Demand

Introduction

[166] In this section we are concerned with the supply and demand for retail and shop front (non-retail) floorspace that is not met by existing zoned or consented developments (being the un-built existing floorspace capacity for zoned and consented likely retail development is set out in Table 2). All experts agreed that there is a degree of uncertainty over the inputs used to estimate future retail demand and that this uncertainty is cumulative. The greatest uncertainty lies with the future of visitor/tourism numbers and associated retail spending and then future household growth. As at 2026 (i.e. at 15 years) this cumulative uncertainty across all inputs to derive future retail demand was estimated to be in the order of +/-25%, with the level of uncertainty increasing over time.[160]

[167] With that caveat in mind we set out our understanding of the various estimates for supply and demand given by the retail analysts. We record that this has not been an easy task given the different data sets and methodologies each witness employs to make his predictions. A compounding factor is that the witnesses do not make predictions about the same subject matter. We were assisted by the Joint Witness Statements produced in three expert conferences, two of which were facilitated by Environment Commissioner Fletcher, and without which it would have been difficult to assess the evidence. We labour this point for a reason: it is the court's view that counsel should have given serious consideration to the merits of expert conferencing on the topic of retail distribution, particularly in relation to methodology and commonality of terms (at least), before evidence exchange, as the presentation of evidence in this manner did not assist the court.

Expert witness assessments

[168] As will be immediately apparent in Tables 3-6 the witnesses differ in their approach to estimating future growth demand for retail activities over the next twenty year period for retail and shop-front (non-retail) activities. No estimates are given for "service" sector activities which are referred to in Table 1.

[160] Second Joint Witness Statement (economists and retail experts) at [31].

[169] A separate estimate for Trade and Home Improvement Retail has been included in Tables 3 to 6, in addition to the estimate for retail activities. This reflects the treatment of this sub-category of retail activity (wrongly in our view) by most of the witnesses, save Mr Tansley.

[170] Any differences in the witnesses' estimates and our findings on floorspace supply are not material, as we have accepted the range of floorspace demand estimated by the experts. By necessity our task is to gain a broad understanding of any unmet land use requirements of Queenstown/Wakatipu. We have kept in mind the caution given by some of the experts; floorspace demand modelling lacks precision and produces estimates that are valid at the point in time they are produced.

Table 3

Future growth in retail land demand over next 20 years

(Mr Heath)

Sector	M^2 GFA
Retail	68,100[161]
Shop front (non-retail)	17,000[162]
Trade and Home Improvement	30,000[163]
Sub-total	115,000

[171] We have assumed that the likely development of floorspace within SPL's AA-E3 to be 30,000m^2.[164] It is appropriate to comment at this juncture that SPL's evidence on the land use demand and its relationship to supply within AA-E3 was far from clear and we are not in a position to form any view on the probative value of the same.

[172] In response to the court's questions about the actual floorspace supply of AA-E3, Mr Heath applied a building coverage ratio of 0.35 and on that basis calculated a gross floorspace supply in the order of 47,000m^2.[165] We observe that this building coverage

[161] Transcript at 939 and 940-1. This figure excludes Trade and Home Improvement Retail.
[162] Transcript at 939.
[163] Second Joint Witness Statement (economist and retail experts) at [58].
[164] At pages 966 and 968 of the Transcript his evidence on this matter was contradictory in the use of the terms demand and the likely retail development of AA-E3. Having regard to all of the evidence we have assumed that demand for Trade and Home Improvement Retail equals likely retail development within AA-E3 i.e. 30,000m^2.
[165] Transcript at 966ff.

may be applicable to Trade and Home Improvement Retail and Yard Based Retail activities, but AA-E3 is enabling of a large range of activities and under SPL's notice of appeal up to 80% and 90% building coverage is proposed for the site and zone standards respectively.[166]

[173] Assuming (conservatively) that development within AA-E3 will be at ground level with 55% building coverage (a figure used by SPL's planner Mr J Brown) then floorspace supply would be even higher (69,000m^2 and not 47,000m^2 as estimated by Mr Heath).[167] Similarly, we were unable to reconcile SPL's building coverage for AA-E3 with Mr Tansley's estimate of land required to enable 30,000m^2 gfa precinct (being 10 hectares).[168]

[174] The discrepancies between Mr Heath's estimate and the provisions supported by SPL only came to our attention when reviewing the evidence after the close of the hearing. For the purpose of having some commonality in the estimates provided by the various witnesses, as noted above, we have assumed that the likely development of AA-E3 (at least any retail activity) to be 30,000m^2 gfa. The actual floorspace supply within this 12.64 hectare sub-zone (assuming, as SPL does, it extends to SH6) is much higher than this.

[175] On a similar basis to the above Mr Heath estimated the floorspace supply of AA-E4 to be 5,600m^2.[169] We are not criticising Mr Heath in doing so, he was not giving evidence on behalf of Manapouri or FMC but was responding to the court's questions and he made it clear that he had not sighted the provisions which would control building coverage. The point we make is this: Manapouri, FMC and QLDC (which supports the AA-E4 and the introduction of a Trade Related Retail Overlay) did not quantify floorspace supply or indeed the likely retail development at these locations. And again, Mr Heath's assumptions were not corrected by the parties' witnesses.

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[166] SPL Notice of appeal at 29.
[167] J Brown EiC Annex I, rule 12.20.4.1(a) at pJ-26.
[168] Tansley EiC at Appendix 4 at [4.9].
[169] While Mr Heath assumed 35% building coverage, the rules of the Ferguson/Hutton draft plan change tabled by Manapouri Beech and FMC proposed a 55% building coverage. See site standard 12.20.5.1(a) at page J-29 and (inconsistently) in the zone standards that apply to AA-E4 a site coverage of 80% at J-33. Even without a second storey development, these standards would allow considerably more floorspace supply than that estimated by Mr Heath.

[176] Finally, we note Mr Heath's examples of retailers engaged within the Trade and Home Improvement Retail sector and estimation of the proportion of trade and general merchandise activity for these retailers; a Mega Mitre 10 was estimated to be around 50/50, Placemakers at 90/10 and Bunnings at [we understood] 50/50.[170]

Table 4

Future growth in retail land demand over next 20 years

(Mr Tansley)

Sector	M^2 GFA
Retail	62,000[171]
Shop front (non-retail)	15,500[172]
Trade and Home Improvement	30,000
Sub-total	107,500

[177] Mr Tansley agreed on the estimates for likely retail development subject to the qualification that development of 25,000m^2 at FF(A) Zone is achievable only if there were a reduced rate of uptake of the current supply in the CBD and Remarkables Park Town Centre. We come back to this when considering the changes to existing trading patterns consequential upon enabling retail activity within PC19.

[178] The Trade and Home Improvement estimate includes, LFR and No-Frills retailing activities for a separate precinct located within AA-E3.

[170] Transcript at 978-979.
[171] Transcript at 868-871. Mr Tansley's evidence considers demand growth over a 10 year period for general merchandise, supermarket and speciality food, grocery, liquor stores and convenience outlets. He extrapolated his growth demand estimate over a twenty year period during cross-examination and it is this figure which is included in Table 4.
[172] Transcript at 872.

Table 5

Future growth in retail land demand over next 20 years (Mr Long)

Sector	M^2 GFA
All Retail	62,991[173]
Shop front (non-retail)	18,897[174]
Trade and Home Improvement	No additional allowance as hardware, building and garden supplies included in "All Retail"
Sub-total	81,888

[179] The base data used in Mr Long's model comes from Statistics New Zealand and other government agencies.[175] The model splits retail into LFR and "other"; LFR being those retailers that occupy large stores and dominate their merchandise category.

[180] While his model calculates total retail demand of 62,991m^2, Mr Long predicts growth in demand for retail space to be in the range of 63,000-74,500m^2 (rounded). When growth in demand for shop front non-retail space is accounted for, this range increases to 82,000 to 93,000 (rounded).[176]

[181] Mr Long's projections for growth demand include hardware, building and garden supplies, which is included in Table 5 under the "All retail" category. While Mr Long agrees with Mr Tansley's estimate for growth demand for Trade and Home Improvement Supplies, his model estimates growth demand for hardware, building and garden supplies to be 20,956m^2, of which 17,326m^2 is LFR.[177] Mr Long does not explain the difference between his assessment and Mr Tansley's 30,000m^2. We have assumed that the difference arises in relation to the inclusion of general merchandise by Mr Tansley within his 30,000m^2, but again this is not clear.

[182] Mr Long does not support the provision of Trade and Home Improvement Retail within the proposed Trade Related Retail Overlay or AA-E3 sub-zone as this would

[173] Long Corrected Supplementary Statement (28 February 2012) Appendix A Table 4.7 (147,478-84,487=62,991m^2).
[174] Derived from Long Corrected Supplementary Statement (28 February 2012) at [35].
[175] Long Corrected Supplementary Statement (28 February 2012) Appendix A at [13].
[176] Long Corrected Supplementary Statement (28 February 2012) at [33].
[177] Long Corrected Supplementary Statement (28 February 2012) Appendix A at [24], 2031-2011.

likely result in the development of another retail node in Frankton Flats.[178] This is then another issue for determination: whether AA-E3 or AA-E4, considered individually or together, would create a separate retail node and if so, what is the significance of this? We come back to this later in the decision.

Table 6

Future growth in retail land demand over next 20 years (Mr Mead)

Sector	M^2 GFA
All Retail	67,000[179]
Shop front (non-retail)	13,500[180]
Trade and Home Improvement	30,000[181]
Sub-total	110,500

[183] Mr Mead relied on information in the ME Spatial report produced in the PC34 hearing, and has also had regard to the projections given by the other retail experts when estimating the range of demand for retail activities over the next twenty years. His definition of retail activities is wider than the other experts, taking into account all retail sectors and includes shop front (non-retail) activities such as personal services.[182] He considers the range for growth demand given in the ME Spatial report to be reasonable; i.e. 95,000 to 118,000.[183] He was able to refine this gross estimate during the course of the hearing and the refined figures for retail and shop front (non-retail) are presented in Table 6.

[184] In the Second Joint Witness Statement Mr Mead attempts to divide growth demand into its preference for town centre and non-town centre locations. Reflecting on Mr Tansley's separate projection for 30,000m^2 for retailers who would prefer to locate outside of a town centre, Mr Mead says there would be a small degree of overlap between floorspace supply for these retailers and with his estimate of 10-15,000m^2 for non-town centre general merchandising.[184]

[178] Second Joint Witness Statement (economist and retail experts) at [60].
[179] Transcript at 802.
[180] Transcript at 802.
[181] Second Joint Witness Statement (economist and retail experts) at [55-58].
[182] Transcript at 796.
[183] Transcript at 796.
[184] Transcript at 803.

[185] Mr Mead cautions that the terms Trade and Home Improvement Retail and No Frills retail have been used interchangeably in these proceedings. He struggled with "No Frills", as this describes a store format (i.e. a building layout). A retailer may apply the store format to one (or more) of its stores but not necessarily exclusively. We noted Dr Somerville's line of questioning of Mr Mead which was to have him confirm that the 30,000m^2 was to cover activities within the proposed Trade Related Retail Overlay. On this Mr Mead deferred to Mr Tansley, but the matter was not pursued with the latter.[185]

Discussion and findings

[186] In common with the other witnesses, Messrs Heath and Tansley estimate retail growth demand within each of the candidate Activity Areas. They are not saying that supply will match demand; indeed the converse is true – their concern is that supply will exceed demand. A number of issues are suffused within their evidence, in particular the evidence given by Mr Tansley:

(a) that retail supply in general is predicted to exceed demand over the next twenty years – although Mr Tansley does not quantify this (or if he does then this is not readily apparent in his evidence); or

(b) that supply of general merchandising will exceed demand over the next twenty years; or

(c) the location of future retail floorspace supply will have effects on the CBD that go beyond those effects normally associated with trade competition; or

(d) all of the above.

[187] Mr Tansley has the strongly held view that "there needs to be a dedicated precinct outside of town centres for some activities and trade supply are the main reason for that kind of precinct".[186] Mr Tansley quite properly conceded that the non-town centre arrangement is not an invariable pattern of retail supply and throughout New Zealand general merchandising occurs alongside No Frills and Trade and Home Improvement retailing and also supermarkets.[187] These activities are variously provided for either as part of a town centre, at its edge or as a separate precinct.

[185] Transcript at 814.
[186] Transcript at 879, see also 842.
[187] Transcript at 881.

[188] In arriving at this conclusion Mr Tansley, applying his judgment, has made certain assumptions as to which store types are desirable or undesirable at different locations and then, in a spreadsheet, allocates floorspace to activities that he thinks are most likely to take up an opportunity to establish.[188] What is "desirable", he advises, is informed by what is "likely".[189] In his opinion it is desirable for the plan change to "allocate" where different retail sectors can locate.[190] He considers this approach more informative than simply assuming "a big thing called retail space" and modelling that.[191] Mr Tansley makes clear "... modelling does not anticipate real-world outcomes. It provides stylised information that can be helpful in forming expert opinion".[192]

[189] Retailers' preferences are averred to by Mr Tansley when he says that the existing Mitre 10 and "No-Frills" operators presently located at the Remarkables Park Zone would likely relocate to PC19 if approved. That is because – in Mr Copeland's words – Frankton Flats is more "commercial" than PC34's new LFR area.[193]

[190] Having found that there will be adverse effects on the CBD if AAs-C1/C2/E2 are developed together with the FF(A) Zone, Mr Tansley concludes that the optimal outcome is the development of SPL's land for a wide range of activities including LFR. For reasons that we discuss later, we do not accept his evidence that the CBD will experience adverse effects if trading patterns change as a consequence of development within AA-C1/C2/E2 and the FF(A) Zone.

[191] We find Mr Tansley's evidence is useful to the extent that it informs our understanding of how retailers may respond to different opportunities for retail development, including opportunities within PC19. However, we have real reservations about his approach as it obfuscates the quite separate issues of whether there is unmet growth demand for retail activity with the optimising of development opportunities for retailers. His retail-centric views are illustrated in the following statement:

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[188] Transcript at 851.
[189] Transcript at 895.
[190] Transcript at 879.
[191] Transcript at 852.
[192] Updated EiC at [7.18].
[193] Transcript at 862.

> ... Retailers need the best solutions for efficient retailing, not to be seconded to, and then undermined by, other resource management objectives.[194]

[192] An optimised location for retailers in a standalone centre located on SPL land (AA-E3) is but one scenario for PC19. It is a trite observation that the court's task is broader than Mr Tansley's; ultimately we must be satisfied that the plan change must achieve the purpose of the Act.

[193] Having carefully considered all of the evidence given by the retail and economic experts, we prefer the evidence of Mr Long. When compared with the analysis presented by the other witnesses, we found his to be transparent, methodical in the application of published datasets and generally consistent in his approach.

Summary of findings on existing floorspace supply (built and un-built) and future floorspace demand

[194] Bearing in mind the critical qualification from the experts that the level of uncertainty around their predictions is in the order of +/- 25%, from the above our key findings are these:

(a) the existing supply of built total retail, shop-front (non-retail) and service floorspace within the Queenstown/Wakatipu area is **140,000m^2 gfa** (Table 1);

(b) the total retail floorspace development over the next twenty years areas of existing areas that are zoned or consented for retail activity (i.e. retail **supply**) is likely to be in the range of **55,600 to 60,600m^2 gfa** (Table 2), which translates for simplicity to a **mid-point of 58,100m^2 gfa**;

(c) the total retail floorspace **demand** over the next twenty years is approximately **63,000 to 74,5000m^2 gfa**[195], which again for simplicity translates to a **mid-point of 68,750m^2 gfa**;

(d) adopting a mid-point in the ranges for retail supply and demand over the next 20 years, the total unmet retail floorspace demand is estimated at **10,650m^2 gfa**;

[194] Tansley Updated EiC at [5.2.18].
[195] Interim Decision at [180].

(e) land required for **shop-front (non-retail)** activities for the entire Queenstown/Wakatipu area is in the range of **13,000 – 19,000m^{2}gfa** (rounded figures taken from Tables 3-6);

(f) land required for service activities (which we understand to be commercial activities as defined by the District Plan but not including retail and shop front (non-retail) activities), was not estimated by the witnesses and is in addition to the above figures;

(g) no leakage adjustment has been made for retail spending by Queenstown/Wakatipu residents; and

(h) floorspace supply for existing zoned or consented development and for future retail demand is quantified on the basis of likely retail development. Actual floorspace capacity is greater again.

The issues arising in relation to land use for retail activity

[195] We turn next to five key issues for determination:

(a) is there demand for retail floorspace that is <u>not</u> met within existing zones and consented development?

(b) would PC19 meet or exceed growth demand for retail floorspace over the next 20 years?

(c) would the proposed development of AA-C1/C2/E2 in conjunction with FF(A) Zone cause adverse effects within the CBD or elsewhere?

(d) the relevance of Trade and Home Improvement Retail Sector to these proceedings?

Issue: ***Is there growth demand for retail floorspace that cannot be met within existing zones and consented development?***

[196] We have found that there is unmet future demand for approximately 10,650m^2 gfa for retail floorspace that is presently unmet through the existing zoning and consented developments over the next twenty years.

Issue: ***Would PC19 meet or exceed growth demand for retail floorspace over the next 20 years?***

[197] When considering this issue we have assumed the likely retail development of AA-C1, AA-C2 and AA-E2 (Grant Rd and at the EAR) to be 33,000m^2. We understood that this estimate includes shop front (non-retail) but does not include "service" (aka other commercial activities).[196] The retail experts predict the likely combined development within AA-C1 to be 15,000m^2 (a figure with which Mr Heath expressly agrees),[197] with a further likely retail development of 8,000m^2 in AA-E2 (EAR) and 10,000 AA-E2 (Grant Rd).[198]

[198] Putting to one side AA-E4 and AA-E2(Grant Rd) (which we have concluded that we have no jurisdiction to consider) if, as we have found, growth in demand for retail activities alone over the next 20 years is 10,650m^2 gfa, then irrespective of whether retail activities are enabled in AA-C1/C2/E2 (EAR) or alternatively the proposed AA-E3, land supply could potentially exceed demand growth for retail and shop-front (non-retail) activities: however, the differences in supply are not material either to our determination as to which sub-zone is most appropriate or we find to the retail market.

[199] For the levels of likely retail development estimated by the experts to be realised, this will come from either changes to the trading patterns of existing retail activities or from slower growth demand than estimated within existing zones or consented developments. That said, we accept Mr Copeland's evidence that an exact match between supply and demand of land for retail activity is neither desirable nor possible. Each of the relevant sub-zones (to varying degrees) propose a mix of commercial uses, including retail activities and record that they have been considered with this in mind.

[196] Second Joint Witness Statement (economist and retail experts) at [47-48].
[197] Second Joint Witness Statement (economist and retail experts) at [48].
[198] Second Joint Witness Statement (economist and retail experts) at [50], although we note that QLDC proposes a cap of 10,000m^2.

Issue: ***Would the proposed development of AA-C1/C2/E2 in conjunction with FF(A) zone cause adverse effects within the CBD?***

[200] In their Joint Witness Statement, the economists and retail experts agreed that the marginal effect of PC19 – considered in isolation – is unlikely to be significant in relation to the CBD or the Remarkables Park Town Centre.[199]

[201] However, that is not so for FF(A) Zone and PC19 combined (at least AA-C1, C2 and E2), which Messrs Heath and Tansley predict (if developed) will function together as a "regional or sub-regional centre" changing the trading patterns within the CBD as some retailers relocate to the Frankton area, with the retail offer in the Frankton area eventually superseding that of the CBD.[200]

[202] Mr Tansley expands on this saying that if the proposed mall development at FF(A) Zone were to proceed, then he predicts that as a consequence of trade competition general merchandising sales in Queenstown CBD will decline by more than 8% (from $76.5M to $70.1M). He predicts also an 8% decline in baseline sales for the RPZ (from $62.0M to $57.3M).[201] Mr Tansley concludes that the development of the FF(A) Zone (by itself) would result in the:

> … appearance and sustained manifestation of vacant and under-utilised premises in the CBD and RPC, at a scale that will be apparent and obvious, to a lesser or greater extent, depending on the outcome of PC19.[202]

[203] In his opinion PC19 would exacerbate and permanently "elongate" these outcomes; it has the capability to reinforce FF(A) Zone's potential to adversely affect the CBD and RPZ because it posits Frankton Flats as offering more or less unlimited future retail.[203] Because of this, Mr Tansley says PC19 should restrict retail to a minor strip along Grant Road for convenience retail only, with provision for trade-based and no-frills retailing being made well east of the FF(A) Zone in a manner that precludes adverse effects on other centres.[204] The last proposition may be a non sequitur, as the

[199] Second Joint Witness Statement (economists and retail experts) at [68a].
[200] Second Joint Witness Statement (economists and retail experts) at [70].
[201] Tansley Updated EiC at [7.2.1].
[202] Tansley Updated EiC at [7.5.8].
[203] Tansley Updated EiC at [7.6.1].
[204] Tansley Updated EiC at [7.6.5].

provision of trade and "no-frills" retail east of the FF(A) Zone within SPL's land, is unrelated to any potential effect on the CBD (and indeed Mr Tansley says as much at [8.0.5], second bullet point, in his evidence-in-chief).

[204] Mr Long discusses the functions of Queenstown's CBD and its role relative to the LFR centre at RPZ and the proposed mall at the FF(A) Zone.[205] He does not share Mr Tansley's concerns in respect of the CBD and is of the view that general merchandising will remain in the CBD serving the lucrative tourist market which, amongst other things, derives from the location of existing visitor accommodation.[206] Because total retail and shop-front (not retail) supply sits within the range of demand forecast over the next 10-20 years, Mr Long is confident that it is unlikely that PC19 will generate any adverse effects on the CBD or Remarkables Park; "least of all effects that would result in a down grade of amenity at either centre".[207]

[205] Mr Copeland makes the point that while Queenstown's CBD is the largest retail centre in the district, retailing is one of several functions performed by the CBD, with much of the retailing and non-retailing activities being directed at the visitor market. He estimates that retailing accounts for around 34% of business activity within the CBD,[208] and that CBD retailing captures 81% of international visitor spending.[209] The CBD's role in servicing the tourist market would not change as a consequence of PC19 and he anticipates that the target market for PC19 will be the residents and businesses of the district, rather than the visitor market. Because of the diversity of retail and non-retail activities and its orientation towards visitors, it is his opinion that the CBD's public amenity values are protected against retail trade competition effects.[210] PC19 will compete with the centre at Remarkables Park Zone, and will have a complementary role to Queenstown's CBD.[211] He points out that the zoning of land provides an opportunity for development, but does not guarantee that development will occur within a particular timeframe.[212]

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[205] Long EiC (6 August 2010) at [4 and 5].
[206] Transcript at 1047.
[207] Long Supplementary (28 February 2012) at [66].
[208] Copeland Supplementary (3 February 2012) at [9].
[209] Copeland Supplementary (3 February 2012) at [9-11].
[210] Copeland Supplementary (3 February 2012) at [19, para 33].
[211] Copeland Supplementary (3 February 2012) at [26].
[212] Copeland Supplementary (3 February 2012) at [26].

[206] Taking into account the likelihood of retail activity relocating to PC19, in Mr Copeland's view there are greater benefits to be had from less leakage from Queenstown, increasing competition for retail space providers and retailers and finally, providing greater choice for the consumer. He says that these considerations are more important than the loss of some general merchandise retail from the CBD.[213] While that retail activity would likely contract in the CBD, it will be replaced by other activities, such as those based around entertainment.[214]

[207] Mr Mead addressed the (then) recent approval of PC34 by the District Council which enables 30,000m^2 retail development within the Remarkables Park Special Zone. In support of PC34 (SPL's privately initiated plan change), SPL's retail analyst (who did not appear before us) adopted a medium growth projection and led evidence that demand for additional retail and service sector (including LFR) would exceed supply over the next 20 years. No adverse effects on the CBD or FF(A) Zone were predicted as a consequence of enabling greater retail supply.

[208] While Mr Mead accepts that there are risks to existing centres where retail development proceed "significantly" in advance of demand,[215] this is a temporal effect with supply and demand eventually balancing. He does not dispute that there could be an adverse effect on the CBD if all of the areas providing for retail activity were developed simultaneously.[216] However, he considers this unlikely for the reason that it would require a "a massive injection of capital into the local economy, investment that is likely to be only able to be justified, given current constraints on the availability of funding, on the basis of future retail growth demand (a much bigger retail pie), rather than through gaining market share from the CBD (a different division of the same sized pie)."[217] He considers the Frankton Flats area north of the airport will be preferred by retailers to the Remarkables Park Special Zone and that strong competition between these two centres will moderate the amount and nature of retail development. Therefore, it is unlikely two large centres will emerge, which combined, would significantly affect the CBD.[218]

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[213] Transcript at 989.
[214] Transcript at 990 and 999.
[215] Mead Supplementary (February 2012) at [51].
[216] Mead Supplementary (February 2012) at [61(e)].
[217] Mead Supplementary (February 2012) at [61(e)].
[218] Second Joint Witness Statement (economist and retail analysts) at [72].

[209] In his opinion, it is more likely that PC19 and PC34 will be developed in stages as market demand enables.[219] If the court has any residual concern then he suggests staging retail development commensurate with population growth,[220] although considered little benefit in doing this in AA-C1 given the area's small size.[221]

Discussion and findings

[210] SPL does not assert that there will be effects beyond those normally experienced as a result of trade competition on commercial activities within the RPZ. Indeed Mr Tansley backs off from asserting that any trade competition effect will be sustained long term.[222] Thus the potential effects consequential upon change in trading patterns concern the CBD.

[211] We anticipate that there will be a functional relationship between the FF(A) Zone and development within AA-C1, C2 and E2. The strength of that relationship will be influenced by the layout of the FF(A) Zone – a mall is proposed, and secondly the extent to which the mall development integrates with the AA-C1, C2 and E2. Taken by itself, or together with the development of the proposed AA-C1, C2 and E2, the development of the FF(A) Zone is likely to change the existing trading patterns within the centre at the Remarkables Park Zone and the CBD. In particular, the FF(A) Zone development is likely to affect the timing and staging of new retail development within the existing zoned and consented land and existing levels of turnover in other retail centres may be reduced. The development of AA-C1, C2 and E2 will have a marginal and cumulative effect on this.

[212] Given the proximity, visibility and accessibility of the FF(A) Zone and AA-C1, C2 and E2 we anticipate retailing within these areas to be very competitive relative to the RPZ and the CBD, particularly in the local market. This would also be true for any retail development within the proposed AA-E3 and E4.

[213] We are satisfied that the synergistic effects of approving AA-C1, C2 and E2 taken together with FF(A) Zone will not cause an adverse effect on the people and

[219] Mead Supplementary (February 2012) at [60].
[220] Mead Supplementary (August 2011) at [36].
[221] Mead Supplementary (August 2011) at [44].
[222] Tansley EiC at [7.6.4].

communities who are supported by the CBD. That is due to the particular function performed by the Queenstown CBD. Queenstown's CBD derives vitality from its range of activities, most of which are not usually found in CBDs, and shopping is an activity that is ancillary to the CBD's role as a tourist destination (a view with which Mr Tansley expressly concurred).[223] Secondly, the CBD is either built out or approaching this stage and competition for space may be expected to be high. Any shops that do close as a consequence of changing trading patterns are likely to be taken up by non-retail activities.[224] Finally, we find that it is likely that the CBD will be resilient to new retail development at Frankton Flats as the CBD's general merchandise retail is orientated towards people who locate there for accommodation or recreational and entertainment purposes and secondly, by people who work in the area.

Issue: ***The relevance of Trade and Home Improvement Retail Sector to these proceedings***

[214] We commence by considering the proposed Trade and Home Improvement Retail category. Trade and Home Improvement Retail is defined in PC19 (Ferguson/Hutton version) as follows:

> Means the sale of goods related to trade; and home improvements, spare parts and accessories for use in the construction, modification, cladding or outfitting of buildings, automotive and marine repairs, that may include but not be limited to:
>
> - hardware, building and construction supplies
> - bathroom and kitchens fixtures and fittings
> - electrical, plumbing, lighting and heating supplies
> - wall and floor covering
> - automotive and marine parts
> - gardening and landscape supplies
> - outside furniture, pools, spas and saunas
> - home security products.
>
> This definition excludes the retailing of furniture and household appliances not listed above.

[223] Transcript at 866-867.
[224] Transcript at 999.

[215] While several witnesses discussed 30,000m^2 floorspace as if it were growth demand for "Trade and Home Improvement Retail", we understood this estimate to include general merchandising in the form of an LFR precinct. Mr Tansley's evidence is clear on this point:[225]

> ... in such a high growth area, no-frills/LFR/trade supply provisions in the Queenstown/Wakatipu sector need to accommodate at least 30,000 gfa of supply, plus a small part of the supermarket and normal general merchandising supply (mainly in the furnishing and electronic appliance supply categories) that would require a no-frills operating environment, rather than a town centre, town centre fringe of CBD environment. This suggests a dedicated precinct on Frankton Flats should be able to accommodate **up to 30,000m^2 gfa**, assuming that part of the sector's demand could be housed in the Gorge Rd area, close to (and indirectly supportive of) the CBD.

Thus Mr Tansley supported:

> A Frankton Flats no-frills retail/trade supply precinct accommodating **"up to 30,000m^2 gfa"** of such activities, plus the inevitable associated commercial and prepared food service activities could expect to achieve an effective site coverage of about 30-35%, suggesting that a dedicated provision for up to 10 hectares is required.

And from the Second Joint Witness Statement at [59]:

> ... Mr Tansley and Mr Heath consider that the creation of a discrete provision for trade supply and non-town centre "no-frills" retailing activity in Queenstown should be recognised as a strategic priority, not only in relation to Queenstown/Wakatipu, but the entire study area....

[216] As noted, "No-Frills" and "Trade and Home Improvement" retail are types of LFR. No-Frills Retail is not defined in the District Plan or PC19. Mr Tansley suggested that a No-Frills retailer would have the following characteristics:

(a) the retailer:
  (i) cannot afford to be in a town centre;
  (ii) would occupy no less than 500m^2;
  (iii) retail "cheaper" goods, including low-end furnishing supplies;

[225] Tansley EiC Appendix 4 at [8.8-8.9]

(iv) be known by its fit-out and by the extent to which it is professionally lit and signed and painted.[226]

[217] A No-Frills Retailer may also be a Trade and Home Improvement retailer (Mitre 10 was given as an example of both). Both types of retailers may offer general merchandise.[227]

Discussion and findings

[218] While a great deal of evidence was directed at the *Trade and Home Improvement Retail* provision, in many respects this was a distraction in the proceeding.[228] With the exception of Mr Tansley, it is our impression that many witnesses treated the 30,000m^2 precinct as if it were an assessment of growth demand for the Trade and Home Improvement retail sector. This is incorrect; the 30,000m^2 is an assessment given by Mr Tansley of the size of commercial centre which would likely develop at AA-E3. While we refer to this as a "commercial" centre (as it could include more than retail activities), our strong impression from Mr Tansley's evidence was that this estimate was principally concerned with retail activities.

[219] We find that there is growth demand within the hardware, building and garden supplies sector and prefer Mr Long's modelled sector estimate of 20,956m^2, of which 17,326m^2 is LFR.[229] Growth demand may be met either through existing zones or consented developments or the provision for **10,650m^2** additional retail floorspace in PC19. Again – we come back to a key issue and that is where and in what manner should provision be made appropriately for retail activities, together with shop-front (non-retail) and commercial activities within PC19?

Provision for land use Activity Areas under the competing Structure Plans

[220] Three parties produced Structure Plans recording provision for a range of activities within the plan change area. We set out in Table 7 a comparison of land areas for the three Structure Plans presented in evidence by QLDC, QCL and SPL. The land

[226] Transcript at 889-890.
[227] Transcript (Mead) at 905.
[228] Second Joint Witness Statement (economist and retail witnesses) at [58].
[229] Long Corrected Supplementary Statement (28 February 2012) Appendix A, at [24, 2031-2011].

required for the Activity Areas in PC19 (DV) is also given.[230] The land areas given in PC19(DV) and in the Environment Court decisions of *Foodstuffs v QLDC and Cross Road Properties Ltd v QLDC* are gross figures that include land required for roading and reserves. In this decision we have considered growth demand for land for the different business sectors on the basis of the net land area available to meet that demand and consider this to be an accurate more transparent method for our purposes.

Table 7

Comparison of PC19 Structure Plan Land Areas (hectares)[231]

Activity Area	QLDC	QCL	SPL	Decisions version
A	2.31	2.31	2.18	2.75
C1	4.17	4.17	1.81	3.88
C2	5.96	5.96	10.49	14.47
D	7.95	7.95	10.68	13.97
E1	20.39	20.39	11.22	17.65
E2[232]	9.37	9.37	-	10.62
E3	-	-	12.64	-
E4	1.62	1.62	-	-
Recreation Use (SPL)	-	-	2.44	-
TOTAL	51.77	51.77	51.46	63.34
Trade and Home Improvement Retail Overlay	?	?	-	-

[221] We turn next in Part 5: Resource Management Issues to discuss the issues to which this plan change responds.

[230] Mead EiC (August 2010) Appendix 1, Table 9. While Mr Mead does not say, these figures appear gross (inclusive of roads).
[231] QLDC, QCL and SPL Structure Plans and land areas are net of roads.
[232] Including both EE-E2 (Grant Road) and AA-E2 (EAR).

Part 5 Resource Management Issues

Issue: ***What resource management issues does PC19 respond to and are these well articulated?***

[222] PC19(DV) contains five Resource Management Issues which subsequent plan provisions address.[233] While it is not mandatory that the plan change contain issues,[234] the QLDC has elected to do so and we recollect no party seeking their removal (see section 75(2)(a)). We recognise the approach as good practice but it follows that the issues should be framed appropriately.

[223] The issues in the PC19(DV) were unaltered through the course of the hearing and subsequently in the QLDC's preferred version.[235] As the QLDC substantially revised its proposed objectives and policies during the hearing it is moot whether the issues should not have also been revisited. In contrast, SPL in closing submitted significantly amended issue statements together with the higher order provisions that it seeks.[236] QCL also called evidence that included proposed amendments to the issues statements.[237] Given their fundamental role in plan formulation, it is necessary to consider whether the issues enunciated provide an appropriate starting point for subsequent provisions and reflect adequately the breadth of matters in dispute. We deal with each of the issues in turn adopting the headings and sequence proposed by SPL, which we prefer.

Resource Management Issue: Urban growth and sustainability

[224] SPL proposes that the heading be amended to read as indicated above. This statement comprises a series of issues relevant to urban growth and sustainability. The

[233] PC19(DV) clause 12.19.2.
[234] See section 75(2)(a).
[235] QLDC Closing submissions: Annexure 2.
[236] SPL Closing submissions: Annexure C.
[237] Edmonds Second Supplementary Statement 10 April 2002 and annotated PC19 version handed up 16 April 2012.

QLDC's version (of the issue) states that the primary goal of the FF(B) Zone is to enhance the sustainable development of Queenstown. No measure of sustainability is given despite its primacy.[238] The issue next describes the Zone's potential to provide affordable housing at densities not hitherto achieved. A Structure Plan is to guide resulting development to ensure this goal is met.

[225] Other issues follow, namely managing the effects of airport noise, leveraging amenity from the Events Centre and (meeting) the projected land use requirements of the wider community. The Explanation raises additional new matters. For example, it speaks of maintaining the transport functions of SH6 and the airport (operations, reverse sensitivity) and allowing development of a mixed use zone. The latter is to complement unspecified "existing and proposed land uses" resulting in "an integrated and coherent built environment" with significant economic and social benefits for the district.

[226] Through design measures and higher densities the FF(B) Zone is to enable growth whilst avoiding the adverse environmental and social consequences of sprawl and high cost housing. Contemporaneously (unidentified) existing resources on the Frankton Flats are not to be compromised.

[227] We commence by recording that the FF(B) Zone provides an ideal opportunity for urban growth because of its location, topography and potential integration/connectivity with neighbouring zones (FF(A) Zone, Glenda Drive Industrial zone and RPZ) and the Events Centre. The only differences we see in SPL and QCL statements about Urban Growth and Sustainability versions are that in the second paragraph QCL would delete reference to "certain forms of retail activities" and include "education". We find the former should be retained and the latter included. Express reference is then made to:

(a) helping meet the demonstrated demand for [Queenstown/Wakatipu] residential, industrial, business, retail, open space and recreational activities;

[238] The issue re-emerges in Issue (iii) where it is linked to the creation of a livable community characterised by identified qualities.

(b) constraints to development; namely, the area's location in the foreground of outstanding natural landscapes as viewed from the state highway east of Frankton; the airport air noise and outer control boundaries; and proximity of existing Glenda Drive industrial development. Collectively these factors are said to largely "determine where certain activities can locate and how they function";

(c) being one of the few areas able to contribute to the district's need for affordable housing at densities not currently achieved;

(d) the importance of maintaining the operation of key transport links (state highway and airport) with particular reference to managing reverse sensitivity effects; and

(e) how the mix of uses enabled by the FF(B) Zone can complement other existing and proposed Frankton land uses to "produce an integrated and coherent built environment with significant economic and social benefits" for the district.

[228] There follow similar references to those of the QLDC about the positive roles of good design, higher densities, avoiding the adverse effects of sprawl and high cost housing.

[229] We find the SPL and QCL versions more cogent, comprehensive and balanced in terms of their sequencing and emphasis on different matters. We also consider Messrs J Brown and Edmonds were correct to start the issues section with urban growth and sustainability matters given their fundamental and overarching nature (as opposed to visual amenity). There is, however, no need for both a statement and explanation in this or the other issues. We find the SPL/QCL treatment preferable subject to the inclusion of the following further matters:

(a) reference to growth projection reports or similar that identify and/or quantify the demonstrated urban growth demands that PC19 will help meet. For example, the *Commercial Land Needs Analysis (2006)*;

(b) elaborating on the mix of uses to be enabled, their envisaged juxtaposition, intensity and integration to produce a different built environment from what exists in Queenstown/Wakatipu;

(c) spelling out clearly that the development enabled by PC19 is to complement and be integrated with the FF(A) Zone resulting in a new Queenstown/Wakatipu town centre, which will add to those existing;

(d) removing the reference to "business" in the second paragraph of the SPL text and replacing it with "commercial" activities – a term which is defined in the operative District Plan; and

(e) the higher than existing residential densities to be enabled. This matter has links to the High Quality Urban Environment issue, but is better dealt with here. There were strands in the planning evidence that more efficient use of the Frankton Flats urban land resource is necessary (because of its limited supply) relative to historical Queenstown densities. There were suggestions that this would require a step change in Queenstown's built form, which should be explicit in the statement. The requirement for intensification is also significant because of its potential to assist with the provision of affordable housing. It is necessary that the methods proposed to achieve higher densities be identified in the issue statement in broad terms; especially if densities are to be prescribed as minima or "quotas" are to be set for affordable housing.

Resource Management Issue: Landscape and Visual Amenity

[230] The QLDC, SPL and QCL versions are the same except that the latter, appropriately in our view, adds "landscape" to the heading. The Issue commences with a factual statement followed by an unequivocal direction that development of the FF(B) Zone must enhance the amenity of the approach to Queenstown. How this is to be achieved, what it might constitute and how "approach to Queenstown" is to be understood are unclear. The Explanation identifies specific outstanding natural landscapes and features that development is to "appear" subservient to. Iconic views from within the development should be protected and enhanced through urban design, placement of roads and reserve areas.

[231] We are concerned about the loose identification of relevant viewshafts, which may be located either within or outside the Structure Plan area.[239] Happily the SPL/QCL urban growth issue states that outside the Structure Plan area the relevant view point is from the state highway east of Frankton. We have previously endorsed this statement which was not disputed through the hearing. In fact the parties' cases focused almost exclusively on the view south from the state highway towards The Remarkables and to a lesser degree west towards Peninsula Hill. There was no suggestion that the effects of development on views from other external points were at issue. References to K Number 2, possibly Walter and Cecil Peaks, the Crown Range and Ferry Hill are therefore redundant in the context of external view points.

[232] Notably, the issue statement does not identify points within PC19 from which "iconic views" are to be protected and enhanced. Although we recall no evidence, we apprehend that all of the named landscapes and features are presently able to be viewed from within the Structure Plan area. Built development enabled by PC19 will inevitably block many of these views from many locations. Mention is made of retaining views to features through undefined urban design measures, the placement of roads and reserve areas. It is implied that these methods will enable views or perhaps provide viewing points. From where, to what and how is obscure at best. To be meaningful these aspects of the issue require more specificity to guide ODP preparation. The viewshafts to be marked on the Structure Plan map have a role to play. We are mindful of the cascade effect of plan provisions and expect the clarification required can be provided without encroaching excessively on the substance of subsequent objectives/policies.

[233] More particularly, we find that the issue would benefit from at least the following and direct accordingly:

(a) removal of the absolute requirement that "Development of the Zone must enhance the visual amenity of the entrance to Queenstown". As subsequent PC19 provisions recognise this is too tall an order. It is also questionable whether what nature gave Queenstown can be meaningfully enhanced;[240]

[239] This differentiation is made in 12.19.1 Resources and Reasons but not maintained effectively in 12.19.2 Resource Management Issues.
[240] The same wording is to be amended in 12.19.1 Resources and Values.

(b) differentiating between the effects to be managed from view points within and outside the Structure Plan area and foreshadowing the tools available to do so. The latter is the more straightforward. The view point is SH6 between Grant Road and the eastern end of AA-A. The viewing direction is south to The Remarkables and west to Peninsula Hill. It should be clearly stated that PC19 is concerned to avoid development intruding into views of the face of The Remarkables as distinct from its foothills;

(c) retain and creating views from points within the Structure Plan area is more challenging. More specificity is required on the intended nature and role of urban design measures. If it is intended as a reference to the three north – south viewshafts to be created by a mix of measures (ODP provisions, maximum building height controls, a mix of private and public open space) this should be stated.[241] Similarly there should be reference to the potential roles of the EAR and Grant Road and their management (street furniture, planting) in retaining views of both The Remarkables and features to the north of the SPA; and

(d) the court gained no clear understanding of what connection is intended, if any, between the "placement" of roads other than the EAR and possibly Grant Road and retaining views of the landscape beyond PC19. Has the alignment of Required Roads been determined on this basis, in all or part (bearing in mind that traffic and connectivity factors must also apply)? If so, what weight is to be given viewshaft considerations in setting the alignment of other categories of future roads? The court also gained no clear understanding of the intended function of reserve areas in these respects. The Structure Plan notably does not show future reserve areas.[242] The possible role of ODPs in this subject area is not traversed or foreshadowed.

[241] The viewshafts referred to are shown as "vistas" on the Structure Plan map. Elsewhere in this Decision we direct that the term vistas be amended to read "viewshafts" as depicted on the SPL 4b Structure Plan.
[242] The evidence on whether AA-A would vest as reserve was inconsistent and it seems likely to remain private open space.

Resource Management Issue: High Quality Urban Design

[234] Both the QLDC and QCL versions are the same and, together with SPL's, all three commence with the same high level provision that development must create a liveable community characterised by high quality urban design. The definition challenge inherent in the term "liveable community" is responded to by giving examples. It is said to include certain things which vary between the QLDC/QCL and SPL versions, reflecting the different urban form outcomes sought:

(a) the QLDC and QCL envisage compact residential neighbourhoods (plural) presumably based on the mixed use opportunities afforded by Activity Areas like C1, C2 and E2. SPL contemplates a single neighbourhood presumably because it seeks a larger AA-C2, a more limited AA-C1 and no AA-E2. Given the findings in subsequent parts of this Interim Decision it would be appropriate if matters contributing to the livable community sought were to include reference to integration of the zone with the FF(A) Zone to form a town centre and creation of a complementary "mainstreet" environment on the east side of Grant Road. It would also be appropriate to refer to the urban design attention required to satisfactorily manage the interface of the reduced area of AA-C2 with AA-D and AA-E2;

(b) both versions contemplate a mix of housing types and sizes. SPL qualifies this by requiring they be "high density". This is a potentially important difference because if all housing were to be high density it would raise the question of how this might be achieved. From subsequent policies it is evident that the QLDC contemplates a "range of residential housing" while "discouraging low density living".[243] We have earlier found that related aspects of this issue need to be expanded and clarified especially if they are the starting point for quantified policies and/or rules;[244]

(c) the QLDC/QCL's wording contemplates "commercial districts with shops for residents and visitors" where SPL, with its different disposition of land uses in mind, would limit this aspect to "convenience retail". Our

[243] QLDC Closing submissions: Annexure 2 Policy 4.1.
[244] Refer Urban Growth and Sustainability at [5(d)].

subsequent findings on AA-C1 referred to above do not support the SPL wording;

(d) SPL and QCL appropriately seek the inclusion of "community activities" which is a defined term in the operative plan;

(e) SPL also seeks the inclusion of explanatory text that reads "It is intended that compatible activities are co-located [sic] and that incompatible activities are adequately separated and buffered from each other". On its face that is a reasonable addition as the QLDC's Structure Plan would separate industrial activities from others by roads and AA-E2. And SPL's Structure Plan uses roads in a similar fashion to separate AA-C2 from areas of E1, E3 and D. However we are concerned that the amendment may be interpreted as militating against the mixed use outcomes that PC19 seeks. We find the SPL text should be included as an appropriate description of the broad approach adopted across the FF(B) Zone but it requires complementing by a statement that clarifies that through urban design measures and related controls PC19 seeks to achieve a mixed use outcome within specific Activity Areas; and

(f) it is notable that under an issue headed "High Quality Urban Environment" there is no express reference to the public realm and what the QLDC intends contributing through its management of such (open space, road reserves). We find this omission should be corrected.

Resource Management Issue: Integration within the zone and with other zones

[235] QCL proposes that the heading be amended to read as indicated above, which we approve.[245] Additional text that both QCL and SPL support would have the positive effect of broadening the issue from solely land use and transportation integration to include other important dimensions. For example "[t]he mix of activities within the [FF(B) Zone] and the location close to other zones and activities, provide the opportunity for strong integration of activities". Similarly, "[t]here is an opportunity/potential for people to live, work and recreate with the Zone". Although such phrases are sometimes clichéd, we find it apposite in the context of PC19 where the District Council policy is for a mixed use development with the Events Centre nearby

[245] SPL would add "and activities" at the end which we find unnecessary.

and each of the components mentioned conveniently accessible, including on foot. Other amendments that QCL/SPL seek are largely concerned with transportation and we similarly find them appropriate, including the references to local road networks, walking/cycling linkages and public transport routes. We also favourably note their (slightly) expanded discussion of the need for and function of travel demand management.

[236] QCL proposed text describing the important role of outline development plans in integrating activities both within specific Activity Areas and with adjoining land use patterns outside of the FF(B) Zone. We agree this issue warrants inclusion and find accordingly.

[237] The issue that QCL identified about a grid-street system integrating roads with viewshafts is also significant and is to be included with the words "... and assist connectivity" added at the end.

Resource Management Issue: Transport Networks

[238] The wording of this statement is agreed among the three parties. The Explanation identifies capacity constraints in the road network which services the Structure Plan area. The issue goes to the plan change provisions for travel demand management which are referred to in the preceding issue statement. This is an important topic that took considerable hearing time. We find that there should also be reference to travel demand management in this section or, alternatively, all of the related material should be combined in a single statement.

Resource Management Issue: Airport Operations

[239] SPL and QCL propose that an issue statement on this matter be added. In its proposed form the statement adds little to the three airport-related references in the Urban Growth and Sustainability section. In practice, the PC35 airport provisions have had a major influence on the disposition of PC19 land uses through the location of the OCB and related controls. However these matters are very largely settled except for QAC's issue whether there should be controls on new Activities Sensitive to Aircraft

Noise beyond the OCB. On balance there is little benefit in adding the statement and we find accordingly.

Resource Management Issue: Infrastructure

[240] QCL appropriately proposes that an issue statement on Infrastructure be added which on its face would be consistent with the QLDC's proposed objective 3 headed "Managing impacts on infrastructure".[246] From that point matters go somewhat downhill. The objectives and policies that QLDC proposes are not (with the exception of stormwater) concerned with provision of the essential utility services, which QCL identifies as the issue. QCL's text refers to stormwater, wastewater and water supply but omits other utilities, which can be readily remedied. Although alluding amongst other things to the need for co-ordination, the QCL text does not identify such factors as responsibility for delivering specific services, timing and funding.

[241] We find that the QLDC should add the Infrastructure issue statement proposed by QCL, complemented by reference to the additional matters we have identified.

Outcome

[242] The parties are to confer and propose amendments to the Statement of Resource Management Issues, to give effect to the court's decisions in this Part.

[246] Notably QLDC limits related objectives and policies to airport operations, the road network, TDM, open space and an ambiguous objective on managing stormwater.

Part 6 Objectives and Policies

Zone Wide Objectives and Policies

Issue: ***Are the objectives/policies consistently formatted in an appropriate way?***

[243] PC19(DV) has five sub-Zone objectives and related policy suites. Through the revision process undertaken by the QLDC during the hearing these reduced to four. Amongst other things this resulted in significant changes to how the objectives and policies are presented.

[244] All the QLDC revised objectives have an initial statement analogous to a heading followed by more detailed statements. The objectives do not commence with "To". This may not be fatal but it does not help with identifying "what" outcome is sought. As a consequence many objectives read as if they are statement of facts about the existing environment – and not objectives that are to be attained.

[245] In PC19(DV) each suite of objectives/policies is followed by an Explanation and Principal Reasons for Adoption. This format is discontinued in the revised QLDC version after QLDC objective 1. We find the formatting and lack of consistency potentially problematical in terms of both interpretation and effectiveness and direct that the SPL/QCL approach[247] be adopted.

Issue: ***Are the objectives/polices in a logical order?***

[246] We previously endorsed the SPL/QCL proposal that under the Resource Management Issues section "Urban Growth and Sustainability" should precede "Landscape and Visual Amenity". It is logical that the objectives/policies follow the same order rather than commencing with "Incorporating and Enhancing Visual Amenity" and we direct that this change be made.[248] We also find that "Creating a High

[247] SPL Closing submissions Annex C and Edmonds Second Supplementary Statement 16 April 2012 (noting Mr Edmonds ran out of steam or time and left some Explanations and Principal Reasons TBC).
[248] See next section for the text of Urban Growth and Sustainability objective/policies.

Quality Urban Environment" more logically follows "Managing Interfaces and Improving Connections" (than infrastructure impacts) because of their related material and it is to be re-ordered.

Court's revision

[247] The court has track changed its revision, and to assist the parties it has identified the source or preferred wording of the relevant provisions (i.e. PC19(DV) or [parties] objective and policy). On occasion, where the court has suggested a new provision which, in our view, is needed to effect the plan change this is shown by the bracketed words (court).

[248] The parties will note that the numbering of all objectives and policies will need revisiting as a consequence of this Interim Decision, commencing with the new objective – objective 1A.

Issue: ***Whether and to what extent do the PC19(DV) objectives and policies respond to the resource management issues?***

Proposed new objective and policies for Urban Growth and the Sustainable Management of Resources

[249] There is a lacuna in the QLDC's revision as its objectives/policies do not address the fundamental issues of accommodating future urban growth and its form, which underpin PC19 as identified in the Urban Growth and Sustainability issue. SPL and QCL proposed that this gap be plugged by the inclusion of similar objectives/policies on the issue.[249]

[250] Under this new objective (which we have numbered objective 1A) QCL and SPL propose QLDC policy 4.2 be located. We agree. QLDC is to edit policy 4.2 and include any activities referred to in Mr J Brown's version of the policy while avoiding repetition and inconsistent use of activity descriptors. We have amended policy 4.2 with the effect that sub-sets of residential activities are now comprehensively addressed under a single policy (that is QLDC policy 4.1).

[249] SPL Closing submissions, Annexure C p J-3ff and attachment to Edmonds' Second Supplementary Statement 10.4.2012.

[251] While omitted by QCL and SPL, QLDC's policy 4.1 should follow policy 4.2 dealing, as it does, with a narrower range of activities. QLDC's policy 4.1 is important as it supports the provision of a range of residential housing including affordable housing and community housing within the Zone.

[252] In Part 15 we set out our findings in relation to the topic of affordable housing and community housing. The parties will note that while we have approved the inclusion of policies pertaining to this topic, we refrain in this Interim Decision from adopting the definition and policy of PC24 and deliberately use lower case "affordable housing and community housing" to convey this.

[253] As noted, SPL provided an Explanation and Principal Reasons for all its preferred objectives/policies (and QCL for some). We find this to be good practice. The first three paragraphs of text submitted by SPL/QCL are to be included. The last paragraph proposed by SPL, which generally fits its relief, is to be deleted and the following text added to better reflect the broad outcome of the appeals:

> "The Zone provides for the integration of enabled activities with adjoining land uses, including the FF(A) Zone such that a town centre will develop, the Glenda Drive industrial area, the Events Centre and the Remarkables Park Zone accessed via the Eastern Access Road. Development will take place at a higher intensity and with a more diverse mix of uses than has generally occurred in Queenstown to date."

Outcome

[254] We find the following provisions to be generally appropriate and we direct their inclusion with the following amendments.

The court's revision

Objective 1A: Urban growth and the sustainable management of resources

To provide for the needs of the District by utilising the Zone for a range of urban activities on a sustainable basis. (SPL objective 1)

To ensure that the Zone develops in a manner that provides for appropriate levels of environmental quality and amenity while avoiding or mitigating any adverse effects on the environment. ~~avoids and mitigates any adverse effects on the environment and provides for appropriate levels of environmental quality and amenity values.~~ (QCL objective 1)

Policies

1A.1 To provide for a range of local services and business activities including retailing, visitor accommodation, residential, education and associated commercial uses, ~~Affordable and Community Housing~~ mixed live/work units, and both light and heavier industrial activities to help meet projected land use requirements. (QLDC policy 4.2)

1A.2 To enable a range of residential housing including short term residential uses and affordable housing ~~Affordable and Community Housing~~ with an emphasis on high amenity high density living environments, while discouraging low density living. (QLDC policy 4.1)

1A.3 To ensure that development within the Zone is integrated by use of a Structure Plan, to collocate compatible activities and to ensure that incompatible activities are adequately separated by roads and/or suitable interface controls. (SPL policy 1.2)

1A.4 To ensure that development within the Zone is integrated effectively with adjacent Zones. (court)

1A.5 To apply appropriate development controls to ensure that adverse effects of the development are avoided or mitigated. (SPL policy 1.3)

1A.6 To ensure that development provides an appropriate ~~levels in the~~ quality of urban design, including in the public realm, ~~the~~ built environment~~,~~ and amenity values. (SPL policy 1.4)

Explanation and Principal Reasons for Adoption

The zone is located where it is close and accessible to other urban areas in the Wakatipu Basin. (SPL)

> The zone provides the opportunity for a range of activities including residential, ~~education,~~ and employment growth in many sectors, and related activities such as recreation. The land can therefore contribute to the ongoing social and economic wellbeing of the District's people and communities. (SPL)
>
> Development in the zone must recognise certain constraints, including the potential adverse effects of development on the ~~iconic~~ views ~~vistas~~ of outstanding natural landscapes, the proximity of and ongoing operational viability of the airport, and the potential for activities to be incompatible with each other. The objectives and policies require that rules ensure that any potential adverse effects are properly avoided, ~~and~~ remedied or mitigated. (SPL)
>
> The Zone provides for the integration of enabled activities with adjoining land uses, including the FF(A)Zone such that a town centre will develop; the Glenda Drive industrial area; the Events Centre and the Remarkables Park Zone accessed via the Eastern Access Road. Development will take place at a higher intensity and with a more diverse mix of uses than has generally occurred in Queenstown to date. (court)

Remaining objectives and policies

[255] We now review the remaining Zone objectives/policies beginning with landscape and visual amenity. The objectives and policies generally appear in the order presented to us in the closing submissions of QLDC.[250] We are of the tentative view that there are no other major issues that the QLDC's objectives and policies do not address, although strengthening and editing of some is required.

The objectives and policies for landscape and visual amenity

[256] PC19(DV) contains the following provision:

> **Objective 1: To maintain connections to the Surrounding Landscape**
>
> Four supporting policies follow concerned with:
>
> 1. Providing a buffer between SH6 and built development and providing primacy to protecting significant landscape values and views.
> 2. Positioning buildings and open space so that "appropriate" views to The Remarkables and named features (6) are maintained from the SH and within the zone.
> 3. Ensuring on-site landscaping does not impact background vistas or viewshafts to The Remarkables.

[250] QLDC Closing submission, Attachment 2.

4. Complementing building appearance by judicious placement of mature trees to mitigate building bulk and height.

[257] The Ferguson/Hutton version of the plan change was largely unchanged except for splitting PC19(DV) policy 1.1 into two and adding the qualifier to policy 1.2 that primacy was to be given to protecting landscape views and values when "considering proposals to exceed height limits". During the course of the hearing the QLDC proffered further changes resulting in the following revision:[251]

Objective : Incorporating and enhancing visual amenity

Views across and through the development of the surrounding mountains are provided, as experienced from the State Highway as well as from within the development.

A gateway experience into the Queenstown urban area is provided at the eastern end of the zone, while in the middle and western sections, development is set back from the State Highway to provide views and visual separation. All development that is visible from the State Highway is of a high standard in terms of visual appearance.

[258] Six supporting policies follow. Five are unchanged from the Ferguson/Hutton version of the plan change. The additional one, which responds to a matter that emerged during the hearing, is to ensure commercial signage does not create visual clutter on the state highway or compromise traffic safety.[252] An Explanation and Principal Reasons for Adoption statement follows unchanged from PC19(DV).

[259] Mr J Brown for SPL proposed a more succinct objective wording than the QLDC's with its roots in the language of section 6, namely:

To define and protect significant views of outstanding natural landscapes and outstanding natural features.

He gave seven supporting policies that largely follow the Ferguson/Hutton version of the plan change but with some important differences to which we shall return.

[251] Mead Third Supplementary Statement April 2012 [10]-[15] and [70] and District Council Closing submissions.
[252] Being re-located policy 2.9 from PC19(DV).

[260] Mr Edmonds for QCL was content to retain the Ferguson/Hutton version of the plan change of Objective 1 "To maintain visual connections to the surrounding landscape".[253] He proposed amended or new policies for the role of roads and vistas as viewshafts; managing building height to maintain views of The Remarkables; the role of landscaped major roads as viewshafts; and enabling additional building height on street corners adjoining AA-A, which was another matter that arose during the hearing.

Discussion and findings

[261] The discussion and findings needs to be read in conjunction with Part 17: Landscape.

[262] Mr Mead referred to the inevitability of urban development affecting current views of The Remarkables from the state highway to some extent, which we accept.[254] In his opinion determining how much of the base of the range could appropriately be impacted should take account of both landscape considerations and the value placed on ensuing development (how much is lost and how much is gained). He suggested that this balancing exercise could only be made subsequent to a finding on "... what the likely quality of the built environment will be". In practice that cannot be known until the Zone is built out and we are required to make a determination on the objective and policies now. We give our findings on maximum building height in a subsequent Part of the Interim Decision. It suffices at this point to indicate that the extent to which the base of The Remarkables would be impacted the QLDC's preferred stepped height control has been found to be appropriate.

[263] Both Mr Mead and Mr J Brown endeavoured to respond to the fraught provisions for land owned by FMC and Manapouri Beech Ltd. FMC, Manapouri together with the QLDC propose this land be zoned Activity Area E4 – this is a new sub-zone.

[264] In doing so Mr Mead gave considered evidence in support of the second limb of the QLDC's preferred objective (QLDC objective 1) which, amongst other matters, addresses the "entry experience" to Frankton on State Highway 6. For reasons that he

[253] Edmonds Second Supplementary Statement [7.10]ff.
[254] Mead Third Supplementary Statement April 2012 [10]ff.

gave the Queenstown urban area starts west of the EAR intersection, which we accept. East of the EAR it was his opinion that "the default position needs to be a strong landscape element of trees and denser planting along the SH, with buildings in behind this screen". We find his analysis to be valid irrespective of the Activity Area allocated to the land east of the EAR. We also acknowledge the witnesses' further suggestion that in controlled circumstances buildings might *better engage with the State Highway* but find there would be a considerable risk associated with achieving buildings of very high architectural quality and the built form/landscaping mix that he described.

[265] Ms Hutton presented the QLDC's revised policies without supporting evidence.[255]

[266] Mr J Brown likewise did not address evidence to all of the (extensively) revised objectives and policies which he supported.[256] He too proffered a separate "gateway entry" objective together with four supporting policies. While we prefer the greater specificity of the QLDC's objective, there is merit in Mr J Brown's policy 3.1 for the eastern end of the Zone, which we have incorporated in an edited form to complement the QLDC's provisions. Other of Mr J Brown's provisions dealt with the same or similar matters as the QLDC's version while his policy 2.3 would provide a policy basis for SPL's preferred view protection [inclined height plane], however, the latter is not approved.

[267] Mr Edmonds was similarly concerned with this area of land and in particular, that a landscape response on the state highway frontage east of the EAR "may have a ... enclosing effect" and that it was unrealistic to expect views over buildings in this part of the zone. We find he was correct in these respects. However, rather than being problematical as he seemed to infer, we find the prospect of landscaping at the gateway to the Queenstown urban area to be in harmony with operative higher order provisions; in particular Section 10.5.3, objective 1 and policy 1.4[257] and also the District Plan's

[255] Hutton Third Supplementary Statement [30]ff.
[256] J Brown Second Supplementary Statement [8]ff.
[257] Objective 1 is for the "[c]consolidation of existing shopping centres at their present location" and policy 1.4 is "to protect and enhance the open space and visual amenity of the approach to Queenstown on State Highway 6 as an attractive gateway entrance to Queenstown and Frankton".

anticipated environmental outcome of protecting the visual amenity and approach to Queenstown along SH6 in the vicinity of the Shotover industrial area.[258]

[268] We found the meaning of the competing objectives to be uncertain. This may be in part because the objectives are framed as if they are a statement about the existing environment; Messrs Mead and J Brown's "gateway" is a present day construct arising in relation to existing patterns of land use – in particular the land's shelterbelt planting. All this may change if land is developed. However, as clearly stated in the operative District Plan, due to its location at the gateway or entry to the Queenstown urban area, it is land which warrants careful and sensitive management – and the witnesses (including those of FMC and Manapouri) are rightly concerned with the land's treatment under PC19(DV).

[269] More saliently, while views across and through the Zone may be achieved for land located west of FM/Manapouri, the development of FMC and Manapouri's land would operate as an exception to QLDC's general objective for the Zone which is to maintain visual connection to the surrounding environment. This objective cannot be achieved at this location while adequately screening AA-E1 development. Any greater specificity with regard to development controls would need to be approved via a variation to the plan change.

[270] We discuss in Part 12: Activity Area E4 the complex planning issues that arise in relation to FMC and Manapouri's land, and secondly, the constraints upon our jurisdiction to approve amendments supported by some parties. That said, it is our tentative view that the District Plan could (and indeed should) be amended by including a policy that specifically addresses the visual sensitivity of land located east of AA-A through landscaping (as proposed by J Brown). We find that there is jurisdiction to make consequential amendments arising under FMC's appeal to rezone its land AA-E1. To do so would also be consistent with the operative District Plan provisions.

[258] Clause 11.1.3.4.4.

Outcome

[271] Subject to our general direction above, and also to the outcomes in Part 17: Landscape, we find that objective 1 and its supporting policies are to be as follows:

The court's revision

Objective 1: Incorporating and enhancing visual amenity

~~A gateway experience into the Queenstown urban area is proved at the eastern end of the zone, while in the middle and western sections, development is set back from the State Highway to provide views and visual separation.~~ To ensure that a~~A~~ll development that is visible from the State Highway is of a high standard in terms of visual appearance. (QLDC objective 1)

Policies

1.1 To ensure a landscape buffer area is established and maintained between SH6 and any built development so that at the western end of the Zone views of the landscape from the State Highway are provided. (QLDC policy 1.1)

1.2 To ensure that views from State Highway 6 to The Remarkables and Peninsula Hill are provided through viewshafts created by controlling built form, open space and the positions of roads. (QLDC 1.3)

1.3 To ensure that views from within the Zone to The Remarkables, Cecil and Walter Peaks, Ferry Hill, P Number 2, Queenstown Hill and Peninsula Hill area are provided by viewshafts created through controlling built form, open space and the position of roads. (QLDC policy 1.3)

1.4 ~~For~~ In the development area ~~(~~Activity Area E1~~-E3)~~ immediately east of ~~adjoining the State Highway, to~~ Activity Area A to require generous areas of landscape planting within a building setback~~s~~ from the State Highway in order to substantially screen built development when viewed from the State Highway. (SPL policy 3.1)

1.5 To give primacy to the protection of the significant landscape values and views of the landscape when considering proposals to exceed height limits. (QLDC policy 1.2)

1.6 To ensure that the nature and location of landscaping proposed to complement development does not itself adversely affect background views or viewshafts to The Remarkables. (QLDC policy 1.4)

1.7 To complement the appearance of buildings through the judicious placement of mature trees so building bulk and height is less apparent. (QLDC policy 1.5)

1.8 To ensure that commercial signage avoids adverse effects of visual clutter on the State Highway and that it does not compromise traffic safety. ~~and traffic safety is not compromised~~ (QLDC policy 2.9)

1.9 To enable additional building height of up to one additional floor to occur where street corners adjoin Activity Area-A. (QCL policy 2.6)

Explanation and Principal Reasons to be added

The objectives and policies for the Structure Plan and Outline Development Plans

[272] PC19(DV) has the following objective 2:

> **Objective 2: To enable the creation of a sustainable zone utilising a Structure Plan and an Outline Development Plan process to ensure high quality and comprehensive development.**

[273] Ten supporting policies follow concerned with:

(a) the roles of the Structure Plan and outline development plans in enabling a mixed use development while avoiding the incompatible juxtaposing of land uses and reverse sensitivity effects;

(b) the range of activities to be enabled in the Zone with an emphasis on high amenity and high density living environments;

(c) achieving acoustic and vibration insulation standards and energy efficient design;

(d) achieving compatibility with the adjacent Airport (operational requirements, location of ASANs, and reverse sensitivity effects); and

(e) managing the effects of activities in proximity to SH6.

[274] The Ferguson/Hutton version of the plan change amended the objective striking out reference to the Structure Plan and ODP process and referring instead to ensuring integrated development as follows:

> **Objective :** To ensure high quality integrated and comprehensive development

[275] Relatively few amendments were made to the supporting policies or Explanation and Principal Reasons.

[276] During the hearing the QLDC proffered yet further changes resulting in the following revision:[259]

> **Objective: Managing interfaces and improving connections**
> Development physically and visually integrates with the FF(A) land and the Events Centre land to the west.
>
> The EAR develops as a corridor that has an important linking role as well as being an urban place in its own right formed by the road and adjacent development.
>
> A connected internal roading system is provided that helps to manage movement demands, while also providing a block structure that supports quality urban development.

[277] The revised objective omits both the PC19(DV) references to structure and outline development plans and the Ferguson/Hutton reference to integrated development. Four of the six implementing policies are drawn from the Ferguson/Hutton version of objective 2, which is concerned with connecting development in the Zone with the surrounding community. This restructuring resulted from Mr Mead's third supplementary statement of evidence which in turn resulted from

[259] Mead Third Supplementary Statement and Council Closing submissions.

a court Minute[260] to the parties directing that they address further planning evidence as to:

(a) what overall urban form outcomes are sought for the PC19 Structure Plan area and which therefore should be articulated in PC19, as informed by landscape, urban design and traffic issues; and

(b) the context for the urban form that they support. In particular, how the urban form relates to the higher order objectives and policies in the Plan.

Discussion and findings

[278] Having reviewed relevant high level issues (urban form, landscapes, interfaces, amenity) Mr Mead deposed that to provide a suitable management framework it is necessary to concentrate first and foremost on shaping an urban environment (built and open space elements combined) that can manage and accommodate the preceding issues. Activities that can support and enable the necessary urban environment then need to be considered. Mr Mead proffered wording to give effect to the foregoing and we find that the change was appropriate and it has led us to conclude that revised objectives 1 to 4 are generally better than those in the hearings version and PC19(DV).

[279] We are concerned, however, that there is no reference to "integration" in the objective 2 as it is one of the principal issues identified in Part 5: Resource Management Issues above (Integration within the zone and with other zones) and is closely related to the subject of the objective. This can be rectified by inserting "integration" into the objective heading.

[280] We are also concerned that references to the Structure Plan and ODP process have been removed from the objective because, amongst other things, these have an important place in achieving the outcomes sought by objective 2. While there is a reference to a Structure Plan in QLDC's policy 2.1 it is in a limited context (as opposed to establishing the Structure Plan's purpose and contents). There does not appear to be a reference to the ODP process until QLDC's policy 4.4 (Quality Development).

[260] Court Minute 7 March 2012.

[281] Mr Edmonds recognised the relevance of the Structure Plan and ODP process to his proposed objective 4 Integration and supporting policies 4.1 (Structure Plan/ODP) and 4.2 (ODP).[261]

[282] Mr J Brown for SPL proposed that there be a Structure Plan objective.[262] While we have little quarrel with Mr J Brown's wording his approach does not recognise that the Structure Plan is essentially a technique to aid the implementation of one or more objectives; and similarly the ODP process. Be that as it may, we see merit in Mr J Brown's policy 4.1 which specifies what the Structure Plan is to establish and his policy 4.4 which is concerned with the ODP's role in integrating development. We find that Mr J Brown's two policies should be included in the QLDC's objective 2 subject to any editing that the QLDC may find necessary including deletion of the reference to "and/or subdivision processes" because (a) the words suggest subdivision may act as a proxy for ODPs and (b) subdivision is but one method to achieve integration whereas it is our judgment it would be insufficient by itself. This is also an appropriate point to raise the question whether ODPs would appropriately be required as a precursor to development in all Activity Areas. In this respect it strikes the court that many of the matters set out in rule 12.20.3.3(iii) appear equally applicable to AA-D and E1 as those named in the rule and go to the question of effective integration and the fact that AA-D and E1 are already referred to in the assessment criterion (e) of the rule (in the Fergusson-Hutton version). We also regard favourably Mr Edmonds' evidence that supported ODPs for all Activity Areas.[263] While the court does not wish to create a dispute where none exists it occurs to us that this is a matter to which the District Council and parties should turn their minds and we direct accordingly.

[283] The QLDC has a separate infrastructure objective with policies on open space, amongst other things. One of the latter policies (QLDC policy 3.31) is concerned with ensuring an open space network that provides connections through the Zone and integrates it with surrounding activities. Again, it occurs to the court that successfully delivered, the policy will play a significant part in achieving the integration and connections that objective 2 seeks and that it should be relocated under this objective.

[261] Edmonds Second Supplementary Statement at [7.12.4].
[262] J Brown Second Supplementary Annex A p J-6 objective 4.
[263] Edmonds Supplementary Statement April 2012 at [2.1, 3.4, 6.7 and 6.10]. Transcript at 654, 1650-1653.

We consider that the former is the preferable approach and have amended the relevant policy accordingly. Leave is granted to the QLDC to submit an alternative wording within objective 2, should the parties wish.

[284] We have added QLDC policy 2.5 with minor wording amendments addressing a concern raised by SPL and others that the policy was capable of being interpreted to require state highway linkages to all activity areas be established before a site may be developed.

[285] In its final draft of the provisions, QLDC's policy 2.2 is repeated as policy 3.19 (Travel Demand Management) under QLDC's objective 3: Managing Impacts on Infrastructure. We appreciate how the repetition has occurred and suggest it may addressed by deleting policy 3.19 as providing for suitable access from the Structure Plan area to SH6 is more suitably dealt with this objective.

Outcome

[286] The QLDC having conferred is to consider and respond to the following:

(a) whether policy 2.2 should require ODPs be prepared for all Activity Areas to ensure that development is integrated and implements the Structure Plan;

(b) confirmation of the court's revisions or suggestion of further editorial changes.

The court's revision

Objective 2: Managing Interfaces, Integration and Improving Connections

To ensure that d~~D~~evelopment physically and visually integrates with surrounding Zones including the Frankton Flats Special Zone (A) Zone, Glenda Drive industrial area ~~FF(A)~~ and the Events Centre land to the west. (QLDC objective 2)

To enable t~~T~~he Eastern Access Road to ~~EAR~~ develops as a corridor that has an important linking role as well as being an urban place in its own right formed by the road and adjacent development. (QLDC objective 2)

To provide a ~~A~~ connected internal roading system ~~is provided~~ that helps to manage movement demands, while also providing a block structure that supports quality urban development. (QLDC objective 2)

Policies

2.1 To use a Structure Plan to establish:

- the necessary open space area and setbacks of development to provide a landscaped buffer adjacent to State Highway 6 and to preserve views~~stas~~ of The Remarkables from State Highway 6;
- a network of open spaces and connections within and between Activity Areas that facilitate pedestrian movements and visual connections through the Zone (QLDC policy 3.31);
- key viewshafts which would frame views from within the Zone to features in the surrounding landscape;
- indicative cycleways/walkways and connections;
- the primary roading structure within the Zone;
- roading for separating incompatible activities; and
- the location of Activity Areas, taking into account the location of the Outer Control Boundary.

(SPL's policy 4.1)

2.2 To use an Outline Development Plan(s) in Activity Areas C1, C2 and E2 to ensure that development is integrated and implements the Structure Plan. (SPL policy 4.4)

OR

To use ~~an~~ Outline Development Plan(s) in all Activity Areas to ensure that development is integrated and implements the Structure Plan. (court's revised SPL policy 4.4)

2.3 To provide for a landscaped road corridor along the Eastern Access and collector routes shown on the Structure Plan that is effective in maintaining an attractive amenity and streetscape. (QLDC policy 2.1)

2.4 To provide a movement network, which is highly permeable and provides a choice of routes and transport modes. (QLDC policy 2.2)

2.5 To provide cycle and pedestrian routes that provide linkages within Frankton

Flats Special Zone (B), and between the Frankton Flats and the Events Centre, Remarkables Park Zone, Queenstown, Kelvin Heights, Arrowtown and the Wakatipu Basin. (QLDC policy 2.3)

2.6 To provide ~~promote~~ an effective road connection between the Frankton Flats Special Zones and the Remarkables Park Special Zone. (QLDC policy 2.4)

2.7 To require that a safe and effective connection to ~~the~~ any site from State Highway 6 exist prior to any development being occupied within the Zone. (QLDC policy 2.5)

2.8 To provide a safe and pleasant street environment for residents and ~~other~~ the users of adjoining properties. Street environments are also to ~~which~~ contribute~~s~~ positively to neighbourhood identity, ~~and~~ amenity, and provide ~~which contributes to~~ a connected series of viewshafts through the Zone towards T~~t~~he Remarkables Range. (QLDC policy 2.6)

Explanation and Principal Reasons to be added

The objectives and policies for Infrastructure

[287] PC19(DV) does not have an objective and supporting policies directly comparable to the QLDC's revised objective 3: Managing Impacts on Infrastructure, which comprises new objective statements supported by policies drawn from various parts of earlier versions of PC19. The revised objective reads as follows:

> **Objective: Managing Impacts on Infrastructure**
> The on-going functioning of the airport is protected and the adverse effects of noise from the airport on activities is controlled.
>
> To manage travel demand to reduce reliance on the private car and to maximise transportation network efficiencies and travel choices.
>
> Stormwater is managed and a variety of open spaces are provided in a way that integrates with the built environment.

Thirty-two supporting policies are arranged under the headings Airport Operation, Road Network, Travel Demand Management[264] and Open Space. Notable changes from the

[264] These policies are set out in full in Part 19: Transportation and Traffic Management.

provisions supported by Ms Hutton are that her road network and travel demand objective has been clarified and broadened, which we favour, and separate road network and travel demand policy headings are adopted.[265]

[288] Mr Mead wrote little in his supplementary statement to explain why he supported the above grouping of objectives beyond stating that:

> In terms of the area-wide and integration-based objectives and policies, these could possibly be grouped under headings to do with:
>
> (c) Managing impacts on infrastructure – in terms of protecting the airport operation, capacity of the surrounding road network (travel demand management), stormwater and open spaces.[266]

Discussion and findings

The objectives

[289] Notwithstanding the absence of supporting evidence we accept that it is appropriate to have a group of infrastructure-related objectives and supporting provisions.

[290] As it is convenient to do so, we address the first objective (and related policies) addressing Queenstown Airport in Part 16.

[291] We approve the second objective that is to manage travel demand and consequently make no further comment.

[292] The third and final objective deals with stormwater and open space in one provision but there is no nexus between the two subjects as the provision is written or, as we understand the evidence, on the ground. We find it would be better if the subjects were uncoupled and the objective began "To ensure that a variety of open space is provided ...". That would leave an objective that reads "Stormwater is managed ..." and no supporting policies which is clearly unsatisfactory.

[265] Hutton Third Supplementary Statement at [32].
[266] Mead Second Supplementary Statement [69].

[293] We have previously directed that an Infrastructure issue be added to the section addressing Resource Management Issues (Part: 5) and indicated the matters to be dealt with including stormwater.

[294] The QLDC is to further develop these provisions by preparing a suitably framed objective and supporting stormwater policies that build on Mr Edmonds' provisions and the court's preceding discussion of the subject.[267] Should it assist, we question Mr Edmonds inclusion of "logical" in his objective and suggest the inclusion of a reference to infrastructure providing for public health and safety be amongst its purposes (section 5(2)). The stormwater policy or policies are to provide for the catchment management plan that the QLDC is preparing for the Structure Plan area; explain the QLDC's role as the intended consent holder; and state that increased run-off from impervious surfaces will be required to be treated and discharged through a combination of infiltration, piping and overland flow along the roading network, all in accordance with the CMP.

The policies

[295] The policies relevant to the Queenstown Airport are addressed in Part 16.

Road Network

[296] The following two sections are to be read in conjunction with Parts 18 and 19 of this decision.

[297] It is notable that the relevant objective speaks of maximising "transportation" network efficiencies but the section is headed "Road" Network (a subset of transportation). As we read the objective it is actually concerned with managing travel demand by three methods (reduced reliance on private cars, maximising transportation network efficiencies, and [providing greater] travel choices). We find the following changes would better implement the relevant objective (adopting the District Council's policy numbering):

[267] Edmonds Second Supplementary Statement [7.15].

(a) alter the section heading to read "Transportation network" and include one or more policies with express reference to all aspects of the network (pedestrian and cycle ways, roads and public transport);

(b) policy 3.8 is a significant policy especially for the effective integration of the FF(A) Zone and the PC19 AA-C1 mainstreet. We find the policy would better serve its intended purpose if the QLDC were to add examples of measures available to achieve the outcome sought as given in evidence and described in Part 19;[268]

(c) it is unclear what part of the objective "... to maximise transportation network efficiencies and travel choices" policy 3.9 is intended to implement as it is concerned with minimising the visual impact of wide carriageways. We consider that the policy goes to the subject of a high quality urban environment and we find that it should be relocated under that objective. Further, we expect that the QLDC's Engineering Standard(s) require already that roads be sufficiently wide to accommodate utilities;

(d) the same consideration attaches to policy 3.12 as policy 3.9 and it is to be relocated in the same way. The two policies appear amenable to amalgamation;

(e) we also find policy 3.13 to be unrelated to maximising transportation network efficiencies and travel choice. It is a policy to implement the first limb of objective 1, namely to secure views across and through development of surrounding mountains as experienced from within the development. However, as it duplicates revised policy 1.3 it should be deleted;

(f) it occurs to us that policies 3.16 and 3.17 are concerned with aspects of network design and would logically follow policy 3.6. Policy 3.17 would read better if the word "other" were deleted after "orientated";

(g) we question whether policy 3.18 might not more appropriately come under Travel Demand Management; and

[268] Refer Part 19: Issue Heavy Traffic on Grant Road.

(h) to what does QLDC refer when in policy 3.17 it talks about community orientated activity areas? If this means AA-C1/C2 and E2 then the policy is to be amended by deleting community orientated activity areas and inserting instead these activity areas.

Travel Demand Management

[298] The following considerations arise (adopting the District Council numbering):

(a) policy 3.19 repeats policy 2.2 and subject to any further submission we find that it can be deleted from this section;

(b) there appear to be overlapping elements in policies 3.21 and 3.10. Of greater concern, there is no guidance in policy 3.21 on how "develop[ing] physical opportunities for better public transport" is to be interpreted, including who is to be responsible for what aspects. The QLDC is directed to lend greater specificity and clarity to policy 3.21 and if technically appropriate amalgamate it with policy 3.10;

(c) PC19(DV) policy 3.22 is "to provide a safe, convenient network of transport routes". This policy is supported by all of the traffic experts. In QLDC's version "to provide" was become watered down to read "to promote". We approve the stronger more directive language of PC19(DV);

(d) policy 3.23 is to be amended by making it clear who is responsible for providing park and ride facilities. This is a convenient place to note that we see no policy "parent" for the agreed provision for travel plans described in Part 19 as emerging from expert witness conferencing.[269] If we are correct is this a suitable amendment to the policies is to be made by QLDC?

(e) policy 3.25 is to be amended by making it clear who is to be responsible for what aspects of "implementing travel behaviour change" and "measures for managing demand for travel" by including appropriate reference to the parties identified in Part 19; and

[269] Ibid, objectives and policies for improved directions to transport rules and other methods.

(f) policy 3.26 is unrelated to Travel Demand Management and belongs under Transportation Network. We do not see any roads on the QLDC's November 2012 Structure Plan map marked as "viewshafts" to be created; instead "vistas" are shown. There was a lack of exactness in the wording of the policies and Structure Plan which variously refer to "views", "viewshafts" and "vistas". This is discussed elsewhere in the decision, for now we record our understanding that the reference to viewshafts is correct and that this policy is concerned with views through the urban area to features in surrounding landscapes. Assuming that is correct, the policy is to be amended accordingly and to also spell out how it is to be implemented (outline plan process?). If we are wrong in our assumption further amendment is required. We suggest that the QLDC give consideration to splitting the policy as shown in the court's revision below. The term "vistas" is to be deleted from the structure plan map and "viewshafts" substituted.

Open space

[299] Again adopting the District Council's numbering the following considerations arise:

(a) policy 3.27 is to provide for a range of public outdoor activities but gives no indication of the QLDC and developers' respective responsibilities. Whilst repetition is generally inappropriate we find that this omission can be remedied, at least to some degree, by PC19 including a suitable reference to policy 1.1 of objective 4.4.3(1) in the Plan's District Issues Section. We recall that the policy requires the payment of development contributions set through the QLDC's Long Term Council Community Plan;

(b) there is also very little if any policy guidance for developers on what contributions (land or money) the QLDC will require developers to make in different Activity Areas and circumstances. By not identifying future open space on the Structure Plan map PC19 has avoided a potentially

problematical rigidity but created a policy vacuum for the outline plans required for AAs-C1, C2 and E2.[270] In its present form Outline Plan Rule 12.20.3.3(iii)(e) has an assessment criterion that reads in part "The open space network ... to be provided communally rather than on a site specific basis ...". The Rule is uncertain and, to the extent that it seeks to articulate policy, it is misplaced. The latter part of the Rule dealing with Activity Areas D, E1 and E2 is equally opaque where the terms "site specific basis" and "pocket parks" appear to be used as synonyms and to possibly contain policy. Notably these "policy gaps" are not plugged in either the High Quality Urban Environment policy suite or in the specific AAs-C1, C2 and E2 provisions;

(c) we have formed the preliminary view that the shortcomings described in (b) above can be remedied by the QLDC either amending policy 3.29 to include either a more specific indication of the types of open space that the Plan will require in different Activity Areas, and the quantum in general terms, or by providing similar guidance in the relevant individual Activity Area policies. The QLDC is to confer and propose the necessary amendments in one or other of these ways;

(d) the problem we see in Rule 12.20.3.3(iii)(e) can be redressed through the lower order hearing;

(e) we can find no unambiguous provision that indicates whether AA-A is to vest as reserve or remain privately owned, but infer from the reference to it being "open to the public" that it is to remain private land.[271] Moreover, we find no record of QCL opposing that position, but it is possible that we have overlooked its submission. This situation is to also be remedied by the QLDC, having conferred with the parties, in one of the ways indicated in (c) above. That is, QLDC to confer and propose a policy for inclusion under either the suite of open space policies or the AA-A policies, that clearly states whether AA-A is to be private or public open space; and

[270] PC19 Ferguson/Hutton version of the draft plan change April 2012 Rule 12.20.3.3(iii)(e) at p J-19ff.
[271] Council Closing submission Annexure 2 objective 5: Area A (Open Space). The reference in Rule 12.20.3.3(ii)(e) to public access reinforces this impression.

(f) policy 3.31 repeats policy 3.28 and is to be deleted.

Implementation methods and assessment matters

[300] Finally the traffic experts were agreed on amendments to the Explanation and Reasons for the adoption of the objectives and policies introducing nine monitoring controls.[272] As the controls are implementation methods – information to be provided by the applicant at the subdivision, outline development plan or land use consent they belong in the *Methods of Implementation* section. That said, they will be considered in the context of the lower order hearing together with the agreed assessment matters for resource consent pertaining to the topics of transportation and parking.[273] The suggested changes appear sound but require consideration in light of the unresolved maxima/minima that will apply to carparking.

Outcome

[301] Subject to our general directions above and also to the outcomes in Parts 16, 18 and 19 we find that Infrastructure objective and its supporting policies should be as follows:

The court's revision

Objective 3: Providing for and managing impacts on infrastructure

See Part 16: for Airport objective to be inserted here.

To manage travel demand to reduce reliance on the private car and to maximise transportation network efficiencies and travel choices. (QLDC objective 3)

~~Stormwater is managed and~~ To ensure that a variety of open space is~~s are~~ provided in a way that integrates with the built environment. (QLDC objective 3)

To manage stormwater ..... (QLDC objective 3).

Policies: Airport Operation

[272] Third Joint Witness Statement (Traffic) at 6.
[273] Third Joint Witness Statement (Traffic) at 7-8

See Part 16: for Airport policies to be inserted here.

~~Road~~ Transportation Network

XXX To provide safe, sustainable and integrated connections to and from the State Highway in locations agreed to with New Zealand Transport Agency. These shall be all-access roads at Grants Road and a new Eastern Access Road, and limited access at Glenda Drive. (QLDC policy 3.6)

XXX To provide a network of streets and accessways, appropriately orientated and integrated with the State Highway with physical distinctions between each, based on function, convenience, traffic volumes, vehicle speeds, public safety and amenity. (QLDC policy 3.16)

XXX To ensure through appropriate road network design, that the impact of commercial traffic on residential and community orientated ~~other~~ activity areas within the Zone is minimised. (QLDC policy 3.17)

XXX To require the Zone Structure Plan has a hierarchy of roads including:

(a) those roads which are required in accordance with the location shown on that Structure Plan;
(b) those roads which are required but ~~over which~~ have up to 25m of flexibility in their location; and
(c) those roads which are required but ~~which~~ are shown only in indicative locations on the Structure Plan to assist with the creation of continuous view shafts, a north-south bias in block structure for solar access, and a permeable, connected network. (QLDC policy 3.26)

XXX To establish a buffer and setbacks between the state highway and noise sensitive activities in the Frankton Flats Special Zone (B). (QLDC policy 3.7)

XXX To encourage the majority of the heavy traffic entering the Zone ~~site~~ to utilise the Eastern Access Road instead of Grants Road by traffic design and road control measures. (QLDC policy 3.8)

XXX ~~To minimise the visual impact of wide carriageways on streetscapes while accommodating public utility services and drainage systems.~~ (QLDC policy 3.9)

XXX To ensure that the design of the relevant street environment takes into

account the operational requirements of public transport. (QLDC policy 3.10)

XXX To ensure that carparking is not over provided and does not ~~a~~ exceed rates necessary to service the development and the reasonable needs of future residents. (QLDC policy 3.11)

XXX ~~To require the provision of landscaping as an integral part of street network design~~ (QLDC policy 3.12)

XXX ~~To design a street layout in order to take advantage of views of Remarkables Range, Peninsula Hill, Ferry Hill, K Number 2, Queenstown Hill and Walter and Cecil Peaks~~ (QLDC policy 3.13)

XXX To provide suitable and convenient, safe and accessible areas for car parking on site rather than on the street. (QLDC policy 3.14)

XXX To ensure businesses provide safe and functional loading zones on site to ensure the effects of trucks unloading do not compromise the effective functioning of the road network. (QLDC policy 3.15)

XXX ~~To provide a network of streets and accessways, appropriately orientated and integrated with the State Highway with physical distinctions between each, based on function, convenience, traffic volumes, vehicle speeds, public safety and amenity~~ (QLDC policy 3.16)

XXX ~~To ensure through appropriate road network design, that the impact of commercial traffic on residential and community orientated other activity areas within the Zone is minimised~~ (QLDC policy 3.17)

Travel Demand Management

XXX ~~To provide a movement network which is highly permeable and provides a choice of routes and transport modes~~ (QLDC policy 3.19)

XXX To provide for methods of influencing travel behaviour through non-infrastructure measures. (PC19(DV) 11.7)

XXX To ensure the layout of the Zone and urban blocks that make up the Zone are attractive, landscaped and facilitate walking and cycling. (QLDC policy 3.20)

XXX To promote and develop physical opportunities for better public transport within the development and between the development and Queenstown

Town Centre. (QLDC policy 3.21)

XXX To provide a safe, convenient network of transport routes. (QLDC policy 3.22)

XXX To provide for convenient and well located park and ride facilities for visitors to Queenstown. (QLDC policy 3.23)

XXX To ensure that carparking is available consistent with a reduced reliance on the private car for travel. (QLDC policy 3.24)

XXX To discourage single occupancy private car use by providing methods of implementing travel behaviour change through measures for managing demand for travel. (QLDC policy 3.25)

XXX ~~To require the Zone Structure Plan a hierarchy of roads including those which are required in accordance with the location shown on that structure plan; those which are required but over which up to 25m of location flexibility is appropriate and those which are required but which are shown only in indicative locations on thestructure plan to assist with the creation of continuous viewshafts, a north-south bias in block structure for solar access, and a permeable, connected network.~~ (QLDC policy 3.26)

Open Space

XXX To provide for a range of public outdoor activities to occur in open spaces, including places to meet, to shelter, to sit and to rest. (QLDC policy 3.27)

XXX ~~To ensure the establishment of a network of well located and well designed open spaces and connections within and between Activity Areas that complement surrounding activities, and support pedestrian facility that facilitates physical and visual connections through the Zone~~. (QLDC policy 3.28)

XXX To ensure that reserves of appropriate quality, quantity, and functionality are provided in convenient locations to meet the active and passive recreational needs of the resident, working, and visitor community. (QLDC policy 3.29)

XXX To require that a mix of open spaces, reserves, community facilities, and recreational facilities be developed in a staged manner that keeps pace with development. (QLDC policy 3.30)

XXX ~~To ensure the establishment of a network of well located and well designed open spaces and connections within and between Activity Areas~~

~~that complement surrounding activities, and support pedestrian facility that facilitates physical and visual connections through the Zone~~. (QLDC policy 3.31~~).~~

XXX To encourage a cohesive system of public open spaces areas and reserves which are oriented to maximise their solar efficiency and shield from the prevalent southerly winds. (QLDC policy 3.32)

Explanation and Principal Reasons to be added

The objectives and policies for creating a High Quality Urban Environment

[302] We come now to the last of the QLDC's revised Zone-wide objectives and policies which is:[274]

> **Objective 4: Creating a High Quality Urban Environment**
>
> A high quality, livable urban environment develops with built and open space elements (including roads) integrated.
>
> Development proposals are prepared and assessed in a way that ensures integrated outcomes that address all of the above objectives.

[303] The objective heading is very similar to objective 4 in both the PC19 Decisions and Hearings Versions, which read "To ensure a high quality urban environment" but neither of these had the two specific objectives now proposed by the QLDC. The revised objectives would be implemented by two suites of largely relocated PC19(DV) policies headed Range of Activities and Quality Development. Under the former there are policies concerned with:

(a) the range of housing to be enabled and density; and
(b) other activities to be enabled.

The Quality Development policies are very largely those from the corresponding PC19(DV) provision and cover a range of matters including that development be

[274] District Council Closing submissions Annexure 2.

undertaken in accordance with the Structure Plan and ODPs for Activity Areas C1, C2 and E2.

Discussion and findings

[304] We struggle to see a nexus between the second objective and the Range of Activities policies. In fact we do not accept that there is a nexus. As the heading states, the policies simply describe with a degree of duplication the activities provided for by the Structure Plan. QLDC policies 4.1 and 4.2 are fundamental aspects of the new objective 1A that we have earlier directed be included.

[305] QLDC policy 4.3 is superfluous and is to be deleted.

[306] Mr Mead's evidence did not greatly assist our understanding of either of the two objectives and, in particular, their concern with integrated development. The second limb of objective 4 is especially problematical. With the Range of Activity policies (now) dealt with in new objective 1A, this part of the objective has no implementing policies. We have concluded that it is not required and is to be deleted for two reasons:

(a) amended objective 2 deals adequately with achieving integrated development outcomes; and

(b) it is a reasonable expectation that development proposals, which we understand to mean resource consent applications, will be required by QLDC to address all relevant objectives/policies and that it will do the same when processing applications.

[307] The Quality Development policies were not greatly in dispute. However, five matters arise:

(a) QLDC policy 4.4 is "To ensure that development is undertaken in accordance with the Structure Plan and Outline Development Plans [for named Activity Areas]...". This is a critical policy, aspects of which are already covered by policy 1.3 of new objective 1A. The second part of the policy is approved with minor word amendments;

(b) PC19(DV) has a High Quality Urban Environment policy 4.7 "To ensure that in building and site design, there is compliance with performance standards to achieve specified acoustic and vibration insulation". The policy is not included in the QLDC's revised High Quality Urban Environment policies although noise and vibration are most certainly relevant to the objective and we note that there are lower order Zone standards for noise and state highway noise-related controls.[275] Noise and vibration are also amongst the matters over which control is retained for Controlled Activities.[276] If there is no relevant policy elsewhere in the QLDC's revised provisions, we find that there should be as Mr Edmonds and Mr J Brown proposed and direct that the QLDC reinstate the PC19(DV) wording. Modification of the wording is required so that the policy refers to achieving performance standards specified in lower order provisions. Also, "insulation" may not be an apt term to use in the context of vibration;

(c) PC19(DV) has a High Quality Urban Environment policy "To attain benchmark energy efficiency goals throughout the entire development". In the QLDC's revised provisions this policy is amended to read "To require all development to adopt energy efficient design" (QLDC policy 4.5). The policy is not foreshadowed in either its parent objective or in the Sustainable Development/High Quality Urban Environment Issues. Equally, there is no mention of energy efficiency amongst the Environmental Results Anticipated (at clause 12.19.4.2) nor as far as we can ascertain in any other PC19 lower order provisions. If we are correct in this, retention of QLDC's policy 4.5 has the potential to create implementation difficulties including when resource consent applications are required to be assessed against Plan policies. If there are "parent" provisions for policy 4.5 in the operative Plan or some higher order part of PC19 that we have overlooked the QLDC is to identify such in its response to this Interim Decision and, having conferred with the other parties,

[275] Rules 12.20.5.2(iv) and (v).
[276] Rule 12.20.3.2(iii)(b).

propose amendments to make the policy chain robust. If policy 4.5 is not supported by either higher or lower order provisions, which have been subject to the Schedule 1 process thus far, it is to be deleted;

(d) PC19(DV) has a High Quality Urban Environment policy "To design for flexible reuse of buildings and spaces"[277] which is retained in the QLDC's revised version as policy 4.11. Again, we can see no parent provision for the policy in either the issues or relevant objective(s). Environmental Result 12.19.4.2(iii) would appear to be on point as it envisages "A range of building types and forms that are flexible to changes in use over time and which will promote social and cultural diversity" (however that might be determined). We have not undertaken an exhaustive review of the lower order provisions to establish whether there are rules to implement the policy but expect it will arise when consent applications are processed. In response to the court Ms Hutton accepted that the policy should not apply to Activity Area D, and we consider, by extension, Activity Area E1. In respect of Activity Areas C1, C2 and E2, potentially affected parties have been put on notice (just) by the policy and result expected that conditions may be imposed on consents. However, we agree with Ms Hutton that the policy should not apply to AA-D and E1. As for the other Activity Areas the policy should be foreshadowed in a Resource Management Issue and probably related explanatory material. Issue (iii) *High Quality Urban Environment* is a candidate location although the QLDC is not limited to this provision. Having conferred, the QLDC is to draft amendments to the higher order provisions that give effect to our findings and is on notice that the subject can be expected to arise in the hearing on lower order provisions;

(e) PC19(DV) has a high quality urban environment policy 4.3 that reads "To encourage underground private car parking in order to contribute to the visual amenity of the zone". QLDC's corresponding revised policy 4.12 is "To manage the location of private car parking in order to contribute to the visual amenity of the zone, including undergrounding where appropriate

[277] PC19(DV) policy 4.9.

and the placement of parking to the side [or] rear of buildings". The revised policy begs the question "in what circumstances might the consent authority consider underground parking to be appropriate?" The court sees no guidance in higher or lower order provisions to guide related decision making. QLDC is granted leave, in consultation with the parties, to propose further, higher order provisions and is on notice that the adequacy of related assessment criteria can be expected to arise in the lower order hearing.

Outcome

[308] Subject to our general directions above we find that objective 4 and its related policies should be as follows:

The court's revision

Objective 4: Creating a high quality urban environment

To ensure that a high quality, livable urban environment develops with integrated built and open space elements, including roads. (QLDC Objective 4).

~~Development proposals are prepared and assessed in a way that ensures integrated outcomes that address all of the above objectives.~~(QLDC objective 4)

~~**Range of Activities**~~

~~5.1 To enable a range of residential housing including Affordable and Community Housing with an emphasis on high amenity high density living environments while discouraging low density living (policy 2.2).~~

~~5.2 To provide for a range of business activities including retailing, visitor accommodation, residential, education and associated commercial and short term residential uses, Affordable and Community Housing, mixed live/work units, business, and both light and heavier industrial uses to help meet projected land use requirements (policy 2.3).~~

~~5.3 To provide specific areas for industrial uses that are needed to support economic growth within the Queenstown district (policy 8.1).~~

~~**Quality Development**~~

Policies

4.1 ~~To ensure that development is undertaken in accordance with the Structure Plan and Outline Development Plans in Activity Areas C1, C2, and E2, so that a.~~ A wide range of urban activities is accommodated within the Zone while ensuring that incompatible uses are located so that they can function without causing reverse sensitivity effects. ~~issues.~~ (QLDC policy 4.4)

4.2 To require all development to adopt energy efficient design. (QLDC policy 5.5 to be confirmed or deleted in accordance with preceding direction).

4.3 To ensure a high standard of building design, urban design and landscape treatment including amenity planting. (QLDC policy 4.6)

4.4 To minimise the visual impact of wide carriageways on streetscapes while accommodating public utility services and drainage systems. (QLDC policy 3.9)

4.5 To require the provision of landscaping as an integral part of street network design. (QLDC policy 3.12)

4.6 To enable variations in building height in order to create interesting streetscapes and variety in form, scale and height of buildings. (QLDC policy 4.7)

4.7 To ensure that subdivision design and the location of buildings on the sites is undertaken to maximise views, solar aspect and enhance street frontage, street presence, and amenity. (QLDC policy 4.8)

4.8 To encourage the use of colours and materials that are complementary to the surrounding landscape character. (QLDC policy 4.9)

4.9 To ensure that crime prevention techniques are incorporated in the design of buildings (including parking areas), public and semi-public spaces, landscaping, and in the location of uses that generate people movement. (QLDC policy 4.10)

4.10 To design for flexible reuse of buildings and spaces. (QLDC policy 4.11)

4.11 To manage the location of private car parking in order to contribute to the visual amenity of the Zone, including undergrounding where appropriate and the placement of parking to the side or rear of buildings. (QLDC policy 4.12)

4.12 To ensure that in building and site design, there is compliance with acoustic and vibration performance standards specified in rules. (amended PC19(DV) policy 4.7)

Explanation and Principal Reasons to be added

Part 7 Activity Area A (Open Space)

Introduction

[309] Activity Area A (AA-A) comprises a 50m deep linear strip along the frontage of the Structure Plan area with State Highway 6 between Grant Road and the FM Custodian's site.

[310] We set out elsewhere our findings in relation to landscaping along the state highway frontage east of the EAR and secondly, our approval to rezone all of FMC's site as Activity Area E1.[278] This Part focuses on the balance of the Activity Area located between Grant Road and the western boundary of the FMC site.

[311] AA-A contains modest landscape planting together with a footpath used by the public for pedestrian and bicycle purposes. It is owned by QCL and we understand from Ms Hutton's evidence that the improvements described are required by extant conditions of resource consent for development of the neighbouring FF(A) Zone.[279]

[312] Under PC19(DV) AA-A is to function as an open space buffer as its objective states:

> **Objective 6: Open Space Buffer**
> To create an area of open space adjacent to the State Highway for landscaping and a buffer to the development.

[313] Following on from this objective are policies which provide that the buffer is to be attractive; free of buildings; provide a setback to development which allows views of The Remarkables and other named peaks; encourages the establishment of pedestrian and cycleway connections to the Queenstown Events Centre; and promotes vehicular connectivity with the latter.

[278] Part 12: Activity Area E4.
[279] Exhibit 10 and Transcript at 1477.

[314] The Explanation and Principal Reasons for Adoption states that the purpose of the buffer is not to screen built development but rather to ensure that it appears as a part of the wider landscape.

[315] At the conclusion of the hearing the District Council amended the provisions to read:[280]

> **Objective 5 Area A (Open space)**
>
> An area of high amenity open space landscaped buffer adjacent to the State Highway that helps to maintain views of the mountains, reduces the visual dominance of development, as viewed from the State Highway, and contains a walkway and cycleway and is open to the public.
>
> **Policies**
>
> 5.1 To provide an attractive landscaped buffer between the State Highway and the developed areas of the zone. (Policy 6.1)
>
> 5.2 To create an area that provides a landscaped buffer that is free from built form to act as a balance to the intensity of the zoning beyond. (Policy 6.2)
>
> 5.3 To provide a setback to the development to allow views of the Remarkables Range, Peninsula Hill, Ferry Hill, K Number 2, Queenstown Hill and Walter and Cecil Peaks. (Policy 6.3)
>
> 5.4 To encourage the use of the open space buffer to establish and maintain pedestrian and cycleway connections to the Queenstown Events Centre. (Policy 6.4)
>
> 5.5 To avoid privatization of the Open Space buffer through subdivision (and consequent fencing and domestication) and to avoid development in adjacent Activity Areas where the backs of the buildings face the open space buffer. (Policy 6.6)
>
> 5.6 Area A be maintained by the owner of the land to the standard required of a public park.

[316] We note that this version of the objective differs from the one supported by Mr Mead and Ms Hutton in their final supplementary statements as it includes references to a high amenity landscaped buffer and pedestrian/cycle facility open to the public.[281]

[280] QLDC Closing submissions, Annexure 2.
[281] Mead Third Supplementary at [71] and Hutton Third Supplementary at [34].

The witnesses' approach

[317] Ms Hutton confirmed that AA-A is not presently a District Council reserve and that "at this stage it is not intended to be one. It is provided for as part of the development as one way of mitigating the intensive urban development beyond it".[282] We have found no record of QCL demurring from this arrangement.[283]

[318] Ms Hutton explained that additional policies had been included to "ensure that maintenance and enhancement ... is undertaken in a comprehensive manner, as opposed to [the Activity Area being] subdivided or split between a number of different landowners and developed individually".[284] We interpret this as a reference to QLDC policy 5.5 which amongst other things provides that the buffer not be privatised through subdivision with consequent fencing and domestication. Ms Hutton acknowledged that further work could be undertaken on the policies that she supported in her third supplementary statement and did not specifically address the AA-A provisions contained therein.

[319] Mr Mead confirmed the intended contribution of AA-A to the urban form outcome described above and noted that AA-A was consistent with operative policy 6.2 under the Frankton Flats objective[285] and, in particular, the related implementation method:

> (b) retention of open space and rural zoning along the greater part of the SH6 approach to Frankton and Queenstown.

[320] In closing submissions SPL proposed, and the District Council agreed, that the AA-A objective should be amended to include provision of a "higher amenity" landscaped buffer.[286] "High amenity" is a relative term capable of interpretation in different ways by different people. The objective we have directed requires that the land

[282] Hutton EiC September 2010 at [12.2].
[283] Gordon, Closing submissions for QCL "The appropriateness of Activity Area A has long been accepted by QCL and all other parties" [175].
[284] Hutton Supplementary Statement February 2012 at [8].
[285] Section 11: District Wide Issues, clause 4.9, see also related objective 6.
[286] SPL Closing submissions [5.15(i)] and QLDC Closing submissions section 2.

be landscaped attractively and we are confident that the consent authority will maintain an appropriate balance between utilitarian and excessive outcomes.[287]

[321] Mr J Brown, for SPL, was similarly supportive noting that AA-A was an appropriate way to implement higher order operative provisions relating to landscape and visual amenity (Section 4.2, objective 1) and the specific objective for Frankton (Section 4.9, objective 6).[288] He supported the PC19(DV) AA-A objective and policies with one omission (QLDC's policy 5.2) and one addition (QLDC's policy 5.5 edited to delete reference to the orientation of buildings in adjacent Activity Areas).

[322] Mr Edmonds, for QCL, supported AA-A but with amendments to its objective, which he proposed in the following form:[289]

> **Objective: Activity Area A**
> To create an area of open space adjacent to the State Highway for landscaping, public access and to provide visual and physical relief to the proximity and scale of buildings in the same Zone.

Discussion and findings

[323] We see merit in much of the succinct yet suitably comprehensive nature of Mr Edmonds objective and note the additional, salient matters contained in his policies 8.2 (comprehensively designed landscaping) and 8.4 (integration with the open space buffer to the north of the Frankton Flats Special Zone (A)).

[324] We find that Mr Edmonds' objective covers the relevant matters including those in the District Council's finally preferred version and that it is to be adopted with the modifications shown below. It important , however, to clarify that the subject land is to remain in private ownership for reasons of administrative certainty and because we had no evidence of what the outcome might be on the provision of open space in other parts of the structure plan area if AA-A were required as a reserve contribution.

[287] We are also mindful that if the extant consent/s for AA-A have not lapsed they determine what is required subject to any further consents lower order provisions of PC19 may require.
[288] J Brown Second Supplementary Statement [20]ff and Annex A p J-11.
[289] Edmonds Second Supplementary Statement April 2012 at [7.16]ff.

[325] The District Council's policy 5.6 which was added after the hearing begs the question (in response to SPL's closing submission)[290] – what standard of maintenance does a public park require? Obviously there is no one answer as a cursory review of the District Council's own parks demonstrates. While not unsympathetic with what we apprehend the SPL/District Council seek, we find they have approached the subject in an inappropriate manner and direct a different tack in the amended policies that follow.

[326] PC19 has uncertain provisions for subdivision in AA-A. The District Council's policy 5.5 suggests that subdivision is not contemplated. Conversely Zone Standard 12.20.5.2(xvi) Minimum Lot Sizes and Configuration does not expressly preclude subdivision of AA-A and states "there shall be no minimum lot size in other Activity Areas [to AA-D]",[291] so there is a need for clarification.

[327] We were challenged by Ms Hutton's opinion that the amended PC19 provisions would enable AA-A to be maintained and enhanced. Unassisted by evidence we have reviewed the lower order provisions to ascertain how this might come about. We assume Ms Hutton had in mind that all activities are prohibited in AA-A except "landscaping" which is a limited discretionary activity.[292] The Ferguson/Hutton version of the plan change is relevant as it contains proposed rule changes, and records at rule 12.20.3.3 the landscape design of AA-A is a limited discretionary activity. We find in a subsequent rule 12.20.3.3(iii) that an approved ODP is required for AA-A is a prerequisite to development in Activity Areas C1 and C2. The rule also specifies what an AA-A ODP should cover.[293] Included are matters not specifically foreshadowed in the District Council's proffered policies, namely:

(a) "consistent" treatment of the entire area;

(b) location of trees and "gardens". An applicant might have reasonably anticipated the former but not the latter from the proposed policies?

[290] SPL Closing submission at [5.15(ii)].
[291] Refer Ferguson/Hutton draft plan change version at p J-38.
[292] Although a matter for the lower order hearing we wonder whether the provision of a walkway and cycleway fall within the definition of landscaping.
[293] Rule 12.20.3.3.xi.

(c) maintenance of important viewshafts. There is no indication of what these might be other than possibly views of the peaks referred to in policy 5.3 and the viewshafts shown on the structure plan map?

(d) arrangements for ongoing management and maintenance "as long as [AA-A] remains in private ownership". The equivocal nature of the latter phrase is unhelpful in terms of the uncertainty it creates.

[328] There are also eight largely different limited discretionary activity assessment criteria in Rule 12.20.3.3(ii) to be applied to landscape design consent applications in AA-A. This begs the question of how PC19 intends that the development of AA-A be consented; the matters to be taken into account; and relationship with development of AA-C1 and C2. Is there to be a limited discretionary activity application for landscaping, for an ODP, or both? What reliance can be placed on QCL's existing resource consent, and in particular the covenants that are to secure ongoing maintenance? Fortunately the detail of this can be left until the lower order hearing but the policies we are charged with determining in this decision must, as a minimum, identify the outcomes sought and means for achieving such. We have attempted to transpose appropriate assessment matters from the rules into the policies that follow. We have also attempted to redress other problems identified in the provisions tendered.

[329] Finally, in its closing submissions the District Council concurred with SPL that policy 12.2 should be deleted.[294] We have been unable to locate that policy amongst the AA-A materials and both parties are granted leave to make further submissions on the point, should they wish to do so.[295]

Outcome

[330] Subject to any further submissions we find that objective 5 and its supporting policies should take the form that follows:

[331] Leave is granted for all parties to make submissions if the court's revisions do not achieve the provisions of the plan change (including the relevant rules, standards and

[294] QLDC Closing submissions at [23].

[295] If doing so, SPL may wish to consider whether its related Closing submission at [5.23] reflects that under Rule 12.20.2.2(xi) an AA-A ODP for landscaping must only precede consents for AAs, C1 and C2.

methods). Careful attention is to be given to revised policy 5.2 and its presumption that the land will continue to be privately owned.

The court's revision

Objective 5 Area A (Open space)

To create an area of private open space adjacent to the State Highway for landscaping, public access, the maintenance of ~~valued~~ views and viewshafts and to provide physical relief to the proximity and scale of buildings in the Zone. (QCL objective 8)

Policies

5.1 To provide an attractive, comprehensively designed landscaped buffer compatible with that in the FF(A) Zone comprised of a mix of trees and mown grass that is free of buildings and located between the State Highway and the developed areas of the Zone. (QLDC policy 5.1)

~~To create an area that provides a landscaped buffer that is free from built form to act as a balance to the intensity of the zoning beyond (policy 6.2).~~ (QLDC policy 5.2)

5.2 To require that resource consent be granted and implemented for development of AA-A prior to work proceeding in AAs-C1 and C2. The consent is to secure public access on a permanent basis; provide for the formation of a walkway and cycle path linked with the local network; secure the Area's ongoing maintenance and management; keep land-aligned with structure plan viewshafts ~~stas~~ clear of planting; protect the State Highway from shading; maintain safe traffic operating conditions on adjacent roads; and allow for integration with the development of north facing buildings in adjacent Activity Areas to the south. (Court based on PC19(DV) Assessment Matters).

5.3 To provide a setback to development to allow views from the State Highway of The Remarkables Range, Peninsula Hill, Walter and Cecil Peaks.~~, Ferry Hill, K Number 2, Queenstown Hill and Walter and Cecil Peaks~~ (amended QLDC policy 5.4)

~~To encourage the use of the open space buffer to establish and maintain pedestrian and cycleway connections to the Queenstown Events Centre (policy 6.4)~~ (QLDC policy 5.4)

5.4	To ~~avoid~~ ~~privatisation~~ preclude subdivision of the Activity Area ~~Open space buffer~~ so that it is not fenced into separate sites and potentially managed in different, incompatible landscape styles. ~~through subdivision (and its consequent fencing and domestication) and to avoid development in adjacent Activity Areas where the backs of the buildings face the open space buffer (policy 6.6).~~ (QLDC policy 5.5) ~~Area A be maintained by the owner of the land to the standard required of a public park.~~ (QLDC policy 5.6)

Part 8 Activity Area C1

Introduction

[332] PC19(DV) has a single objective (objective 7) for a combined AA-C and a mix of separate and common policies for Activity Areas C1 and C2. In this Part we are concerned with AA-C1 and concentrate on the provisions that are relevant to it. Interfaces with other District Plan provisions are dealt with only to the extent necessary. The PC19(DV) objective 7 reads:

> **Objective 7 – Activity Area C**
> To create a vibrant, mixed use urban village offering a compatible range of intensive permanent living and working environments, with high standards of building design integrated with the public environment comprising high quality streetscape and open space.

[333] There follow 14 policies, four of which are specifically concerned with AA-C1 and its proposed "mainstreet" as follows:

> **Policy 7.1** - Within Activity Area C1, a range of retail, commercial, residential and visitor accommodation activities are to be provided to form a village core centred on a new main street environment that complements and integrates with the adjacent Frankton Flats Special [A] Zone. Residential activities in this Activity Area should not be located on the ground floor.
>
> **Policy 7.4** – To encourage the area to develop around and sustain a "mainstreet" village environment with any buildings including large format retail designed to contribute to this.
>
> **Policy 7.5** – To encourage active street frontages by using windows and entrances and discouraging visitor accommodation and residential activities to locate at ground level within Activity Area C1.
>
> **Policy 7.13** – Retail activities should be located in Area C1 where they can support the development of a mainstreet town centre, complementing and extending the commercial activities within Frankton Flats Special Zone.

[334] In the PC19(DV) AA-C1 is surrounded on three sides by land zoned AA-C2 for the development of a permanent residential neighbourhood with smaller scale

convenience stores, work places and visitor accommodation (policy 7.2). Other PC19(DV) AA-C policies relevant to C1 require a cohesive system of public open space (policy 7.3); a high amenity landscaped streetscape (policy 7.6); large format retailing to be sleeved with smaller buildings (policy 7.7); managing airport, industry and state highway noise to avoid reverse sensitivity effects (policy 7.9); and achieving a fine-grained grid street system (policy 7.12).

[335] The Explanation and Principal Reasons for Adoption state that AA-C1 is to develop as the core of a true mixed use higher density village having the greatest intensity of business, local retailing and other services. High quality design of buildings and intervening space is expected. Proposed building forms are said to secure higher density residential, commercial and office activities, which in turn are intended to enable residents to live in close proximity to the village centre and other Frankton activities.

[336] In the Ferguson/Hutton version of the draft plan change the combined AA-C1/C2 format and objective remains unaltered. Policy 7.1 was amended by providing that residential activities may locate at ground level "provided they do not have a frontage on the mainstreet and are outside the OCB". Policy 7.5 was significantly amended to read "[t]o encourage active street frontages along the mainstreet by using extensive areas of windows and entrances and not allowing visitor accommodation and residential activities to locate at ground". Policy 7.11 was aptly amended by deleting "industrial activities" and inserting "outdoor dining areas" as an example of the type of activity that should be controlled to avoid adverse effects on noise sensitive activities. Finally, for these purposes, we note that policy 7.12 which deals with the desired street network was amended by adding "... and a perimeter block form of development where streets are generally edged by continuous building facades".

[337] Towards the end of the hearing in a material development Mr Mead and Ms Hutton in supplementary evidence for QLDC both supported separate AA-C1 and C2 objectives and policies.[296] They proposed the following AA-C1 objective:

[296] Mead Third Supplementary Statement, April 2012 [71] and Hutton Third Supplementary Statement, April 2012 [35].

> **Area C1 (Urban village: mainstreet)**
> A vibrant, mixed use urban village with high standards of building design integrated with the public environment comprising high quality streetscapes and open spaces organised around a mainstreet-type environment.

Ms Hutton listed eight unaltered AA-C1 policies from the District Council's hearings version which she considered appropriate for implementing the objective.[297]

[338] The AA-C1 provisions which the District Council sought in its closing submissions were those supported by Mr Mead and Ms Hutton in their previously cited Supplementary Statements. It is notable that the District Council excluded the Explanation and Principal Reasons for Adoption material contained in earlier versions of PC19 from those submitted with closing submissions.[298] We do not know if this was deliberate, but either way find the material assists interpretation and is to be reinstated suitably edited in all objective/policy suites.

[339] Finally, by way of background, we note that QLDC and QCL propose the following AA-C1 activities – retail, commercial and office activities (permitted); visitor accommodation outside the OCB (controlled); and residential, community, education, day care and health care activities outside the OCB (permitted).[299]

Issue: ***Would the SPL or District/QCL objective better achieve the purpose of the Act?***

[340] SPL agreed with the other parties that there should be a separate objective and policies for AA-C1.[300] A major point of difference was that SPL sought amendments to the objectives and policies stating that AA-C1 is intended to serve the needs of the neighbourhood catchment and not a wider area. In support of this position it adopted Mr J Brown's objective 8 and policies 8.1 – 14 *together with* the SPL 4b structure plan AA-C1 which has a markedly smaller C1 area (1.81 hectares net) than what the District Council/QCL support (4.17 hectares).[301]

[297] Ms Hutton Supplementary Statement April 2012.
[298] QLDC Closing submissions Annexure 2.
[299] QLDC and QCL Matrix Tables dated 3 May 2012.
[300] Ibid [5.32].
[301] SPL Closing submissions [5.31].

[341] The objective which Mr J Brown proffered reads:

> **Objective 8 Activity Area C1 - village**
> In Activity Area C1 a vibrant, urban village with high standards of building design integrated with the public environment comprising high quality streetscape and open space while protecting landscape and amenity values.

[342] His proposed policies incorporated the following significant themes:

(a) **Policy 8.1** –that AA-C1 be limited to land within the OCB, which in turn restrains its total area and potential function in catchment terms;

(b) **Policy 8.2** –that AA-C1 comprise a village precinct with, amongst other things, only convenience retail and offices. In other respects the activities Mr J Brown supported for AA-C1 were similar to those of the District Council and QCL (acknowledging the implications of the OCB for residential and visitor accommodation activities); and

(c) **Policies 8.3 and 8.4** – that AA-C1 be *integrated* with AA-C2 and AA-A but only *connected* with the FF(A) Zone on the opposite side of Grant Road, which we take to mean some lesser relationship.

SPL's Case

[343] AA-C1's intended function is clearly at the heart of the differences between SPL and the District Council/QCL. In evidence for SPL, Mr J Brown was concerned that the District Council's AA-C1, in conjunction with the proposed extension AA-E2 towards Grant Road and adjacent FF(A) Zone, would enable a town centre with the potential to service a wider area than just PC19. His related evidence has the following principal threads:[302]

(a) combined with the FF(A) Zone (6.8 hectares),[303] the total area of AA-C1 and AA-E2 (Grant Road) available for general merchandising retail would be between 17 – 18.5 hectares;

(b) by comparison the Queenstown Town Centre Zone contains approximately 17.2 hectares and the Remarkables Park Zone approximately 24 hectares

[302] J Brown Rebuttal October 2011 at [Part 3.1].
[303] Edmonds Supplementary Statement October 2011 [3.16] states 7.8 hectares.

for retail (comprising Activity Areas 3 and 5 plus what has recently become available in PC34);

(c) the PC19 provisions supported by the District Council and QCL planning witnesses propose "... in conjunction with FF(A)Z, a major general merchandising retail centre (or "town centre" or "sub-regional centre" as labelled by Mr Mead) comprising an enclosed mall, and a mainstreet (including all forms of retail and other supporting town centre activities) and large format retail"; and

(d) the preceding matters raise the question "... whether it is appropriate and necessary for PC19, in achieving the purpose of the Act, to enable a third major general merchandising retail centre (a town centre or sub-regional centre) for [the] Queenstown/Wakatipu".

[344] We have found that the extension of AA-E2 (Grant Road) and a relatively small area of C1 both west of Grant Road cannot be upheld for want of jurisdiction; something Mr J Brown would not have known prior to giving his evidence. We do not know how this reduction in the area potentially available for retail may have affected his assessment of the fit between PC19, the purpose of the Act and aspects of the latter subsumed into relevant higher order Plan provisions. We set his thinking out in any event, but with the caveat that the appeals are to be decided without the approximately 6 – 7.5 hectares of the reduced AA-E2 land (court's estimate) and the reduced C1.

[345] In summary, Mr J Brown considered that another town or sub-regional retail centre in the Wakatipu Basin is not contemplated by the higher order objectives and policies of the Plan, and was not contemplated by notified PC19 or by the PC19(DV). He also considered that the evidence in support of such a centre falls well short of the comprehensive and integrated analysis he would expect when a new town or sub-regional centre was being advanced.[304] Mr Brown drew our attention, in particular, to the following higher order Plan provisions in Section 4: District Wide Issues clause 4.9.3:

[304] J Brown Rebuttal October 2011 [38].

(a) **Objective 4 :** Business Activity and Growth from the district-wide objectives – which seeks a close relationship and good access between live/work/play environments. Presumably to provide further context, Mr Brown also identified:

(i) **policy 4.1** – to promote existing and proposed town centres as principal foci for commercial and other named activities;

(ii) **policy 4.2** – to promote and enhance a network of compact commercial centres; and

(iii) the **implementation methods** – which include Plan provisions for town centres located convenient to living environments and zoning to enable new consolidated urban areas.

[346] Mr J Brown stated that the policies established a hierarchy led by "town centres" (policy 4.1) having the most "gravitational reach" in terms of attracting people followed by commercial centres (policy 4.2), which he deposed "must refer to the corner shopping zones.[305] He noted **objective 6** - which seeks integrated and attractive development of the Frankton Flats locality in association, amongst other things, with residential, recreation, retail and industrial activity.

[347] Mr J Brown also reviewed objectives for the Remarkable Park Zone at some length emphasising their congruence, in his opinion, with relevant higher order objectives and making the point that a well established commercial centre had been established in accordance with them.[306]

[348] Mr J Brown opined that based on the district-wide objectives and policies for urban growth; the key objectives and policies for the Town Centre Zones; and the RPZ objectives and policies that the District Plan promotes a "centres strategy" and that this "provides for two "major" town centres in the Queenstown/Wakatipu [namely] Queenstown Town Centre Zone and the RPZ (Areas 3 and 5), with several smaller centres".[307] He did not consider that the "district-wide objectives and policies, and those of Section 10: Town Centres, could be said to ordain any new major town centre"

[305] Ibid [76].
[306] Ibid [50]ff.
[307] Ibid [77].

including by inference AA-C1 juxtaposed with the FF(A) Zone as proposed by the District Council and QCL.

The District Council's case

[349] The District Council submitted that the operative District Plan provisions do not anticipate and provide for only two main centres in Queenstown or limit new retail development to such. In support of this position, Ms Macdonald noted that the District Plan allows for an additional large centre to be developed in the FF(A)Z and submitted that "first and foremost the plan seeks a centres based approach and C1 and E2 Grant Road provide for an expanded centre".

[350] Counsel submitted that the District Council supported a "structured" approach to retail activities "... enabling retail to establish in the Zone area in recognition of the demand for such activities" but in a way that ensured other activities [are] not "disabled". The District Council's approach was contrasted with the case for SPL, who "wish to see provision for LFR extended in the north-east and retail activities restricted in the west" and the case for QCL, who wish to concentrate retail activities in the western portion of the structure plan area, building on and extending the Frankton Flats A development".[308]

[351] In a supplementary statement Mr Mead addressed what he considered the relevant objectives and policies commencing with those in Section 10: Town Centres of the operative District Plan, noting that they focus on the management of activities with little guidance on the establishment of new centres.[309] He also made the following points:

(a) the District Plan identifies the need for compact centres so as to promote a sense of vitality in them;

(b) in relation to the Queenstown CBD, Section 10; clause 10.2.4, objective 1 states that the CBD should be maintained and enhanced as the principal commercial, administrative, cultural and visitor focus for the District; and

[308] Macdonald Opening submissions [56]ff.
[309] Mead Supplementary Statement August 2011 [38]ff.

(c) that Section 4, clause 4.9.3, policy 4.1 of objective 1 is concerned with promoting town centres, existing and proposed, as the principal foci for commercial, visitor and cultural activities. And that policy 4.2 is for the promotion of a network of compact commercial centres.

QCL's case

[352] QCL submitted that its appeal squarely raises the issue, amongst others, of whether retail activity in AA-C should be enabled to provide for a wider market beyond the future residents of the Zone. It asserted SPL's suggestion, that the provisions which the District Council and it support, will seriously threaten the viability of the Queenstown CBD or Remarkables Park "cannot be sustained".[310]

[353] In a second supplementary statement Mr Edmonds stated that Section 3: Sustainable Management, clause 3.6 headed "A Vision of Community Aspirations for a Sustainable District" creates "... the expectation that there will be more than one town and/or retail centres. And that those centres will be compact and that there will be a cohesive urban form".[311]

Discussion and findings

[354] Unlike Mr J Brown, Mr Mead did not attribute "town centres" and "commercial centres" different hierarchical significance which highlights (in our view) the District Plan's inconsistent use of terms like commercial centre. For example, in Section 10: Town Centres we read about three "town centres" including Queenstown, Arrowtown and Wanaka. In the Section's preamble to the issues, objectives and policies Arrowtown is also described as a "local business centre" and Wanaka is referred to as "an important commercial centre".[312] By way of another example in Section 12: Remarkables Park Zone, there are numerous references to the "commercial centre" in the objectives and policies, as well as a single reference to the "town centre" in the Explanation and Principal Reasons for Adoption. Similar challenges arose throughout the hearing with other terms like village, urban village, village core, village centre and urban centre. We

[310] QCL Opening submissions [11]ff.
[311] Edmonds Second Supplementary Statement, April 2012 [4.2].
[312] Section 10: Town Centres, clause 10.1.1.

did not find the submissions or evidence on their envisaged size or function conclusive. We trust that robust definitions and consistent usage will emerge through future Plan processes.

[355] That said, we find that the District Plan does not presume there should be just one main retail centre at Frankton as contended by Mr J Brown.

[356] Commenting on the appropriateness of the District Council's AA-C1 in relation to the Plan's objectives, Mr Mead opined:[313]

> ... the current objectives and policies do not lend any specific weight to the need to manage the expansion of retail activities outside of the CBD so as to mitigate risks from the expansion of land supply ahead of demand, beyond a general recognition of the importance of the CBD to the district. If anything, the objectives and policies identify the need for Council to cautiously plan for growth, rather than to defensively protect the CBD.

[357] Mr Mead elaborated on his reasoning on related aspects of the District Plan's settled higher order provisions in a second supplementary statement, in these terms:[314]

> I do not consider arguments that the [Plan] anticipates and provides for only 2 main retail centres in the Queenstown area (the CBD and Remarkables Park) as being a valid reason to limit retail activities in the PC19 area. I remain of the view that while the plan recognises [those] two centres as being part of the environment, it does not specifically limit new retail development to these centres. In fact the plan allows for an additional large centre to be developed in the FF(A) land. First and foremost, the plan seeks a centres-based approach to retail development, and PC19 provides for an expanded centre.

[358] In his third supplementary statement Mr Mead re-traversed some of the preceding provisions and matters. However, we found the following section of his statement on CBD amenity values of assistance.[315] It concerns Section 10 where, as we have previously recorded, there are objectives and policies for town centres, including the following for the Queenstown CBD which Mr Mead specifically identified:

[313] Ibid [40].
[314] Mead Second Supplementary Statement, February 2012 [52].
[315] Mead Third Supplementary Statement, April 2012 [52]ff.

> Objective 1 of [clause] 10.1.3 is headed "Maintenance and Consolidation of the existing Town centres and Activities Therein". The objective goes on to state:
>
> > Viable Town centres which respond to new challenges and initiatives but which are compatible with the natural and physical environment.

Mr Mead deposed that:

> The Plan therefore notes that centres will be subject to "challenges". The urban growth section also states that Council recognises the longer term retail needs of the community as well as the need to protect and enhance the amenity values [of] the Queenstown Town Centre.

[359] In other words, the Plan recognises that there will be changes in the retail environment.

[360] As intimated, we find the language of the District Plan neither sufficiently precise nor consistent to support Mr J Brown's contention that the higher order District Plan provisions enable a hierarchy of centres that allows for only two major town centres in the Queenstown/Wakatipu Basin, namely the Queenstown CBD and RPZ. While the RPZ may have evolved town centre functions, the language of the Plan only weakly intimates that RPZ is a town centre; the objective and policies refer to it as a commercial centre. Unlike SPL it seems, we also acknowledge the practical reality of the FF(A) Zone. Irrespective of the hierarchical descriptor that the centre is given, its enabled size and function are such that it will inevitably service all of the Queenstown/Wakatipu Basin catchment, and most probably areas beyond. This cannot be ignored.

[361] Nor do we accept Mr J Brown's evidence that PC19(DV) does not envisage AA-C1 servicing a greater area in conjunction with the FF(A)Z than the surrounding PC19 neighbourhood. That is to ignore the thrust of PC19(DV) policies 7.1 and 7.13 which speak of AA-C1 complementing, integrating with and extending the FF(A)Z. We do not find it incongruent that at the same time AA-C1 will support and provide services for the intended mixed use C1/C2 neighbourhood and other PC19 development.

[362] On this subject we prefer the case for the District Council/QCL, particularly as supported by the evidence of Mr Mead. We need not rehearse all the points he made in rebuttal of the SPL case. A number are the converse of Mr J Brown's evidence and reflect in the preceding paragraphs. That said, we have had particular regard to his opinions that:

(a) to the extent that they afford guidance on the number of centres, the higher order District Plan provisions provide that the District Council should cautiously plan for growth rather than protecting the CBD and we expect the RPZ;

(b) the District Plan seeks a centres based approach to retail development and PC19 provides for that in conjunction with the adjacent FF(A) Zone; and

(c) the Plan recognises that over time there will be changes in the retail environment.

Issue: ***Was there sufficient analysis to support a centre comprising AA-C1 in conjunction with the FF(A)Z?***

[363] We come now to Mr J Brown's concern that there is insufficient analysis to support a centre comprising AA-C1 as proposed in conjunction with the FF(A) Zone. Our findings in Part 4: Land Use Demand led to a different conclusion. We have previously found that taking existing and zoned opportunities into account and within plus or minus 25% accuracy there will be a probable shortfall in land zoned for retail activities at Frankton of 10,650m^2 over a 20 year planning horizon. In addition we have found there is growth demand for shop front (non-retail) floor space in the range of 13-19,000m^2 for the whole of the Queenstown area a proportion of which could be accommodated within PC19. The retail analysts did not separately report on land demand for commercial activities that are not retail and shop front (non-retail) activities.

[364] From the 2006 Commercial Land Needs Analysis between 28-30 hectares (gross) of land was required for "mixed business use" in the Queenstown/Wakatipu area which, we understand excludes land required for retail activities but includes land uses like offices – which are provided for in AA-C1. Over the next 15 years Mr Heath estimated of 46 hectares (gross) of land was required for commercial activities (offices

are specifically mentioned and retail activities excluded) in Queenstown/Wakatipu, Wanaka and Cromwell of which Queenstown/Wakatipu could accommodate 60% of this growth.[316] As he rightly points out some of this demand could be accommodated within existing zones and consented development.

[365] AA-C1 as proposed by the District Council and supported by QCL has a net area of 4.17 hectares or, say, 38,200 m^2 when the relatively small area on the western side of Grant Road is subtracted for want of jurisdiction. Applying the proposed maximum building coverage of 90% that could generate up to approximately 34,400m^2 of floor space[317] at ground level with the potential for a considerable increase through multi-storey buildings constructed in accordance with the maximum building height rules.[318] However, we remind ourselves that:

(a) AA-C1 is a mixed use zone and not all of the floor space that might theoretically be built will be for retail activities. To do so would be contrary to the District Council's C1 objective which is for a mixed use development, which we expect will be implemented through the ODP process and in particular by the application of assessment criterion (a) in proposed Rule 12.20.3.3(iii) – "consistency with the objectives and policies for the particular Activity Area";

(b) the additional retail space in AA-E2 (Grant Road) that concerned Mr J Brown is not to be endorsed for want of jurisdiction, which must lessen his concern; and

(c) the full development potential inherent in the proposed rules is unlikely to all be built out, especially in the short to medium term – if ever.

[366] We find that the PC19 AA-C1 objective proposed by the District Council in closing submissions, amended as we shall direct, would better achieve the purpose of the Act, and relevant higher order operative Plan provisions, than SPL's alternative. We find it highly probable that AA-C1 will provide for the community's social and

[316] Heath EiC at [87] and [91-92].
[317] Proposed Rule 12.20.5.2(ii) Building Coverage at p J-35 Ferguson/Hutton draft plan change version. It is not clear how this rule relates to Site Standard Rule 12.20.5.1 ostensibly on the same subject.
[318] Proposed Rule 12.20.5.2(iv) Building Height at p J-33 Ferguson/Hutton draft plan change version.

economic wellbeing by developing as a differentiated *mainstreet* component of an integrated town centre,[319] which through agglomeration, is able to efficiently provide a range of complementary retail and other services conveniently to both the Queenstown/Wakatipu catchment and adjacent PC19 mixed use neighbourhood. That outcome is consistent with revised objective 2 "Managing Interfaces, Integration and Improving Connections" in the sense of allowing for integration both within the FF(B) Zone and between it and the FF(A) Zone. As Mr J Brown fairly conceded, a *mainstreet* coupled with the development enabled by the District Council's structure plan "offers a counterpoint to the mall-like development on FFA".[320]

Issue: ***What is the appropriate size and location of AA-C1?***

[367] SPL seeks a different shaped, and as previously noted, a smaller AA-C1 area than that proposed by the District Council and QCL.[321] Simply put, SPL would limit C1 to 1.81 hectares within the OCB and east of Grant Road whereas QLDC/QCL support a 4.17 hectare area that straddles the OCB and crosses to the western side of Grant Road. We have previously found that there is no jurisdiction for the latter, which we estimate to be approximately 3,500m^2.

Sub-Issue: *Should PC19(DV)'s Activity Area C1 be extended by rezoning AA-C2 west of Grant Rd?*

[368] We understand the subject land to be designated for Events Centre with an underlying zoning of Rural General. If the designation were to be uplifted, the Court has an incomplete understanding of the likely implications for the use of adjoining land of a change in the underlying zoning to AA-C1 and expects that it is a matter in which persons not party to these proceedings may be interested. We are not prepared in these circumstances to initiate section 293 action as requested in the alternative by QCL.[322]

[369] Returning to the primary issue, what is the appropriate size and location of AA-C1, we note that we have previously made our finding that the C1 area proposed by the

[319] Or possibly with activities clustered around a small open space like a town square, which Mr J Brown accepted could be accommodated within the District Council's Structure Plan. Refer Transcript 1939.
[320] Transcript 1939.
[321] SPL Memorandum 20 June 2012 Annex A and QLDC Closing submissions and substitute structure plan map November 2012.
[322] QCL Closing submissions [217]ff

District Council is suitably sized to support the combined mixed use C1/C2 area and to complement the town centre which will emerge from development of the FF(A) Zone.

[370] That leaves the question of AA-C1's shape. The District Council and QCL propose an (almost) "L" shaped area with substantial west – east and north – south rectangular components straddling the OCB. SPL proposes similar boundaries to the north (AA-A) and west (Grant Road) but on its eastern edge SPL's boundary would follow the curve of the OCB creating an area with limited (and diminishing) depth in the north east.[323] The practicality of such a boundary for built development emerged as an issue.

[371] Mr J Brown responding to questions put in cross-examination stated that, having heard the evidence of other planning witnesses, he considered the curved boundary should be "squared off" resulting in a revised AA-C1 area of 3.5 hectares.[324] He indicated that he had discussed the change with SPL's urban design witness Mr Brewer, who he described as being comfortable with it.[325] Mr J Brown conceded that his revised boundary would result in a relatively narrow development strip north of the Required Road 8, which he considered might be redressed by either moving the boundary south to the Road or north to create more depth.[326] He explained that his revised eastern C1 boundary was located to avoid the previously described difficulty with the OCB creating a triangular shaped area, and conceded that both the boundary and development illustrated on Mr Barratt-Boyes drawing SKE 03 Revision F could result in an equally valid approach.

[372] Like Mr Gordon, the court commends Mr J Brown for his candour in giving this evidence in cross-examination. The fact that he had consulted Mr Brewer on the change indicates it was considered, resulting from a professional re-evaluation of position and not a knee jerk response. SPL did not adopt this aspect of Mr J Brown's evidence in its closing submissions, describing it as an unsuccessful attempt in the witness box to develop, freehand an alternative [boundary] using a straight line.[327] We think there was

[323] Memorandum of counsel for SPL dated 20.6.2012 submitting Attachment A: SPL 4b Structure Plan.
[324] Transcript 1936ff and Exhibit 14.
[325] Ibid 1942.
[326] Mr Gordon calculated this at approximately 20m and the witness did not disagree. Refer Transcript 1942/43.
[327] SPL Closing submissions [5.89].

rather more substance to Mr J Brown's evidence than that and it should not be assumed, as SPL submitted, that the problem could be redressed by using the problematical area for open space.[328]

[373] In the final analysis the District Council, QCL and SPL planning evidence was not a great deal apart on either the size or the location of AA-C1. On size it was, as Mr Gordon colloquially put it, "3.5 hectares plays 4.3"[329] or, if the area of C1 west of Grant Road is deducted from the District Council's final 4.17 hectares, approximately 3.82 hectares. At this point there is effectively no difference in the evidence. On location, we prefer the District Council's proposed boundaries supported by the conceptual work of Mr Barratt-Boyes' SKE 03 drawing, which demonstrates how the area might appropriately develop. The efficacy of Mr J Brown's revised boundaries was limited, amongst other things, by the unresolved issue around the developable depth north of Road 8. We accordingly find that the size and location of AA-C1 should be as finally proposed by the District Council minus the area on the west side of Grant Road for which there is no jurisdiction.

Issue: ***Are objective 6 and the AA-C1 policies worded suitably?***

[374] We do not accept SPL's submission that we should leave the parties to settle the policies for AA-C1 having first determined the objective. Subject to our granting leave for comments, we find that is a matter on which the court should provide a lead.

[375] In supplementary evidence Mr Mead and Ms Hutton supported the District Council's finally preferred objective,[330] which reads:

> **Objective 6: Area C1 (Urban Village: Mainstreet)**
>
> A vibrant, mixed use urban village with high standards of building design integrated with the public environment comprising high quality streetscapes and open spaces organised around a mainstreet-type environment.

[328] Ibid [5.90].
[329] Transcript 1944.
[330] Mead Third Supplementary Statement, April 2012 [71] and Hutton Third Supplementary Statement, April 2012 [34].

[376] Mr Mead described the urban form outcome that he envisaged AA-C1 delivering in these terms:[331]

> A town centre-like environment where there is the greatest diversity of activities within a built up setting. Buildings typically align with the street edge and often abut each other. Development is two to three storeys in height ... with car parking to the rear, basement or above ground. Urban form is structured around a mainstreet ... forming an integrative element with the Frankton Flats A development ... Residential development is possible outside of the OCB. Within the OCB, retail and related activities are expected to form the main land uses along the mainstreet. There is also space for larger format retail activities where these are compatible with the mainstreet environment. ... The C1 area does not create a town centre by itself. This arises from the combination of FFA and C1, and arguably the Events centre land and the supporting E2 area to the south[332]. The specific role of C1 is that it offers a counterpoint to the mall-like development of FFA. In this respect, the C1 could be said to provide the mainstreet part of the wider centre.

[377] It is trite that objective 6 and its policies should reflect this vision, which we largely endorse, if the outcomes that Mr Mead described in support of the District Council's case are to be achieved. The following considerations arise:

(a) Mr Mead's evidence speaks of "a town centre-like" environment whereas the objective uses the descriptor "mixed use urban village". Which is it to be?

(b) should the objective provide for AA-C1 as both a mixed use village within PC19 and as part of an integrated town centre with the FF(A) Zone? Would this not better reflect the flavour of Mr Mead's evidence?

[378] Mr Edmonds also saw AA-C1 as a town centre environment with the same two key characteristics, namely a mainstreet function and integrated with the adjacent FF(A) Zone on the opposite side of Grant Road. He supported the following objective:

> **Objective 9: Activity Area C1**
>
> The C1 area develops around a fine-grained vibrant "mainstreet" commercial environment that complements, extends and integrates with the commercial activities within Frankton Flats Special Zone (A).

[331] Meads, ibid [26(a)].
[332] Deleted by the court for want of jurisdiction.

[379] Mr Edmonds' objective has the immediately evident strength of addressing both key elements; the mainstreet and integration with FF(A) Zone. However the following considerations arise:

(a) although his evidence refers to a town centre environment the term is not used in the objective;

(b) there is no provision for other outcomes or ancillary matters that the District Council apparently considers important and which Mr Mead addressed in evidence, namely, a high standard of building design, integration of buildings with the public realm; achieving high quality streetscapes and open spaces;

(c) should the ancillary matters we have identified in (b) above be included in the objective or in policies?

(d) is use of the term "commercial environment" appropriate given that the definition of "commercial activity" in the Plan includes the sale of goods and services with few exceptions? Whilst the latter are few they do include community activities and visitor accommodation which are provided for in PC19's Activity Table.

[380] Mr J Brown proffered an AA-C1 objective in the following form:

> **Objective 8: Activity Area C1 – village**
> In Activity Area C1, a vibrant urban village with high standards of building design integrated with the public environment comprising high quality streetscape and open space, while protecting landscape and amenity values.

[381] Mr J Brown's objective includes the ancillary matters that we have referred to but would enable no more than an "urban village" consistent with SPL's case and his previously described evidence, which we have not accepted. While his objective has the positive, added component of "protecting landscape and amenity" this matter is covered adequately by Zone wide objective 1. Mr J Brown was concerned that reference to a

mainstreet should not preclude activities fronting a public square or possibly other forms of open space. We agree that the latter should not be precluded and expect that the term *mainstreet-type environment* has this effect.

[382] We have edited the objective below in an attempt to address the preceding considerations and to strengthen its primary focus. We find that the ancillary matters, as we have termed them, whilst important, detract from the principal outcomes sought and are better dealt with as policies. The opportunity has also been taken to add policies proposed by Messrs Edmonds and J Brown in supplementary statements on matters that either arose during the hearing or provide context for significant rules.

[383] Leave is granted the parties led by the District Council to review and propose a revised version of the objective and policies, subject to the court's overall direction being maintained.

The court's revision

Objective 6

Area C1

A vibrant, mixed use urban ~~village~~ development organised around a mainstreet-type environment that serves the surrounding Zone and which complements and is integrated with the Frankton Flats A Zone to form a town centre. ~~high standards of building design integrated with the public environment comprising high quality streetscapes and open spaces organised around a mainstreet-type environment.~~(QLDC objective 6)

Policies

6.1 ~~Within Activity AreaC1,~~ Achieve a mixed use outcome by enabling a range of ~~a range of~~ retail, commercial, office, high density residential ~~and~~ visitor accommodation, community, education, health and day care, licensed premises activities and Activities Sensitive to Aircraft Noise outside the OCB. ~~are to be provided, to form a village core centred on a new main street environment that complements and integrates with the adjacent Frankton Flats Special Zone. Residential activities in this Activity Area may be located on the ground floor provided they do not have a frontage on the main street and are outside the OCB.~~ (QLDC policy 6.1)

6.2 To require outline development plan(s) for development in AA-C1 to ensure that urban design, street and site layout, open spaces, and pedestrian and cycle connections are adequately provided for in a manner that accords with best practice urban design principles, (court)

6.3 To encourage the development of a fine grained street network based on a grid pattern and a perimeter block form of development where streets are generally edged by continuous building facades. (QLDC policy 6.8)

6.4 Through the outline development plan process ensure buildings have a high design standard and are integrated with the public realm which is to comprise high quality streetscapes and open spaces orientated to maximise sunlight and protection from southerly winds. (court)

6.5 Large format retail activities are to be limited in number and through the outline development plan process to locations at either end of the mainstreet to help generate pedestrian activity and support commercial viability. (court)

6.6 ~~To encourage the C1 area to develop around and sustain a "mainstreet" village environment with any buildings including large format retail designed to contribute to this environment.~~ (QLDC policy 6.2)

6.7 To encourage active street frontages along the mainstreet ~~in Activity Area C1~~ by using extensive areas of windows and entrances and not allowing residential activities and visitor accommodation ~~and residential activities~~ to locate at ground level on the mainstreet. (QLDC policy 6.3)

6.8 To incorporate landscaping within the streetscape to create a high amenity urban environment. (QLDC policy 6.4)

6.9 To require façade design of large format retail uses to mitigate its adverse visual effects by requiring the sleeving of large buildings with smaller buildings and requiring variation of street frontages. (QLDC policy 6.5)

6.10 To encourage educational activities, with associated residential activities and short term (visitor) accommodation in close proximity to the Events Centre and other activities with which collocation is appropriate in order to create integrated precincts of complementary activity. (QLDC policy 6.6)

6.11 To control development to avoid the potential adverse effects of noise generating activities (such as outdoor dining areas) on noise sensitive activities. (QLDC policy 6.7)

6.12 ~~To encourage the development of a fine grained street network based on a grid pattern and a perimeter block from of development where streets are generally edged by continuous building facades~~. (QLDC policy 6.8)

6.13 To achieve a high level of amenity on the northern edge of AA-C1 as viewed from State Highway 6 and AA-A by requiring buildings to face and provide access to the laneway. Buildings on site(s) between the western end of the laneway and Grant Road are to similarly address AA-A. (court)

6.14 To avoid adverse visual effects of signage on the northern side of buildings adjoining AA-A by managing the size and location of sign platforms when assessing building design. (court)

6.15 To enable variations in building height in order to create interesting streetscapes and variety in form, scale and height of buildings. (court)

6.16 To manage the location of car parking in order to contribute to the visual amenity of the Activity Area, including undergrounding where appropriate and the placement of parking to the side or rear of buildings. (court)

Reinstate Explanation and Reasons

Part 9 Activity Area C2

Introduction

[384] As previously recorded, PC19(DV) has a single objective 7 for a combined AA-C to be implemented through a mix of separate and common policies for Activity Areas C1 and C2. In this Part we are concerned with AA-C2 and concentrate on the provisions that are relevant to it. The PC19(DV) AA-C2 comprises an area of some 14.4 hectares (gross) located west of the EAR with boundaries adjoining AA-A (to the north), AA-E2 (east), AA-D (south) and AA-C1 (west). In addition, there is also a relatively small area of C2 on the western side of Grant Road and a strip of (potentially) north facing C2 land south of Road 5.

[385] Objective 7 reads as follows.

> **Objective 7 – Activity Area C**
>
> To create a vibrant, mixed use urban village offering a compatible range of intensive permanent living and working environments, with high standards of building design integrated with the public environment comprising high quality streetscape and open space.

[386] There follow 14 policies two of which are specifically concerned with AA-C2 as follows:

> **Policy 7.2** – Within Activity Area C2, an environment conducive to the development of a permanent residential neighbourhood should be provided, with retail, commercial and visitor accommodation activities limited to smaller scale convenience stores, workplaces and developments.
>
> **Policy 7.14** – Within Activity Area C2, retail activities should be limited to small scale activities compatible with a residential environment, providing for day-to-day and services to residents.

[387] In the previous section we set out relevant PC19(DV) policies that AA-C2 shares in common with C1. These are not repeated but footnoted below for ease of

reference.[333] The PC19(DV) Explanation and Principal Reasons states that AA-C2 is envisaged as a high density general mixed use [zone] with an "increasingly residential periphery." As with C1, there is an expectation of high quality design of buildings and intervening spaces with residents living in close proximity to both a "village centre" and other activities in the wider Frankton locality.

[388] The Ferguson/Hutton version of the plan change deleted PC19(DV) policies 7.13 and 7.14 and added a new C2-specific policy 7.13 that does not read particularly well, as follows:

> 7.13 To manage the design of development in Activity Areas [sic] C2 to ensure a high quality living environment is provided, both within and [sic] developments and for the Activity Area as a whole.

[389] Significantly the District Council also reduced the size of AA-C2 to 7.48 hectares (gross)[334] to coincide with the OCB on its southern side[335] and by re-zoning some as C1, some E2 west and some D. As a result of our findings on jurisdiction in Part 2 the area that the District Council sought to re-zone E2 west with QCL's support is confirmed as AA-D and the previously referred to small parcel on the western side of Grant Road confirmed as AA-C2.

[390] As previously indicated, Mr Mead and Ms Hutton in supplementary evidence supported a separate AA-C2 objective as follows:[336]

> **Area C2 (Urban village: neighbourhood)**
> A compact livable urban residential neighbourhood where there is a mix of building typologies with a predominance of terrace houses and low to mid rise apartments (4 to 6 storeys), designed to provide a high quality living environment (both public and private).

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[333] Requiring a cohesive system of public open space (policy 7.1); a high amenity landscaped streetscape (policy 7.6); managing existing and predicted airport, industry and state highway noise to avoid reverse sensitivity effects (policy 7.9); designing residential and visitor accommodation within 50m of both the OCB and AA-D to avoid adverse noise effects (policy 7.10); and achieving a fine grained grid street system (policy 7.12).

[334] Net area in QLDC November 2012 Structure Plan is 5.96 hectares.

[335] Macdonald, Opening submissions for District Council, February 2012, [34(e)].

[336] Hutton Third Supplementary Statement, April 2012 [36] and Mead Third Supplementary Statement, April 2012 [71].

[391] Notably, the objective does not refer to a mix of uses which was in the Ferguson/Hutton version. Ms Hutton listed two unaltered AA-C2 specific policies from the Ferguson/Hutton version that she considered appropriate to support the objective, namely policies 7.2 and policy 7.13 in the forms set out above.[337] That begs at least two questions – are two C2 specific policies sufficient to implement the revised objective which Ms Hutton and Mr Mead support and should shared AA-C policies previously considered relevant to AA-C2 be retained?

[392] From the District Council's revised Activity Table[338] we note that the following uses are proposed by it in AA-C2, namely convenience retail; offices; residential activities; community activities; education activities; health and day care facilities.

Issue: What should the extent and boundaries of AA-C2 be?

[393] SPL submitted in closing that the provision of residential land is a key strategic driver for PC19. Its structure plan SPL 4b provides 10.49 hectares (net) of AA-C2 and has a similar AA-C2/D southern boundary to that which results from the court's jurisdiction decision on AA-E2 west. SPL's Structure Plan extends AA-C2 east to the EAR displacing the area of AA-E2 supported by the District Council and QCL. It also extends significantly into the District Council's AA-C1, although SPL's position on this was not ultimately supported by its planning witness Mr J Brown as recorded in the previous section.

[394] Much of the SPL C2 case was concerned with the merits that it saw in its Structure Plan providing more land for high intensity housing than the District Council/QCL alternatives. SPL submitted that at a density of 75 units/gross hectares the 7.48 hectares (gross) in the District Council's February 2012 structure plan could yield 561 units compared to its corresponding 12.45 hectares yielding 934 units.[339] Whilst this is a positive attribute, as Mr Mead acknowledged,[340] we interpret those figures as theoretical maxima for two reasons. Firstly, being a mixed use zone there is no certainty

[337] Hutton, Third Supplementary Statement, April 2012 [36].
[338] Matrix Table by QLDC, 3 May 2012.
[339] SPL Closing submissions [5.120] and Rule 12.20.3.3(iii)(k).
[340] Mead Second Supplementary Statement, February 2012 [12(c)].

until an ODP is consented, what proportion of the Activity Area may be taken up by residential activities. And secondly, we had evidence from both Mr Mead and Mr Serjeant that significantly higher densities may be achieved.[341] Mr Barrett-Boyes acknowledged that a density of up to 100 units/hectare was achievable but this would require "heavier" forms of construction and bigger buildings than he had assumed in his Drawings SKE 03 E and F, which illustrate predominantly town and we think row house development at 41 units/hectare. He considered that 45 – 50 units/hectare would be a comfortable minimum and that stipulating a higher density would risk not achieving good outcomes.[342] The comparison that SPL sought to make requires further tempering by allowing for the additional residential activity permitted above ground level in the District Council's AA-E2 on the western side of the EAR[343] and Mr Mead's evidence that it would be appropriate to allow the whole of a building fronting the EAR to be used for residential.[344] It is also relevant that residential activity is enabled outside the OCB in the District Council's significantly larger, AA-C1.[345] Finally, as Mr Mead further noted, the District Council's Structure Plan allows for taller buildings and hence residential yield than SPL's.[346]

[395] The District Council, in closing submissions, identified what it considered to be a "U" turn in SPL's position on the importance of enabling residential activities through PC19. It did so by contrasting:

(a) Mr J Brown's evidence-in-chief where he stated "I consider that the PC19 land strategically does not need to accommodate residential growth" because, amongst other things, updated QLDC studies (2009) "... indicate a residual capacity in existing zones of 21,295 dwelling units ... [indicating] sufficient existing zoned residual capacity for at least several decades";[347] and

[341] For example, Transcript 1803.
[342] Transcript 2,101ff
[343] Which the court estimates to be approximately 2 hectares gross.
[344] Transcript 506.
[345] The District Council's November 2012 structure plan has an AA-C1 of 4.17 hectares (net) and SPL a corresponding 1.81 hectares.
[346] Mead Second Supplementary Statement, February 2012 [12(c)].
[347] J Brown EiC, August 2010 [5.7].

(b) SPL's subsequent position that residential development is a priority for PC19 and its structure plan is better because it provides almost double the AA-C2 yield compared to the District Council/QCL alternative.

[396] The District Council linked SPL's changed position with its concern to "promote an outcome that disenables retailing (in AA-C1 and AA-E2 EAR) activities within Plan Change 19".[348] Counsel may also have noted in fairness to Mr J Brown that in subsequent evidence he differentiated land for high density residential use (from other categories of residential growth) as a fundamental principle underlying his vision for PC19.[349]

[397] QCL supported the extent and location of the District Council's AA-C2 except for proposing a greater depth (50m) of AA-E2 immediately west of the EAR, which for previously explained reasons of jurisdiction, reverts to AA-D.

Outcome

[398] There is no potential in these proceedings on the facts and available jurisdiction to extend AA-C2 in any direction except the east. No party proposed a lesser area of AA-A to the north and we have already made a finding confirming that there is no jurisdiction to alter the PC19(DV) AA-D land south of the C2 boundary (be it by introducing AA-E2 west or extending AA-C2). And there is no gain in residential yield terms in extending C2 into AA-C1 because, as stated, it is also a mixed use zone and residential activities are (already) permitted there.

[399] Ultimately the yield that is achieved from AA-C2 will be influenced by a number of factors – the area zoned; the market's response; and whether there is to be a minimum number of units required per hectare as a limited discretionary activity. As the District Council noted in closing, there was differing evidence on the latter point and we direct it be the subject of further evidence in the lower order hearing.[350] In any event, yield is properly assessed on a Zone wide basis.

[348] District Council Closing submissions June 2012 [43].
[349] J Brown Second Supplementary April 2012 [7(a)].
[350] Ibid [46]ff.

[400] We do not find the difference in yield between the District Council and SPL areas of AA-C2 a determinative factor for setting the Activity Area's eastern boundary for the reasons noted above. The area supported by either party would adequately give effect to objective 1 and policy 1.1. We set out in Part 10: Activity Area E2 our reasons for not extending C2 to the EAR.

Issue: ***Can the Structure Plan and ODP processes appropriately manage the interface between AA-C2/D and A-C2/E2?***

[401] To a degree submissions and evidence on these questions overlapped and we deal with them in one section, however, repetition of some of the material in Part 13: Activity Area D is unavoidable. Not all the materials were concerned exclusively with AA-C2 but it was frequently a common factor.

[402] In closing SPL submitted that, a significant issue for achieving the intended layout and form of AA-C2 was whether in addition to the Structure Plan and ODP there should also be "network layer of plans addressing green linkages, stormwater, [and] transport (including cycleways and walkways)".

[403] For managing the interface between AA-C2 and the EAR, SPL would also extend C2 to the EAR.

Managing the interface between AA-C2 and D

[404] For managing the interface with AA-D SPL relied on *Johns Road Horticultural Limited v Christchurch City Council*[351] to support its submission that "... in high density developments there is an environmental effect on residents if they do not have ready access to open space, public transport and convenient retail and community services".[352] Ultimately SPL's submission led nowhere in the sense of seeking a specific relief, except possibly that the parties be directed to work collaboratively on C2 policies.[353] We are also mindful of Mr Serjeant's evidence for SPL that while he had previously considered it desirable that open space be shown on the Structure Plan he now accepted that it should be "... explicit that the ODPs must show open space areas and the ongoing

[351] [2011] NZEnvC 185.
[352] SPL Closing submissions [5.108].
[353] Ibid [5.109] and [5.123].

development of each Activity Area had to comply with that. The decisions version of PC19 has made sufficient changes to make the latter option more effective and therefore I consider my concern ... has been addressed".[354] We find that evidence called by SPL significant.

[405] The District Council sought to differentiate PC19 from *Johns Road* on the basis that the former is a mixed use development (not high density residential). And that while the settled *Johns Road* policies may be laudable the matters SPL alluded to were not, in its submission, supported by SPL's witnesses in the current proceedings. Secondly, SPL did not seek a comparable key policy (from *Johns Road*) like "... managing sensitive land use interfaces throughout [by] the use of appropriately "like with like" buffers of density and use".[355] In fact, as we shall see, its evidence took a different approach.

[406] QCL made substantial closing submissions on this subject. It was concerned with how effects on C2 land at its interface with other zones, and in particular AA-D yard-based industrial activities, could be suitably managed reflecting its support for the (now deposed) E2 west Activity Area. We also heard considerable evidence about the management of the AA-C2/E2 (EAR) interface.

[407] The resolution of issues around the AA-C2/D interface needs to take account of the court's related jurisdiction finding. The option of an interceding E2 west favoured by Mr Mead, Mr Edmonds and Mr Barrett-Boyes is not open. We remind ourselves that SPL's structure plan provides for Road 5 to separate AA-C2 as it is now configured from AA-D. One of three fundamental principles that underpinned Mr J Brown's vision for PC19 was "efficiency of use of land", which he considered relevant to the management of Activity Area interfaces. His evidence on this matter follows:

> The spatial arrangement of activities should minimise the amount of land [used] for buffering between incompatible activities. Where land is necessary for buffering, this should be used as efficiently as possible – for example by roading, or open space/reserves, along with adopting

[354] Serjeant, EIC August 2010 [11].
[355] District Council Closing submissions June 2012 [44].

> building design and site landscaping mechanisms at the interface between the two areas. I consider these mechanisms provide for a far simpler arrangement of activities within the zone.[356]

[408] We also heard evidence from SPL witnesses Mr Rae and Mr J Brown about how AA-C2 development north of Road 5 might be managed by other means, presumably through the ODP process and consent assessment matters, to safeguard C2 amenities and we expect to protect AA-D from reverse sensitivity effects. Mr J Brown, for example, referred to offices in C2 fronting Road 5 and we foresee other potential land uses in the Activity Table.[357] Mr Serjeant spoke of a linear strip of open space extending west along the frontage from the EAR towards Grant Road possibly acting as a buffer to complement the effect of Road 5.[358] Mr J Brown, replying to questions put in cross-examination, clarified that he did not consider a linear park to be necessary as a buffer and that the interface SPL proposes could be managed adequately in terms of amenity expectations by Road 5 in conjunction with other means, namely:

> Frontage controls including building setbacks, landscaping, building design and that's building design on both sides in particular landscaping within the road reserve itself, and acoustic controls within the residential [development] and of course the design of the residential itself and whether it wants to orient itself to the north to the sun or to the south to the views of The Remarkables or both.[359]

[409] When replying to a question put in cross-examination on likely amenity effects at the C2/E2 EAR interface on the District Council's structure plan, Mr J Brown accepted that this was a matter that could be managed through the ODP process.[360] We note Mr Edmonds for QCL was concerned with a "disconnect" between the Structure Plan and ODPs and saw the solution as requiring plans for all Activity Areas including C1 – E4.[361]

[410] Conversely, Mr Mead did not consider that a road could be a sufficient or suitable buffer between different activities as "...you're never going to be able to get a really high amenity edge out of it because of the nature of [AA-D]".[362] Mr Mead saw

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[356] Brown Second Supplementary April 2012 [7(c)].
[357] Transcript 2013.
[358] Serjeant Supplementary Statement April 2012 [18] ff.
[359] Transcript 2013.
[360] Ibid 1918.
[361] Edmonds Second Supplementary Statement April 2012 [6.5]ff.
[362] Ibid 1350.

measures like a linear park encroaching on and reducing further the area of AA-C2.[363] Although in a different context, we note that Mr Mead also deposed that buildings in C2 may be up to 6 storeys high with the tallest buildings to the south.[364] This suggests that whatever activity occupies the northern edge of Road 5 the potential exists for a degree, probably a substantial degree, of over-viewing to the south towards AA-D. Mr Mead opined that fencing and planting controls on the AA-D frontage would make only a limited contribution to managing the interface.[365] When asked by Dr Somerville whether it was possible to develop objectives and policies leading to rules and standards to address the interface, Mr Mead stated:

> .... it all depends what sort of level of amenity that you want to provide, and I think that becomes the issue. ... you could craft a set of provisions which talk about the C2 and the D interface, but that interface as I said will, I think, inevitably leave an area along that edge of Road 5 which will have diminished livability associated with it, and therefore the residential component, if it were, is somewhat less than what might otherwise occur.[366]

[411] A significant part of that answer was Mr Meads' acknowledgement that the C2 interface may be occupied to some degree by non-residential "components" or activities.

[412] Mr Edmonds was also troubled by the prospect of C2 and D being separated only by Road 5 for much the same reasons as Mr Mead and preferred (the now deleted) AA-E2 (Grant Road) sub-zone.[367]

Managing the interface between AA-C2 and E2 (west of the EAR)

[413] Mr Mead foresaw similar interface management issues arising if SPL's AA-C2 were to abut the western side of the EAR (as opposed to District Council's preferred E2).[368] While such land use arrangements do not exist in Queenstown he conceded that they do in Auckland, but typically in situations where the zoning enables apartments on both sides of a road.

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[363] Ibid 1352.
[364] Meads Third Supplementary Statement April 2012 [26(c)].
[365] Transcript 1352.
[366] Ibid.
[367] Ibid 1640.
[368] Ibid 1355ff.

[414] While Mr Rae for SPL expressed doubts about the compatibility of residential activities in AA-E2 EAR given likely E2 building typologies he did not specifically address management of the E2/C2 interface.[369] Instead, his evidence was that C2 on the western side of the EAR with amended activity provisions would enable a suitable interface in amenity terms with SPL's AA-E3 opposite.[370] Mr Barratt-Boyes' urban design drawing SKE 03[371] illustrates how the C2/E2 interface west of the EAR might be suitably managed through a mix of access, open space and building orientation arrangements. Mr J Brown in cross-examination continued to support AA-C2 east to the EAR but conceded that 'there may be able to be interface measures on that".[372] We have concluded that achieving an outcome of the type illustrated on SKE 03 would require compatible C2 and E2 ODP provisions and in turn an effective policy framework and suitable ODP assessment criteria. We understood Mr Mead to agree that the subject was better approached in this way than by adding detail to the Structure Plan such as a requirement for service lanes in defined locations.[373] Mr Edmonds was of the same opinion.[374]

Outcome

[415] There is a tension between adding further detail to the Structure Plan map, to achieve the integrated Activity Area outcomes sought by the relevant Zone-wide objective and introducing *rigidities* that may create difficulties at the ODP design stage. We have determined that on balance it is better to maintain the PC19 approach; not require *network layer plans* or more detail on the Structure Plan map; and to rely on the policy framework and (lower order) ODP assessment criteria. To this end, we accept Mr Rae's evidence which proposed much the same approach for both the C2/D and C2/E2 EAR interfaces.[375] We are also inclined to accept Mr Edmonds' evidence on the merits of extended coverage of ODPs so that development of the northern edge of AA-D is managed having regard to the AA-C2 Activity Area opposite. A new policy to this effect is included in the AA-D section below (Mr J Brown's policy 1.3) and we direct

[369] Rae Rebuttal, October 2011[74]ff.
[370] Ibid [82]ff.
[371] Barratt-Boyes Second Supplementary Statement, April 2012 and QCL Closing submissions attachment.
[372] Transcript 1917.
[373] Transcript 1431.
[374] Ibid 1715.
[375] Rae Rebuttal October 2011 [100–102].

that assessment criteria for the AA-D ODP be addressed in evidence in the lower order hearing.

[416] We do not consider it necessary that there is a requirement for specific activities, or a mix of activities, to occupy the Road 5 frontage on the southern boundary of C2. It is probable, as Mr J Brown, said that some AA-D compatible activities will elect to locate there of their own volition with a low probability of reverse sensitivity effects. For example, convenience retail, offices, community activities or healthcare facilities.[376] Nor do we consider it appropriate that the District Council should be committed to applying the finite and imprecisely defined quantum of reserve land that will be available to it for open space purposes to a buffer. In addition to the activities that we have noted, we expect that it should also be possible through the ODP process to provide for residential development at the interface in an appropriate manner. For residential activities this may involve north facing living and open space areas with access, subject to traffic engineering considerations, from Road 5. As Mr J Brown said, it is also probable that some multi-storey developments will elect to take advantage of views across AA-D to The Remarkables. Whilst possibly not an optimal outcome, and certainly not one that will result in similarly grained development on both sides of Road 5, we find it workable.

[417] We have determined that there should be a specific policy to guide the assessment of that part of the AA-C2 outline development plan for development fronting the north side of Road 5. The court is loath to write the policy, which the District Council is to do in consultation with the parties, but find that it should include matters of the type referred to in Mr J Brown's evidence above. Key aspects are likely to involve the design of residential buildings, including orientation of living and open space areas; the location of vehicle and pedestrian access; the activity mix along the frontage; building setbacks; landscaping, including in the road reserve; acoustic controls; and should they be known, relevant provisions of the AA-D ODP.

[418] We have similarly determined that should be a specific policy to guide the assessment of that part of the AA-C2 outline development plan for development

[376] District Council Matrix Table, 3 May 2012.

adjoining AA-E2 on the western side of the EAR. We are again loath to write the policy, which the District Council is to do in consultation with the parties, but expect it should allow for consideration of factors such as vehicle and pedestrian access arrangements; building bulk and orientation; and open space (public and private).

Sub-issue What provisions are needed for AA-C2 west of Grant Road?

[419] This question arises from the court's jurisdiction finding that reinstates the PC19(DV) C2 zoning to a small area on the west side of Grant Road adjacent to the FF(A) Zone, opposite AA-C1 and designated for Events Centre purposes. The land is owned by the District Council.[377]

[420] For understandable reasons we were not assisted with submissions and evidence on this subject during the hearing. However, recognising the area's size, location and neighbouring activities, we have determined that the District Council should prepare in consultation with other parties AA-C2 policy provisions for the land for inclusion in the revised version of PC19, which this decision will require. Ultimately, new lower order related provisions may be required to assist policy implementation. We make no further comment on the subject beyond the preliminary observation that residential activities may not be appropriate.

Sub-issue: Is objective 7 suitably worded?

[421] We have set out the District Council's finally preferred objective and policies above. While SPL accepted that there should be a separate AA-C2 objective as proposed by the District Council and QCL[378] it preferred a different version formulated by Mr J Brown as follows:[379]

> In Activity Area C2, a high density residential area with high standards of building design integrated with the public environment comprising high quality streetscape and open space.

[377] District Council Opening submissions: Attachment entitled "Ownership Plan".
[378] SPL Closing submissions June 2012 [5.102]ff.
[379] Brown Second Supplementary Statement April 2012 Annex A p J-13.

[422] Mr Edmonds for QCL proposed another option as follows:[380]

> To encourage some of the highest intensity residential living environment in the district in the C2 area, which will include multiple level and mixed use buildings, shared open space at ground level and communal parking areas.

[423] We consider that the District Council's wording would better reflect the outcome sought if it were to expressly reference mixed use development (in addition to a mix of building typologies). We also find the word "livable" something of a slogan and surplus given the subsequent words "to provide a high quality living environment". The word *urban* is also superfluous in the context of PC19.

[424] Mr Edmonds' wording commences with contextual information that adds little to the outcome sought by the District Council's wording. "Enable" would be more apt at the beginning than "encourage". If they are necessary, the shared open space and communal parking references are more appropriately covered by policies and we expect implicit in the building typologies that the District Council describes. Overall, we find no advantage in substituting Mr Edmonds' wording.

[425] Mr J Brown's wording describes the key outcomes sought adequately, except that mixed use is not included. While his wording appropriately refers to high density residential activities this is implicit in the District Council's objective given the building typologies described.

[426] We find the slightly greater detail on built form in the District Council's objective positive and, subject to the minor edits below in the court's revised version, that it is an appropriate statement of the intended outcome for AA-C2.

Sub-issue: What policies are required?

[427] As previously noted the District Council position in closing,[381] and supported by Ms Hutton in supplementary evidence,[382] was that there should be two AA-C2 policies.

[380] Edmonds Second Supplementary Statement April 2012 [7.18.4].
[381] District Council Closing submissions Annexure 2.
[382] Hutton Third Supplementary Statement April 2012 [36].

In contrast, Mr Edmonds[383] proposed four policies and Mr J Brown eleven.[384]

[428] As a starting point for the analysis, we see no good reason why the policies in the Ferguson/Hutton version[385] applicable to C2 but shared with C1 in that version, should not also continue to apply to C2. Ms Hutton gave no probative evidence in support of her abbreviated material that we see and we have noted that Messrs Edmonds and J Brown, two well experienced planners, clearly considered more policy support is required to implement the objective. On the court's assessment, the following Ferguson/Hutton AA-C policies should apply to AA-C2. We accept, in fact prefer strongly, that they not be duplicated and the District Council is to adopt a suitable mechanism to make it clear that they apply to both C1 and C2 (see court's suggested approach in revised policy 7.6). The relevant policies are with amendments identified where required:

(a) 7.3 (open space);
(b) 7.6 (landscaping in streetscape);
(c) 7.8 (collocation of activities) – we have an open mind about the continued relevance of this policy. It might be said that the only remaining parcel of C2 land in close proximity (a relative term) to the Events Centre is that on the west side of Grant Road. We are not confident that it is suitable for the associated residential and visitor accommodation activities referred to, including for reason of its location within the OCB;
(d) 7.9 (noise mitigation) – we leave open the inclusion of the Airport (See Part 16: Queenstown Airport);
(e) 7.11 (a further aspect of noise mitigation);
(f) 7.12 (fine grained street network) – possibly requires differentiation from the C1 equivalent although we expect some elements would be apposite.

[429] For the avoidance of possible doubt the policies in the Ferguson/Hutton version that specifically refer to C2 and supported by Ms Hutton in her supplementary statement are to be included. That is QLDC policies 7.1 and 7.2 suitably edited. In particular:

[383] Ibid.
[384] Brown Second Supplementary Statement, April 2012 Annex A pp J-13-14.
[385] Handed up by counsel with Opening submissions 20 February 2012.

(a) QLDC policy 7.1 – it is unclear what the word "permanent" adds to the policy. Can all development not reasonably be assumed to be "permanent" unless otherwise stated? Alternatively, if it is intended as a reference to the status of the residents we wonder if this would be appropriate as some are likely to be seasonal workers, visitors or similarly transient? The District Council is to clarify by an appropriate edit;

(b) QLDC policy 7.2 – the policy does not read from the words "is provided" in the second line. The solution may be as simple as deleting "and" after "within". We have suggested an amendment and leave is granted leave to the parties to confirm or amend while retaining the overall purpose of the policy.

[430] We now review Mr J Brown's proposed policies using the numbering in his second supplementary statement:

(a) Policy 9.1 – speaks of locating C2 outside the OCB which would be correct for SPL Structure Plan 4b but would not align absolutely with either the boundaries in the District Council's November 2012 Structure Plan supported by QCL or with Mr J Brown's revised evidence previously described. His reference to the OCB is apposite to the high quality living environment required by QLDC's policy 7.2 (and Ferguson/Hutton p7.13) and we have edited the former to include the reference;

(b) Policy 9.2 – duplicates in part the District Council's policy 7.2 as it describes specific activities enabled to give effect to the objective but with an emphasis on those that align with SPL's case;

(c) Policy 9.3 – does not appear to duplicate a District Council policy. It has relevant and import provisions which are to be included;

(d) Policy 9.4 – deals with similar noise matters to the Ferguson/Hutton version of AA-C policy 7.9. The QLDC policy wording is preferred and is to be cross-referenced into the AA-C2 policy suite;

(e) Policy 9.5 – is to discourage low density residential living. We are generally supportive of this policy which is equally applicable to AA-C1 on account of its overall strategic fit with PC19. As worded by Mr J

Brown, however, it begs the question of how the policy is to be implemented. The proposed C1/C2 ODP Rule 12.20.3(iii)(k) requires an indicative density plan and gives a guideline of a minimum of 75 dwellings/hectare. Mr Brown's policy is to be inserted in both C1 and C2 with words added stating that implementation is to be achieved by development complying with a minimum density rule;

(f) Policy 9.6 – is contrary to the range of activities endorsed by the court for C2 and is not adopted;

(g) Policy 9.7 – also implies a more limited range of activities than we have endorsed and is not adopted;

(h) Policy 9.8 – is included in the Ferguson/Hutton version as AA-C policy 7.3, which is to be cross-referenced into the C2 policy suite;

(i) Policy 9.9 – is included in the Ferguson/Hutton version as AA-C policy 7.6, which is to be cross-referenced into the C2 policy suite;

(j) Policy 9.10 – creates the requirement for a AA-C2 ODP which is a key measure in the suite of implementation methods and should be included for C2 and all Activity Areas where ODPs are required. The QCL and the District Council are granted leave to edit Mr J Brown's policy if necessary;

(k) Policy 9.11 – provides for streets to provide views to named natural landscapes and features. As it would duplicate Zone wide policy 1.3 (court's numbering) it is not required.

[431] The policies that Mr Edmonds proposed in his second supplementary statement were all from earlier Zone-wide or AA–C provisions dealt with previously in the Interim Decision.

[432] As noted earlier, in addition the parties are to propose policies that address the AA-C2/D interface, the interface between AA-C2 and E2 (west of the EAR) and finally, the interface of AA-C2 west of Grant Road.

Outcome

[433] Subject to our general directions above we find that the objective and policies for Activity Area C2 should be as follows:

The court's revision

Objective 7: Activity Area C2

A compact, residential neighbourhood where there is a mix of activities and building typologies with a predominance of terrace houses and low to mid rise apartments (4 to 6 storeys), designed to provide a high quality living environment (both public and private). (QLDC objective 7)

Policies

7.1 Within Activity Area C2, an environment conducive to the development of a permanent residential neighbourhood should be provided, with retail, commercial and visitor accommodation activities limited to smaller scale convenience stores, workplaces and developments. (QLDC policy 7.1)

7.2 To manage the design of development in Activity Area C2 outside the OCB to ensure a high quality living environment is provided, both within developments and for the Activity Area as a whole. (QLDC policy 7.2)

7.3 To be added by the District Council for the AA-C2/D interface. (court)

7.4 To be added by the District Council for the C2/E2 interface on the western side of the EAR. (court)

7.5 To be added by the District Council for the area of AA-C2 west of Grant Road. (court)

7.6 Policies [QLDC to specify] of AA-C1 apply to AA-C2. (court)

7.7 To require a high standard of site and building design, that integrates with neighbouring land uses, the streetscape and open space areas; and with a high

level of amenity for residents and visitors. (SPL policy 9.3)

7.8 To discourage low density residential living. (SPL policy 9.5)

7.9 To require outline development plan(s) for development within AA-C2 to ensure that urban design, street and site layout, open spaces and pedestrian and cycle connections are adequately provided for and in a manner that accords with best practice urban design principles. (SPL policy 9.10.)

Explanation and Reasons to be added.

Part 10 Activity Area E2

Introduction

[434] Activity Area E2 was not notified in the original plan change, but emerged under PC19(DV) in response to submissions. AA-E2 would accommodate businesses looking to take advantage of the passing trade of the EAR and which are not suitable for AA-C1. Land uses would be of a type that could "invest in a high quality building response such as premier showrooms, prestige commercial/light industrial".[386] The hearing Commissioners' vision for the Activity Area is perhaps best captured in their decision to reject Five Mile Holdings' submission seeking, amongst other measures, residential, educational and visitor accommodation within Activity Area E and their finding that the "premier frontage along the EAR in Activity Area E2" is intended to be business focused.[387]

[435] SPL strongly opposes PC19(DV) AA-E2 and by way of relief, amongst other measures, proposes a new Activity Area (AA-E3) be located east of the EAR and that AA-C2 extend to the EAR on the west.

[436] The District Council and QCL support AA-E2 (including extending E2), and the differences that arise between them primarily concern the restrictions on retail development.

[437] The court must decide whether to approve AA-E2 or SPL's proposed AA-E3; but it cannot approve both.

Overview of PC19(DV): Activity Area E2

[438] In PC19(DV) AA-E1 and AA-E2 share the same objective (objective 10). Thus this is an area for light industry and related business activity.

[386] Commissioners' decision at [3.1.18] and [3.10.26].
[387] Commissioners' decision at [3.10.72].

[439] A separate objective informs us that these Activity Areas, together with AA-D, are to have a standard of amenity that is pleasant to visit and work in. However, this objective has not survived the cutting floor of the parties' evidence.[388]

[440] Policies directly related to objective 10 state that AA-E1 will enable predominantly industrial and trade service activities (policy 10.1). To ensure land is used for its intended purpose within AA-E1, any office space and/or retail must be minimal and ancillary to the principal use of the site (policy 10.11).

[441] The equivalent AA-E2 policy concerns the achievement of a high quality streetscape along the EAR. Policy 10.2 is:

> To enable high quality activities which benefit from visual exposure and passing trade, and which can contribute to a high quality streetscape, to locate along the Eastern Arterial Road within Activity Area E2. These include activities such as retailing inappropriate for location within Activity Areas C1 and C2. These tend to be single purpose destinations offering goods and services associated with vehicles, construction and home building. Showrooms, and premier light industrial premises are also anticipated.

[442] We take from this policy that the listed activities are of a type that can achieve a "high quality streetscape".

[443] Finally, policy 10.5, which applies equally to AA-E1 and AA-E2, is relevant and reads:

> To exclude activities (such as residential activities, non showroom retail and visitor accommodation) that conflict with the activities of the intended uses in the Zone.

[444] That said, the Activity Table does not exclude from AA-E2 retail activities that are not showroom retail, as these are discretionary activities.[389]

[445] To complete this brief overview, the types of activity that are contemplated within this Activity Area (i.e. that are either permitted or are not non-complying or prohibited) include industrial and service activities with ancillary retail (permitted), community activities (permitted), offices (permitted), educational facilities outside the

[388] PC19(DV) objective 9.
[389] Rule 12.20.3.7 Table 1.

OCB (limited discretionary) showroom retail with a gross floor area greater than 500m^2 (limited discretionary) and other retail (discretionary).[390]

[446] "Showroom retail" referred to in policy 10.2 is defined in PC19(DV) as follows:

> Means the retailing of goods manufactured on site, goods that are primarily stored outside (e.g. garden/landscape supplies), and retailing associated with Service Stations, Automotive and marine products, parts and accessories, Hardware and buildings supplies including bathroom and kitchen fitting, lighting, and wall and floor coverings. It does not include the retailing of furniture and household appliances.

[447] QLDC proposed that this definition be deleted in the Ferguson/Hutton version of the Plan Change produced during the hearing.

[448] While "light industry" and "business" are referred to in objective 10 these terms are not defined under PC19(DV).

Changes to the wider planning context

[449] Following the release of PC19(DV) the planning context changed considerably. Several important matters arise:

(a) under PC19(DV) the Air Noise Boundary and Outer Control Boundary extend into the southern part of the Zone. The southern boundary of AA-C2 (being the residential area) was aligned with the Outer Control Boundary. As a consequence of Queenstown Airport Corporation Ltd's notice of requirement to amend Designation 2 and its privately initiated plan change (PC35), the Outer Control Boundary now occupies a larger area within the Zone, reducing AA-C2;

(b) under PC19(DV) residential activities in AA-E2 are either non-complying (above ground) or prohibited (at ground).[391] The District Council now proposes residential activities take place within AA-E2 as a permitted

[390] PC19(DV) Activity Table.
[391] PC19(DV) 12.20.3.7 Table 1.

activity where located above ground level and outside the Outer Control Boundary;[392]

(c) PC19(DV) confirmed the EAR at a location approximately 70m east of its present alignment. AA-E2 sleeved the EAR on an approximately north-south axis from the state highway to the southern boundary of the zone. Differently dimensioned, the AA-E2 was approximately 45m in width east of the EAR, and 70m to the west; and

(d) all parties support the relocation of the EAR as now confirmed by the court's related NOR consent notices.

District Council's preferred objective and policies

[450] The changes in the local planning context, particularly the realignment of the EAR and the change to Queenstown Airport's noise boundaries, has had a considerable bearing on the plan change, AA-E2 in particular. The District Council, together with QCL support the retention of an AA-E2 in relation to the relocated EAR but propose that the sub-zone terminate in the vicinity of Road 5. During the course of evidence exchange several iterations of this Activity Area were proposed by the District Council's witnesses. The latest iteration appeared in the April 2012 evidence from the District Council's planner, Ms Hutton as follows:[393]

> **Objective 8: Area E2 (Mixed Use environment)**
>
> An environment that acts as a mixed use transitional area between the urban village: neighbourhood and the surrounding industrial and yard-based areas, while presenting cohesive and visually attractive edges to the EAR, Grant Road and the Events Centre land.
>
> **Policies**
>
> To enable activities which benefit from visual exposure and passing trade, and which can contribute to a high quality streetscape, to locate along the Eastern Arterial Road within Activity Area E2. These include activities such as business units, offices, showroom, light industrial and midsized retail units. (policy 11.1)
>
> To make efficient use of Activity Area E2 by providing for an area outside of the Outer Control Boundary where residential activities above businesses are enabled to create a true mixed use environment. (policy 11.2)
>
> To require a high quality of design and landscaping for buildings and activities that are viewed from the State Highway. (policy 11.3)

[392] QLDC Memorandum of Counsel (Matrix Table) dated 3 May 2012.
[393] This version appears to be the same as that attached to QLDC Closing submission Annexure 2.

To require all outside storage to be appropriately screened from the State Highway and EAR to retain high amenity values. (policy 11.4)

To ensure provision is made for adequate road access and on-site loading zones, particularly for heavy vehicles. (policy 11.5)

To ensure that the E2 Activity Area outside the OCB develops as a mixed residential and business environment, the size and design of retail units is to be managed so that retail development is compatible with residential activity and the total amount of retail floorspace that can occur within the Activity Area that is outside the OCB is capped at a level which enables other activities to establish. (policy 11.6)

To ensure that the traffic generated by retail activities located in the E2 Activity Area within the OCB does not adversely affect the functioning and amenity of Grant Road and proposed mainstreet environment within the C1 land. (policy 11.7)

To ensure that car parking areas are located to the side and the rear of buildings to maintain a high quality frontage along the EAR. (policy 11.8)

To ensure that activities adjacent to the Events Centre land contribute to a high quality interface with the recreational amenities of the land by controlling the design of buildings and layout of development. (policy 11.9)

To promote vehicular, pedestrian and cycleway connectivity with the Queenstown Events Centre. (policy 6.5)

[451] We record that the outcomes sought for this Activity Area are described by Mr Mead in his latest brief of evidence in the following terms:

> Area E2: An environment that acts as a transition between the residentially focused precinct to the west and north and the industrial and yard-based uses to the east (Area E1) and south (Area D). Along the EAR corridor, development is to present a cohesive streetscene (in terms of the road design and development and building typologies) on both sides of the EAR, while shifting from a mixed business / residential area to the north, to a more industrially focused area to the south. This reflects the role that the EAR will play in linking the northern and southern sides of the airport. Along the northern part of the EAR, buildings are expected to present a high quality frontage to the street, with a high degree of visual interest and interaction between the activities and the street environment by way of glazing, entrances, landscape treatment and the placement of car parking to the side and rear. ... Outside of the OCB, residential activities are possible above ground floor. The EAR is to be designed as a cohesive street environment that provides for movement of people and goods within the PC 19 as well as to and from the southern part of Frankton Flats. Vehicle access to properties is to be managed to reduce conflicts, while still ensuring that a mixed use environment can be sustained. Landscape treatment is to ensure that views of the mountain landscape are maintained and enhanced. A quality environment for pedestrian and cyclists is to be provided.

The evidence

[452] Underpinning the concerns raised in the witnesses' evidence is the conceptualisation of this Activity Area together with the EAR. In particular, what is the contribution of AA-E2 both separately, and together with the EAR, to the form and function of this new urban area? Secondly, are the listed activities that may be established supportive of these outcomes? Mr N Rae, who gave urban design evidence on behalf of SPL, observed that there is a lack of direction as to what may emerge within the urban fabric which cannot be addressed simply through road frontage controls.[394] Rather, there needs to be a determination of "exactly what intended built form and environment we anticipate along the EAR and have direction about that and then rules to achieve that outcome ...". What needs to be done to "get a handle on" AA-E2 is to determine whether it is an industrial zone, a mixed-use business zone, or predominately a business zone that could potentially have some residential activities within it?[395]

[453] The urban design witnesses were in agreement that the function of the EAR was not limited to its role as an arterial route. Mr Mead conceived of it in terms of it being a separate attractive urban space. In a similar fashion another witness spoke of the EAR as a "boulevard".

[454] We heard considerable detailed evidence concerning assessment matters for the proposed road frontage control. The debate around the Road Frontage Overlay is illustrative of Mr Rae's concerns. For SPL, Mr J Brown supported a landscaping regime and a set of road frontage controls that would apply along the length of the EAR. However, Mr Edmonds, foresaw Mr Brown's controls being employed as a landscape strip to effectively hide the back walls of the buildings and was concerned that the hearing Commissioners' idea of using building architecture to activate the road frontage would be lost.[396] Thus it was Mr Mead's preference that buildings, and the activities that take place within them, should define the road as opposed to relying on landscaping to do this.

[394] Transcript at 746.
[395] Transcript at 746.
[396] Transcript at 1696.

[455] In addition to the objective for AA-E2 being poorly described, the witnesses were concerned that PC19(DV)'s diverse mix of activities would undermine the outcomes for AA-E2 and the EAR. Given the range of activities, Mr Rae queries how development could be balanced on both sides of the road such that the built form of development "speaks to" the other side of the road as promoted by Mr Mead.[397]

[456] These concerns are taken up by Foodstuffs, highlighting in its submission that QLDC and QCL witnesses would seek to restrict LFR in this location for urban design and amenity issues, but not restrict the lower amenity industrial or service activities.[398] Like LFR, industrial and service activities may also require outdoor storage and carparking areas.[399]

[457] Much of the evidence concerned the efficiency and effectiveness of AA-E2's provision for industrial and service activities (as permitted under PC19(DV)). Confounding the strategic provisioning of land within this Activity Area was QLDC's suggestion that yard-based industrial activities should also be accommodated. For reasons that we discuss later we have found Mr Mead rightly criticises the definition of showroom retail in PC19(DV) as it lists activities that are more suitable for an industrial area than the higher quality built environment along the EAR.[400]

[458] Critically QLDC has now stepped away from this and, together with QCL, propose that "light industrial" replace industrial and services activities in the Activity Table. In QCL's closing submission we read that QCL and QLDC planners have agreed on a definition of "light industrial". We have not found any reference to this definition in their evidence, although it is possible that we may have overlooked it given the volume of evidence considered. That said, the proffered definition for "light industry" follows:

[397] Transcript at 552 and 764.
[398] Foodstuffs Closing submission at [6.2].
[399] Foodstuffs Closing submission at [6.5].
[400] Mead EiC at [9.16].

> ... the use of land and building for an Industrial activity where that activity, and the storage of any material, produce or machinery (including waste storage) incidental to the activity occurs wholly indoors, within and enclosed by a building. The requirement for the activity to occur indoors does not apply to the requirement for carparking and manoeuvring areas.[401]

[459] Having considered all of the evidence we conclude that under PC19(DV) the activities, rules, standards and methods were being used to drive an outcome for the AA-E2 which was poorly described in the objectives and policies. And we agree with Mr K Brewer that the role of the EAR, apart from its arterial function, is buried in PC19(DV)'s objective 3 and its policies. Before we come back to the objective and policies for AA-E2, and in particular the amendments proposed by the parties, we comment next on the proposed residential component and several key controls proposed for this area.

Issue: Does the court have jurisdiction to consider residential activities?

[460] As noted, under PC19(DV) residential activities on the ground floor are prohibited and non-complying above ground-floor in AA-E2. QLDC and QCL propose residential activities be permitted above ground-floor.[402] Alternatively, SPL proposes, *inter alia*, extending AA-C2 (with its residential focus) east to the EAR.

Discussion and findings

[461] The first mention we have found of residential activity within AA-E2 is in the evidence-in-chief of Mr Mead who said that the EAR should be treated as an urban arterial with a range of intensive, mixed use activities along its edges, including residential above ground.[403] No explanation is given for the introduction of residential activity – i.e. whether the amendment addresses an appeal. In Mr Mead's August 2011 Supplementary Statement the opportunity to accommodate residential activities outside the Outer Control Boundaries is again noted.[404] This time Mr Mead explains that residential activities were not appropriate under PC19(DV) because of the roading

[401] QCL Closing submission at [64].
[402] QCL Memorandum 3 May 2012 (Matrix Table), QLDC Memorandum 3 May 2012 (Matrix Table).
[403] Mead EiC at [9.10].
[404] August 2011 at [56].

environment that existed, which has now changed.[405] And secondly, he states that AA-E2 has developed from a high quality business and retail area to a mixed use area which seeks to accommodate business and residential development.[406]

[462] This is all very interesting – but we are left wondering what the source of our jurisdiction is to approve residential activities in AA-E2? We cannot see mention of residential activity in the District Council's or QCL's memoranda (Appeals Summary) both filed on 7 May 2012 subject to the court's direction that jurisdiction be identified for the changes supported by these parties.

[463] Furthermore we note that QCL sought to delete all rules relating to affordable housing, which now appear supported by QLDC in the rules, standards and methods for AA-E2.[407] The extension of affordable housing beyond AA-C1/C2 (or even more generally the location of affordable housing) does not appear to feature in the Queenstown Lakes Community Trust appeal either as a subject matter of the appeal or by way of relief.

[464] We have considered the SPL notice of appeal as a potential source of jurisdiction. For SPL Mr J Brown's evidence (at least in August 2011) was that there was no strategic need to accommodate residential growth within PC19.[408] This is consistent with SPL's notice of appeal which asserts also that "there is a substantial supply of residential land already zoned within the district".[409] However, in his first Supplementary Statement (October 2011) Mr J Brown propounds a Structure Plan based around four quadrants of environmentally compatible activities, and supports a mix of AA-C2 activities, offices and local convenience retail up to the boundary with the EAR.[410]

[465] Of more moment is SPL's notice of appeal where at clause [8.2.2] SPL was concerned to avoid what it considered poor planning by allowing residential activities

[405] Mead, first Supplementary Statement, August 2011 at [67].
[406] Mead, first Supplementary Statement August 2011 at [68].
[407] Five Mile Holdings appeal at [57].
[408] J Brown EiC at [5.7].
[409] Notice of appeal at 7.3(f).
[410] J Brown First Supplementary Statement, October 2011 at [25].

within the OCB. That we can find, SPL does not appear to seek relief to extend residential activities outside the OCB save in relation to its own land where its relief was that above ground residential activities are to become a controlled activity (clause 8.2.5(v)). As noted elsewhere this relief is no longer pursued.[411] In light of this it was curious that in closing counsel for SPL submitted that use of that area outside of the OCB, specifically QLDC's AA-E2 west of the EAR, was required to sustain a residential community.[412] In its Appeal Summary filed at the direction of the court, SPL referring to clause [8.2.2] of the notice of appeal states this clause supports its relief to "redraft the boundaries of Activity Area C2 to maximise residential activities outside the OCB".[413]

[466] SPL does not address how specific relief restricting residential housing within the OCB could lead, by default, to extending its provision on QCL's land within the AA-E2. There does not appear to be any nexus between the relief sought under appeal and the relief to extend AA-C2.

[467] That said, for SPL we understood Mr Rae not to close down the possibility of a mixed use Activity Area including residential activities, albeit he considers the establishment of residential uses in conjunction with larger retail units problematic.[414] He illustrates his concern with reference to the residential development in AA-E2 that is also part of its proposed Trade Retail Overlay. He says that residential accommodation within a Trade and Home Improvement Retail store would be an incongruent element.[415]

[468] Mr G Dewe, Foodstuffs (South Island) Ltd's planner, also queried whether the mix of uses should include residential and industrial.[416] He points out that under PC19(DV) residential activities are either non-complying (above ground) or prohibited (at ground level) and that it was not a purpose of the hearing Commissioners to provide for these activities within the area. While he considers residential activity may be

[411] SPL Memorandum (appeals summary) filed 7 May 2012 and memorandum dated 6 June 2012 at [2.4].
[412] Closing submission at [5.55].
[413] Filed on 3 May 2012.
[414] Transcript at 763.
[415] Rae EiC at [74].
[416] Dewe Rebuttal at [2.4, 2.12].

appropriate in some locations, given the activity mix for AA-E2 this may not be desirable.[417]

[469] Added to this, there seems to be no common understanding as to whether residential activities would be required on every site; while the requirement for this was expressed by several witnesses Ms Hutton, for the District Council said that was not the case.[418]

Outcome

[470] Subject to jurisdiction, and what we say about the area's activity mix, the court is satisfied that above ground residential activities is an appropriate activity. As it is our decision the proposed AA-E2 is the most appropriate way to achieve the purpose of the Act, we reject the alternative provisioning of residential activities – namely the extension of AA-C2 west of the EAR propounded by SPL. We find that the interaction between residential activity and other mixed uses within the Activity Area and with the EAR is able to be managed.

[471] However, before any decision can be made we require further submissions identifying with reference to the notices of appeal what is the source of the court's jurisdiction to consider relief extending residential activities into AA-E2.

Introduction - Road Frontage Controls

[472] As noted during the course of the hearing detailed evidence was received from a number of witnesses regarding road frontage controls and other methods to address the appearance and amenity of the Activity Area and EAR. In addition to the methods we briefly mention above there was evidence concerning the use of laneways and landscaping to separate AA-C2 and AA-E2, the requirement for noise insulation and ventilation measures for residential activities and so forth. All this is grist for the mill, but what this evidence highlights is the fundamental issue namely, the conceptualisation or objective for this Activity Area and for the EAR.

[417] Dewe Rebuttal at [2.14].
[418] Transcript at 1494.

[473] While we will come back to these matters in the lower order hearing it is appropriate to address four methods, namely:

(a) an inclusion of an indicative cross-section of the EAR in the plan change;
(b) carparking along the EAR;
(c) the appropriate depth of AA-E2;
(d) whether AA-E2 in the vicinity of the EAR should be subject to an outline development plan(s) and retail activity capped.

We address these as sub-issues in turn.

Sub-Issue: Should an indicative cross-section of the EAR be included in the plan change?

[474] Mr J Brown, for SPL, supported inclusion in the Plan Change of an indicative cross-section of the EAR road reserve including carriage widths, median and berm treatments, landscaping and building setbacks.

[475] Mr Brewer, also for SPL, commenting on EAR cross-section drawings he had sighted (we assume those in Exhibit 9) said that he considered them to be conceptually weak; consisting of a concrete median strip down the centre of the road with footpaths and trees on either side but no street-parking.[419] Likewise, Mr Rae thought approving cross-sections would be a pointless exercise where the District Council has not yet determined the road layout.[420]

Outcome

[476] It is our understanding that EAR will be provided for by way of designation in the District Plan,[421] and do not consider that it is appropriate to include cross-sections of the EAR in the plan change.

[419] Transcript at 647.
[420] Transcript at 776.
[421] Resumed hearing, 7 November 2012 at 105.

Sub-Issue: Should there be carparking along the EAR in proximity to AA-E2?

[477] This issue is of particular moment under SPL's preferred AA-E3 which, if its application for sub-division and Foodstuffs (South Island) Ltd and Cross Roads Properties Ltd applications for land use consent are an indication, would likely develop with the primary access off Road 2.

[478] The matter having been raised requires determination notwithstanding our decision to reject AA-E3.

The evidence

[479] The parties agreed that there should be no roadside parking on the EAR between the state highway and Road 2, or on Road 2 itself, with this being confirmed in the scheme plans attached to the consent orders approved by the court for the NZTA and QLDC notices of requirement. This discussion therefore focuses on the balance of the EAR within the Structure Plan area.

[480] SPL has not addressed whether the court has jurisdiction to make policy for the road frontage of the proposed EAR. We understand that the EAR would be the subject of a designation, but that a notice of requirement has yet to be lodged with the District Council. The District Council, as the Local Government Act's road controlling authority, would manage this road and our understanding is that the decision whether there should be carparking within the road reserve is a matter for the road controlling authority.

[481] As we would anticipate, PC19(DV) does not have higher order provisions addressing activities within the EAR road reserve. The hearing Commissioners record their understanding that carparking would be restricted; how they arrive at this understanding they do not say.[422] To the extent that the plan change addresses activities within the road reserve, it is limited (appropriately in our view) to an assessment matter for resource consents, including ODPs. And that is "[w]hether and the extent to which the EAR is designed as an arterial road with no on-street parking".[423]

[422] Commissioners' decision at [3.8.42].
[423] PC19(DV) clause 12.20.6(vii)(c).

[482] Rule 15.2 4 (vii) at page J-54 of the Ferguson/Hutton version of the draft plan change requires arterial carriageways (such as the EAR) to be designed to a minimum classification of a Primary Street: Arterial as defined in NZS4404:2004. We were not provided with a copy of this standard but there is no reason to suggest that roadside parking would be excluded on arterial roads.

[483] More generally, to the extent that the road environment is addressed by the traffic experts, then it is to respond to an issue posed by the parties for consideration at their second conference concerning the traffic implications of retail on both sides of the EAR. They agreed that the number of access points from the EAR should be limited, for example by using rear access, frontage services or restricting access to left in/out turns with a central median. While retail activities could generate pedestrian movements across the EAR any safety concern may be mitigated to some extent through the provision of a central raised median.[424]

[484] Otherwise the traffic experts did not give any considered evidence directly on the effects (or otherwise) of providing roadside parking on the EAR.

The parties' submissions

[485] QCL, by way of consequential relief to its appeal, seeks to amend the previously cited assessment matter by deleting the words "with no on-street parking".[425] This is on the basis that there is no evidence that on-street carparking would adversely affect the functioning of this arterial road.

[486] For SPL, Mr J Brown's evidence was that there should be no roadside parking given the EAR's function as an arterial road and to enable the efficient movement of traffic along its route.[426] He said his opinion was informed by urban design considerations more than traffic or transportation management.[427] He proffered a new policy that purports to control on-street carparking as follows:

[424] Second Joint Witness Statement (Traffic Experts) December 2011 at [42].
[425] QCL Document "Plan Change 19 – Appeals Summary" filed 26 April 2012.
[426] Transcript at 2055.
[427] Transcript at 2055.

> Policy 6.5
> For the Eastern Access Road, to provide for a landscaped road corridor with landscaping setbacks, a limited number of access points, and no on-street car-parking, to establish an attractive amenity and streetscape while preserving the arterial function of the road.[428]

[487] Counsel for SPL submits this new policy reflects the assessment matter noted above. And, referring to policy 5.10 in PC19(DV) which is "to provide suitable and convenient, safe and accessible areas of carparking on site rather than on the street", submits Mr J Brown's provision is a continuation of policy 5.10 albeit with specific reference to the EAR.[429]

[488] QLDC opposed the introduction of SPL's new policy.[430]

Outcome

[489] We reject the SPL's proposed policy 6.5.

[490] The agreed (relevant) assessment matter is broad and potentially leaves open the possibility of on-street carparking; although it might be worded in more neutral terms and can be addressed at the lower order hearing.[431] Policy 5.10 of PC19(DV) does not lend support for this new provision as it is a policy of general application to the mixed use zone.

[491] We have been unable to identify any evidence that the function or efficiency of the EAR would be compromised if roadside parking was allowed. Ultimately, this is a matter for the road controlling authority to manage. What is important, however, is that the road controlling authority's decision be taken into consideration as an assessment matter on a resource consent application. It is also highly desirable that the AA-E2 policy provisions articulate clearly a land use outcome that can be taken into account and supported by the design and management of the EAR by the road control authority.

[428] J Brown, April Supplementary Evidence at [16] and Annex A at J-9.
[429] SPL Closing submission at [9.34].
[430] QLDC Closing submission at [106].
[431] PC19(DV) Assessment matter 12.20.6(vii)(c).

Sub-Issue: Should there be equal depth of sleeving of AA-E2 along the EAR?

[492] Because the location of the EAR was not settled, the provisioning for this road was a particularly vexed issue for the hearing Commissioners. All parties to these proceedings have agreed that the EAR be relocated 70m west of its alignment in PC19(DV).

[493] What the Commissioners had to say about the relationship between the EAR and the adjacent Activity Areas remains pertinent notwithstanding the EAR's relocation, and so we quote them in full. Much of what they wrote resonated positively with the court as we reviewed the parties' cases and evidence:

> [3.8.26] In our opinion it is preferable to locate the EAR as part of the Plan Change process taking into account the amount of land which we consider should be allocated to each Activity Area, avoiding so far as practically possible, a location which would result in arbitrary portions of Activity Areas being created.
>
> This is for three reasons:
>
> a. The EAR will be a heavy traffic bearing arterial running from the State Highway in a direction which will allow road users to enjoy views to the Remarkables. It will itself be a gateway to large areas of land and should therefore, as far as practically possible, be an attractive road with land uses on either side drawn from the same range of land use options, meaning that the same Activity Area should be allocated on either side of the road to a depth that delivers realistic developable lots.
>
> b. It would not be sound planning to determine Activity Area boundaries without reference to the road. The later fixing of the road location could result in some parcels of land set aside for certain activities being unsuitable for those activities due to their shape or size. There may also be a relationship between the market viability of certain land uses and their access to a major roadway and passing trade.
>
> c. The evidence given to us was consistent that there needed to be a sound logic between the location of roads and the land use Activity Areas, and that ideally roads will have an equivalent land use on each side. We were repeatedly asked to ensure that land use outcomes were not compromised by the road layout and that, on the contrary, the road network should be subservient to appropriate land use needs.[432]

[432] Commissioners' decision at [3.8.28].

[494] And later at paragraph [3.10.25]:

> [3.10.25] We heard much evidence that the EAR should be a high quality gateway experience into the Zone, as well as serving as an important viewshaft opportunity to the Remarkables. We concur with this. In particular, we agree with the suggestion of Mr Porter that for its length through this Zone a special activity overlay with unique landscaping, building design and setback, and land use activity controls is most appropriate. The Council's officers seemed to partially agree with Mr Porter in their promotion of an Activity Area C3 that lined the EAR until the boundary with Activity Area D. We do not agree that the desirability of a high quality experience along the EAR should end simply because one has entered Activity Area D. Notwithstanding its emphasis on larger scale industrial type activities, we consider it is appropriate that the EAR frontage condition be continued. ...
>
> [3.10.26] We have considered the activities likely to locate in this overlay area, which we were told should include higher value showrooms and other premier businesses looking to exploit the passing trade of the EAR (which we agree will be too hostile to support the street-based local retail activities sought in Activity Area C1). It is our view that these are more aligned with the activities proposed in Activity Area E than Activity Area C. Activity Area C is more of a mixed, residential-compatible environment. Activity Area E is more employment focused, although it will provide for a range of businesses at relatively high employee density. It is our recommendation that this EAR overlay area should therefore be classified as a subset of Activity Area E (E2).

[495] Under PC19(DV) the depth of the AA-E2 east of the EAR is recorded as 45m on the Structure Plan and to the west of the EAR the depth is slightly wider at 70m. The dimensions supported by the District Council's witnesses changed during the course of these proceedings (although some changes appear to be drafting errors on the District Council's Structure Plans). That said, at the close of the hearing, the District Council and QCL proposed a depth of 50m on both sides of the EAR.

[496] QLDC and QCL were criticised by Foodstuffs over these changes. In its appeal Foodstuffs pragmatically seeks an outcome that would be consistent with its resource consent to construct and operate a supermarket on an area of land of approximately 22,000m^2 adjoining the EAR.[433] Foodstuffs' relief is straightforward – it seeks that its supermarket proposal be accommodated within a single Activity Area and that the

[433] Foodstuffs Opening at [1.2].

Activity Table allow for the same. For its part this could be achieved in either AA-E2 (subject to the dimensions of the Activity Area) or AA-E3. Generally it supports retail activities (greater than 500m^2) as limited discretionary activities.[434]

[497] Mr Mead explained that the changes to the width of the Activity Area were made in response to the Minister for Education's advice that AA-C2 was being considered as a potential location of a secondary school. When this no longer appeared to be an option, Mr Mead settled on an equal depth of sleeving to achieve appropriate urban design outcomes for the area and the EAR.

[498] Undoubtedly some parties feel frustrated by these developments. Foodstuffs in particular accuse QLDC and QCL of engineering outcomes designed to forestall its supermarket proposal. However, we find Mr Mead's explanation to be a reasoned cogent response to what is, we repeat, an evolving planning context. Further, we agree with the reasons given by him for supporting equal depth of sleeving on both sides of the EAR, in particular that it would:

(a) promote a consistent pattern or grain of development on both sides of the EAR;[435]

(b) discourage a scale of building and site layout associated with very large format retail activity;[436]

(c) enable built development close to the road frontage with carparking to the side and rear;[437]

(d) enable the management of reverse sensitivity issues arising in relation to adjoining Activity Areas (AA-C2 in the west and AA-E1 in the east) including using techniques such as a laneway to separate activities and landscaping to define Activity Areas;[438] and

(e) encourage integration of Activity Areas across the Zone.[439]

[434] Foodstuffs Memorandum 3 May 2012 (Matrix Table).
[435] Mead Transcript at 1314. Edmonds Rebuttal at [5.20].
[436] Edmonds Rebuttal at [5.20].
[437] Transcript at 557.
[438] Transcript at 558. Rae Transcript at 757.
[439] Transcript at 558.

[499] These outcomes would give effect to the hearing Commissioners' decision and strengthen the outcomes for PC19(DV), and in particular this AA-E2 and its relationship with the EAR.

[500] In many respects the evidence called by SPL on the form and function of this Activity Area and EAR was antithetical to the relief it pursued. SPL planner, Mr J Brown agreed along with the other planners that from an urban design perspective, and subject to appropriate controls preventing what he termed "clutter" associated with retail activity, retail on the western side of the EAR was desirable.[440] He agreed with others that the EAR played a major role in legibility of the area and that there should be a consistent approach down the road.[441] SPL's urban designer, Mr Rae, gave evidence where he said he could support Foodstuffs' application for resource consent under PC19(DV) as absent any strong policy direction a very large format supermarket would, in his view, be more appropriate than the development of the site for industrial activities. However, we did not understand him to support PC19(DV) as he was strongly critical of its provisions especially in relation to AA-E2.

Outcome

[501] We approve the equal dimensioning of 50m on both sides of the EAR.

Sub-issue: Should retail activity within AA-E2 in the vicinity of the EAR be capped at 10,000m^2 GFA with a limited tenancy range?

[502] Land use demand within Queenstown/Wakatipu includes land for employment activities which may require land in areas other than in town centres.[442] This is the last greenfield area in Queenstown/Wakatipu where a mix of business, employment and residential activity can take place. These demands are not the sole preserve of retail activity or, for that matter industrial. In that regard Mr Mead's evidence that there is a need for land within Queenstown/Wakatipu to accommodate up to 4,200 non-retail workers of which PC19 could provide land for 3,600 was not seriously challenged.[443]

[440] Transcript at 1921.
[441] Second Joint Witness Statement (Planners) December 2011 at [12].
[442] Mead Supplementary Statement August 2011 at [45].
[443] Mead Supplementary Statement August 2011 at [45]ff.

The 2006 Commercial Land Needs Analysis reported 30 hectares of land was required for business purposes (which we understand to mean commercial and office, with a limited range of retail).[444] Updating the forecasts in the 2006 Commercial Land Needs Analysis, Mr Mead records that there has been expansion in the business and service sectors that has created a demand for land in a business/office type environment, rather than an industrial environment.[445]

[503] While acknowledging the desire of some parties to lessen the restrictions on retailing along the EAR, Mr Mead found there to be little policy guidance under PC19(DV) as to what other forms of retail may be appropriate.[446] He explains that PC19(DV) attempts to draw a distinction between retail activities that are appropriate for a town centre environment and those better suited for a business-orientated environment – such as along the EAR. Evidently showroom retail was enabled to induce or create a specific amenity along the arterial route.[447]

[504] In his evidence-in-chief Mr Mead grapples with the demand for retail land and its integration within a mixed use environment within E2 in the vicinity of the EAR by suggesting a retail cap of 15,000m^2 which he says approximates to about one-third of the net land area. In his August 2011 Supplementary Evidence he revised downward the retail cap to 10,000m^2 retail floorspace with retail store sizes to be between a minimum of 500m^2 and maximum of 1,000m^2, perhaps with an average minimum of 500m^2 per site.[448] The provision appears as a new site standard in clause 12.20.5.1(vi)(a).[449] We understand these to be the "mid-sized retail units" referred to in Ms Hutton's objective/policies.[450] The rationale given for the retail cap is to ensure that retail activity does not predominate within this Activity Area. Mr Mead also proposes a range of assessment criteria some of which we have noted earlier.

[444] 2006 Report at 60.
[445] Mead EiC at [4.8].
[446] Mead EiC at [9.18-9.19].
[447] Mead EiC at [9.9].
[448] Mead Supplementary Statement August 2011 at [94].
[449] Ferguson/Hutton draft plan change.
[450] Policy 8.1.

[505] While QCL's planner, Mr Edmonds supports a genuine mixed use environment he considers that this is achievable without the imposition of a retail cap.[451] In his opinion if the width of the AA-E2 is the same on both sides of the EAR this will effectively manage the scale of the buildings to be constructed.[452]

[506] Mr Mead, however, still considers that the policies need strengthening to make it more likely that a mix of uses will occur.[453] He does not support PC19(DV)'s definition of showroom retail because it includes retail activities that are more appropriate for an industrial area.[454] That said, he would not restrict the type of retailing to be occupied by the mid-sized retail units but would avoid very large stores where carparking dominates the street-scene and buildings become internally focused.[455] In summary, it was Mr Mead's evidence that there is little policy guidance as to what other retailing may be appropriate and trying to maintain a distinction between showroom retail and other forms of retail may be problematical.[456]

Discussion and findings

[507] We accept unequivocally Mr Mead's evidence that retail can provide a supporting role for other business and residential activities, but if allowed to dominate then it will likely push out other activities through higher land values.[457] We have found that there are opportunities for retail elsewhere in PC19 and specific provision for large format retail outside of the plan change area.

[508] We share Mr Mead's concern that along the EAR, unless restricted, retail activities will likely predominate. We are not persuaded that the PC19(DV) definition of showroom type retail is beyond redemption. Like the hearing Commissioners, we consider showrooms suitable on the EAR subject to editing of the definition to remove confounding uses[458] and adding supporting criteria.[459] We have doubts about the

[451] Edmonds Rebuttal at [5.70].
[452] Edmonds Rebuttal at [5.72].
[453] Mead Supplementary Statement August 2011 at [99].
[454] Mead EiC at [9.16].
[455] Mead EiC at [9.25].
[456] Mead EiC at [9.19].
[457] Mead Supplementary Statement August 2011 at [88].
[458] Such as "goods that are primarily stored outside" and "retailing associated with service stations".
[459] For example, requiring a significant percentage of a building street frontage be glazed, that there be direct public access from the street, and a requirement that goods be displayed in the shop front window.

efficacy of a retail cap which if *spent* on one side of the EAR would diminish the utility of the road control frontage overlay, amongst other methods proposed, to achieve the cohesive and visually attractive edges to the EAR that is spoken about in the amended objective. There are also related issues of equity as the retail cap would apply on a first come first served basis. As Mr Rae recognised, the policies need to articulate with greater specificity the range of activities to be provided in AA-E2 and we find the following appropriate:

(a) showrooms suitably defined;
(b) light industry suitably defined along the lines QCL proposes but desirably with some showroom-type characteristics added;
(c) residential above ground level (subject to jurisdiction);
(d) offices;
(e) convenience retail; and
(f) mid–sized retail suitably defined in the range 500 – 1,000 m2 gfa.

We are mindful of the importance that AA-E2 built form will play in achieving the objective for the sub-zone. While we recollect no specific evidence we expect that building to a minimum of two storeys as Mr Barratt-Boyes illustrated in his drawings SK29 and 30[460] would contribute significantly to the QLDC objective 8. The parties are directed to address evidence to this subject in the lower order hearing with particular regard to whether there should be a rule that requires a minimum number of storeys for sites fronting the EAR between AA-A and Road 5.

[509] The size of the retail unit is important as it influences complementarity of built form on either side of the EAR. One of the means to achieve consistency in built form is the size of the retail unit. We approve the limitation of retail to activities between 500m^2 and 1000m^2 gfa, as larger retail units are unlikely to give rise to the high quality streetscape as envisaged by the hearing Commissioners, where built form is an important contributor. These activities should be defined as "mid-sized retail units" if they are to be referred to as such in the policies (see QLDC policy 8.1).

[460] Barratt-Boyes Second Supplementary Statement April 2012.

[510] Subject to jurisdiction, we suggest that instead of a retail cap, a new policy may be devised to require that either within an approved outline development plan retail activities are restricted to a fixed percentage cap. To approve such a policy would require the endorsement of the parties and, failing that, evidence.

Issue: Should all of AA-E2 be subject to an outline development plan?

[511] Under PC19(DV) there is to be an outline development plan for the whole of the Activity Area.[461] QLDC now support an outline development plan for AA-C1, C2 and E2. Foodstuffs strongly oppose the requirement for a single ODP on the grounds, *inter alia*, that the process could be frustrated by what it characterised as "anticompetitive" behaviour of QCL and SPL (the two landowners).

Discussion and findings

[512] We cannot accept Foodstuffs submission that an outline development plan is not warranted because there are sufficient layers of control provided by way of the Structure Plan, subdivision rules and other methods.[462] The outcome of the ODP should be informed by the plan change objectives and policies, and we have concerns about these. Furthermore, these lower order controls are not matters for determination at this hearing.

[513] Putting to one side the interesting legal issue of whether two landowners/developers can be engaged in trade competition for the purposes of the Resource Management Act and secondly, whether the vigorous debate between QCL and SPL in these proceedings can properly be characterised as "anticompetitive" (we think a somewhat counterintuitive description), it is our view that there is a stronger case to be made for two outline development plans for land located east and west of the EAR respectively. That is because the issues arising in relation to integration of land use activities across the various sub-zones are likely to be quite different and warrant their own careful consideration. This is particularly so for the AA-C2 and AA-E2 interface on the west of the EAR, but also the integration of AA-E2 and AA-E1 east of the EAR with its different height regimes.

[461] PC19(DV) clause 12/20/5/2(xvi).
[462] Foodstuffs Closing submissions at [8-9].

[514] There would also need to be a new assessment matter requiring consideration of the extent to which an outline development plan complements any existing development, or development proposed in an approved outline development plan or consented proposal.

[515] A difficulty may arise between SPL and QCL, both of which own land on the east of the EAR. This is potentially less of an issue given that their landholdings are located north and south of Road 9 and in QCL's case relatively small. A way to manage competitive behaviour of these two landowners/developers is to include a new rule that development not in accordance with an approved outline development plan is a non-complying activity. If this was found to have merit there would need to be a new policy to address this.

Issue: ***Are the objective and policies suitably worded?***

[516] In common with the other Activity Areas we are not in a position to approve the objectives and policies for AA-E2. We do offer detailed comment and the parties are directed to confer and propose amendments in light of the same and with reference to the decisions made by the court in other Parts (to the extent these are relevant). If necessary, the hearing will be reconvened to hear further evidence on these matters.

The objective

[517] The revised objective and policies tendered in evidence by Ms Hutton assume AA-E2 extends east and west of Grant Road, and this understanding is also recorded in Mr Mead's description of the area. However, it is the decision of this court that it has no jurisdiction to approve the extension to AA-E2 in the vicinity of Grant Road and so the proposed objective and policies are in need of general revision.

[518] The amended objective for AA-E2 also needs strengthening with a view to articulating the role of the Activity Area relative to the wider urban area. The wording proposed by Ms Hutton is a good start; she reflects rightly that this is a mixed use environment which acts as a transition between what she calls the "urban village" to the west and the industrial and yard-based areas to the east and south respectively. The

parties are to also consider the court's revision of the AA-C1 provisions when responding, noting that the phrase "urban village" does not find favour with the court.

The policies

[519] While referred to in policy "business" is not defined by the District Plan and for this reason it is our strong preference that the term not be used.

[520] Subject to jurisdiction, AA-E2 policy should record that the mixed use area would enable residential activities above ground level. Policy 8.2 submitted with QLDC's closing submissions provides a flavour of this, although we are uncertain why the policies refer to "efficient use of Activity Area E2" and so the policy could be reworded as follows:

> To provide an area outside of the Outer Control Boundary where residential activities above other activities are enabled. (policy 8.2)

[521] We do not approve the wording for QLDC policy 8.3 – what are the outcomes that QLDC seeks from a high quality of design and landscaping for buildings and activities viewed from the state highway? Why not have the EAR and SH6 as a viewing point? Notably there is no policy addressing the relationship between the Activity Area and the EAR, this is so notwithstanding that the amended objective specifically mentions the EAR. A policy needs to be introduced here (and possibly also objective 2) to describe the course of action to bring about a "cohesive and visually attractive edge" – assuming those words survive in objective 8. We understand what is proposed is that there is to be a complementary use of built form but also of activities and landscaping on both sides of the EAR.

[522] QLDC policy 8.6 is an omnibus provision addressing at least four discrete issues: (a) the development of a mixed use area; (b) the compatibility of land uses; (c) restricting retail activities; and (d) enablement of other activities. We have suggested the mechanisms to ensure that a mixed use environment is developed by restricting retail. These outcomes are in part tied to the size of the retail units. If there is to be

residential activity in AA-E2 then a policy is required that addresses directly how the potential for reverse sensitivity effects are to be managed.

[523] As for the remaining policies we offer the following comments:

(a) with amendments, Mr Edmonds policy 13.3 is an appropriate response to maintaining the function and efficiency of the arterial route as follows:

> To limit road access to and from the Eastern Access Road to either shared crossing points, or alternative access locations.

(b) we generally find Mr Edmonds version of policy 11.8 to be more comprehensive than the QLDC equivalent (with some minor amendments shown). On that basis policy 11.4 appears superfluous. Policy 11.8 should read:

> To ensure a high quality of road frontage along the Eastern Access Road by requiring on-site car parking areas are located to the side and the rear of buildings and to that storage, including storage of refuse, and secondly goods loading areas are located at the rear of buildings ~~to maintain a high quality frontage along the Eastern Access Road~~.

(c) policies 8.7 and 8.9 concern Grant Road and the Events Centre and should be deleted.

The parties are to confer and propose amendments to the objectives and policies to give effect to the court's decision. Leave is reserved for any party to raise a jurisdictional issue with the proposed amendments to the capping of retail activity (which we note was itself an amendment proposed by QLDC to PC19(DV)) and to address the court's jurisdiction to approve residential activities within AA-E2.

Outcome

[524] We find that the proposed AA-E2 is the most appropriate way to achieve the purpose of the Act as it provides an opportunity to meet growth demand for business land - by that we mean predominately commercial (including office and showroom activities) and light industrial activities - whilst serving a transitioning function between different Activity Areas. This transitional function is an important method to achieve integrated management of the effects of the use and development of land within the

Zone (PC19's objective 2 and section 31(a) of the Act) while at the same time contributing land to meet demand for non-town centre business related employment activities. The sub-zone also gives effect to the PC19(DV) vision for a high amenity EAR corridor.

[525] Growth in commercial activities is concomitant with all facets of the projected growth for Queenstown. The Activity Area would give effect to the operative District Plan provisions at Section: District Wide Issues, clause 4.5.3, objective 1 and policies 1.1 and 1.2 and secondly in the same section, clause 4.9.3, objective 4 and policy 4.2. It follows that we are satisfied that the AA-E2 achieves those principles of sustainable management set out in Section 3 of the operative District Plan and that this is so irrespective of whether there is jurisdiction to approve residential activities. If there is jurisdiction, then it is our view that these activities are able to be integrated effectively within the sub-zone.

[526] The parties led by the District Council are to review and propose a revised version of the objective and policies for AA-E2, consistent with the court's findings.

[527] The parties are to update the Activity Table and to confirm or propose a definition for Light Industry.

Part 11 Activity Area E3

Introduction

[528] As it is the decision of this court to approve AA-E2, we have not embarked on a detailed analysis of SPL's AA-E3. In this Part we set out our reasons for concluding that the proposed objective and policies for the AA-E3 sub-zone is not on balance the most appropriate way to achieve the purpose of the Act.

Description of Activity Area E3 provisions

[529] Under PC19(DV) approximately one third of SPL's land was zoned AA-E2 and the balance AA-E1.[463] The District Council's relocated AA-E2 (moving westwards in association with the EAR) would see the area of SPL land zoned AA-E2 reduced, with the balance land remaining AA-E1.

[530] As noted, SPL opposed this sub-zoning and sought instead a new Activity Area (AA-E3). To give a flavour of what is proposed we set out the following (relevant) provisions:

> **Objective 13: Activity Area E3**
>
> To enable Activity Area E3 to develop as a business, industrial, and service environment including trade and home improvement retail and yard based retail activities, with higher level of amenity values for workers and visitors.
>
> **Policies**
>
> 13.1 To enable activities which benefit from co-location and integration with the business, industrial, service and trade retail environment of Glenda Drive.
>
> 13.2 To enable activities for which there is demand, including business and industrial, trade and home improvement and yard based retail activities catering for the construction, agricultural, vehicle and marine sectors, in a location suited to the high traffic/heavy vehicle environment on the main access to and alongside the existing business, industrial, service and trade retail area of Glenda Drive.
>
> 13.3 To ensure that activities do not undermine the viability and amenity of town centres.
>
> 13.4 To provide for a single supermarket on the site adjacent to the Eastern Access Arterial Road immediately sought of the road connecting the Eastern Arterial Road with Glenda Drive.

[463] SPL Closing submission at [8.5].

13.5 To discourage residential and other activities, including general merchandising retail, not compatible in the business/industrial environment.

13.6 ...[464]

SPL Submissions

[531] In closing SPL highlighted three *facts*: "it is a fact that Plan Change 34 could accommodate all forms of retailing, including trade and home improvement retail. It is a fact that Mitre 10 wants to establish on SPL's land. It is also a fact that SPL has conditional contracts on its land".[465] Further to this SPL submits that there is an existing supply of land available for general merchandising retail activities and secondly, a demand for 30,000m^2 for Trade and Home Improvement Retail.[466]

[532] Counsel then makes the submission that "[w]hile it is intended that AA-E3 provide for trade and home improvement retail, the exact extent of such activity is not known. There is room for the predicted 30,000m^2 of demand. Mr Brown's objectives and policies envisage a mix of business, industrial and service activities, including trade and home improvement retail, within AAE3".[467]

[533] Three issues arise out of SPL's closing submissions:

(a) what is the objective for this Activity Area?
(b) does the proximity of SPL land to Glenda Drive support the enablement of Trade and Home Improvement Retail activity?
(c) would AA-E3 give effect to the objectives and policies of the operative District Plan?

[534] Before we address these issues we return to the findings of the court in relation to Trade and Home Improvement Retail, as provision for this retail sector featured in the evidence called in support for AA-E3 and also in the District Council's proposed Trade Retail Overlay.

[464] SPL Closing submission (attachment).
[465] SPL Closing submission at [8.8].
[466] SPL Closing submission at [2.2].
[467] SPL Closing submission at [8.11].

[535] Mr Tansley, on behalf of SPL:

(a) advocated (and we use this word deliberately) for a standalone precinct on SPL land;

(b) gave evidence that the precinct could see the likely development of up to 30,000m^2 of commercial, we understood him to mean predominately retail floorspace;

(c) said the precinct would support a range of retail activities including Trade and Home Improvement Retail activities, No-frills Retailers, a supermarket and large format retail was also mentioned.

[536] We found SPL case to be confused; is this an Activity Area enabling a 30,000m^2 commercial, principally retail, centre or is it something else – a "business, industrial and service environment" that also accommodates Trade and Home Improvement Retail, Yard Based Retail and a supermarket?[468] The strong impression gained from Mr Tansley's evidence was that SPL's AA-E3 would accommodate large format retail (**LFR**) activities in a non-town centre arrangement. To put it colloquially, it would be a LFR centre.[469]

[537] As we have noted elsewhere the planning witnesses in particular, but also Mr Heath, referred to the 30,000m^2 as if it were an assessment of growth demand for Trade and Home Improvement retail activities category.[470] However, as we have found, 30,000m^2 is what Mr Tansley considered would be the likely size of a centre that would establish if enabled under the plan change.

[538] We have also found that there is likely to be growth demand within the hardware, building and garden supplies sector over the next 20 years of 20,956m^2.[471] We prefer Mr Long's assessment of "hardware, building and garden supplies sector" as it does not include a general merchandising component. Growth demand for this retail sector could be accommodated within the existing zones or consented development. Having regard to land available within the existing zones or consented development for

[468] From AA-E3, objective 1 and policies.
[469] Tansley EiC at 7.6.5(2) and Appendix 4 at [8.8-8.9].
[470] Second Joint Witness Statement (Planners) dated December 2011 at 15. Heath Transcript at 963 and 965.
[471] This includes LFR and non-LFR.

all retail activity, we also found that there is a total unmet retail growth demand of 10,650m^2.

[539] If AA-E3 were intended to accommodate a centre of the type described by Mr Tansley in his evidence, then floorspace supply of 30,000m^2 would exceed the unmet growth demand for all sectors of retail activity. It is worth noting again our finding that the relationship between a 30,000m^2 precinct and the area of the AA-E3 (12.64 hectares (net)) was far from clear.

Issue: Can the objective and policies for this Activity Area be approved?

[540] That said, while the focus of much of the evidence concerning AA-E3 was on Trade and Home Improvement retail activities it is clear from the objective and policies proposed by SPL for AA-E3 that this area is not exclusively concerned with Trade and Home Improvement Retail or for that matter retail in general. In that regard SPL's proposed AA-E3 is strikingly similar to the objective supported by FMC/Manapouri in relation to AA-E4 (which we come to). The objective is simply to enable a wide range of activities subject only to the requirement that the area develop with a "higher level of amenity values for workers and visitors".

[541] The policies reinforce the objective in a number of different ways. Policy 13.1 is to enable activities which benefit from collocation and integration with the business, industrial and service and trade retail environment of Glenda Drive. Glenda Drive is zoned Industrial albeit that the District Council has consented a wide range of non-industrial activities in this zone. Given the range of activities that are consented or established in the Glenda Drive Industrial Zone it is unclear what activity, if any, would not be contemplated under this policy. Policy 13.2 reinforces the breadth of activities for Activity Area as it is "[t]o enable activities for which there is a demand ... in a location suited to the high traffic/heavy vehicle environment ...". The policy illustrates these activities by listing (inclusively) business, industrial, trade and home improvement and yard based retail activities. There is also a policy that a supermarket is to be enabled (policy 13.4).

[542] While policy 13.5 is to "[t]o discourage residential and other activities, including general merchandising retail, not compatible in the business/industrial environment" it is

unclear whether this policy is intended to be an effects based policy, and would be applied to exclude certain types of retail activity – say the small format fine grained retail activities that are more typical of town centres? Policy 13.3 lends support to this interpretation, which is that the area should not undermine the viability and amenity of town centres. Although we are not sure how policy 13.3 could be achieved in a practical sense, as such effects tend to arise over a long period of time. On the other hand policies 13.2 and 13.4 contemplate some level of general merchandising, including by Trade and Home Improvement retailers (who are typically engaged to varying degrees in general merchandising) and also a supermarket.

[543] There is, we find, opaqueness in the wording of the policies for AA-E3 and consequently we were left to the Activity Table to gain an understanding of what form of development may emerge. The latest details of the Activity Table are provided in a memorandum by SPL counsel filed after the conclusion of the evidence. Here SPL confirms either the activities and their status described in J Brown's October 2011 evidence or alternatively, seeks the more permissive "business activity" be included in the Activity Table.

[544] We find that the 2011 (J Brown) and 2012 Activity Tables (the latter filed by SPL counsel) contemplate a different range of activities than those described by Mr Tansley in his evidence and secondly, we think a much narrower range of activities than those contemplated under the policies. To illustrate this, while there is a policy to provide for a supermarket on a site adjacent to the EAR, supermarkets are not listed in SPL's Activity Table and would arguably fall into the "other retail" category – which are prohibited.[472] This is clearly not what is intended and Foodstuffs sought instead that retail (excluding Trade and Home Improvement) with a gross floor area more than 500m^2 per retail outlet is a limited discretionary activity.[473] If approved this would apply to all retail activities and not just a single supermarket.

[472] J Brown in his April 2012 Supplementary Statement defines "supermarket" with a high degree of specificity. Supermarket, or more particularly a "discount supermarket" means: "the use of land and buildings for the purpose of a single supermarket with a gross floor area no less than 5,000m^2 and a land area no less than 2 hectares".
[473] Foodstuffs' Memorandum dated 3 May 2012 (Matrix Table).

Outcome

[545] As presented to us in the objectives and policies, we had no clear impression of the manner in which this area would develop or its function either within the Zone or wider district. In short, the relief sought by SPL lacked coherency.

[546] We find that there has been no considered analysis by SPL's witnesses of the compatibility of the activities included in the AA-E3 objectives or policies or the Activity Table collocating within this area or secondly, the form of the urban area that may emerge and its relationship to other Activity Areas. But in any event we doubt that the list of activities in the Activity Table (any version) would give effect to the broadly stated policies and if AA-E3 were to be approved the Activity Table would need substantial revision.

Issue: ***Does the proximity of SPL land to Glenda Drive supports the enablement of AA-E3 or Trade Retail Overlay?***

[547] A second reason given for situating Trade and Home Improvement Retail either in a proposed Trade Retail Overlay (introduced by the District Council in these proceedings), AA-E3 or AA-E4 is the area's general proximity to Glenda Drive. We do not dwell on AA-E4 as we have found that we do not have jurisdiction to consider the extended relief that would enable this activity.

[548] While the extent of the Trade Retail Overlay occupying appears to be based on an understanding that there is 30,000m^2 growth demand for this retail activity – we are not sure that the area shown on QLDC's November 2012 Structure Plan can be equated to 30,000m^2 or indeed whether there was evidence as to its spatial extent.

[549] With the exception of Placemakers, Mr Long did not consider that the proximity to the Glenda Drive Industrial zone would influence the decision by Trade and Home Improvement Retailers to locate in AA-E4 and AA-E3. More important considerations for these retailers include the availability of flat land, good accessibility, visibility to arterial roads and the occupancy deal.[474] These are not the only factors leading to demand for land at a particular location, for example demand may also be evidence of

[474] Transcript at 1057.

developer and tenant alliances.[475] We accept that these locational factors will have greater influence on a business decision whether and where to locate in PC19 than proximity to Glenda Drive.

[550] During cross-examination and in closing counsel, for SPL made much of the fact that QCL's witnesses had not undertaken an agglomeration study.[476] This appeared to be for the purpose of challenging the opinions supportive of retail activity (in particular) either within or in proximity to AA-C1. What counsel anticipated from an agglomeration study was not explained, but we understand these studies consider generally the benefits that businesses derive when locating near each other. While counsel did not elucidate on the subject matter of any such study, we observe that if it were to be required then we would expect such a study would not be limited to AA-C1 but would consider the benefits of collocating Trade and Home Improvement retailers near the Placemakers store; AA-E3 together with AA-E4 or extending as proposed by SPL AA-E3 over FMC/Manapouri land and finally, collating AA-E3 near Glenda Drive's Industrial Zone. It is noteworthy that the benefits of collocation are asserted by witnesses for SPL, FMC and Manapouri – and that they are able to do so without the benefit of an agglomeration study.

[551] While tenant and developer locational preferences are an important consideration, they are not the sole consideration or even a controlling factor when deciding the provisions of this plan change. And we assume (as we think we must) that businesses will act rationally when making locational decisions.

Outcome

[552] We reject the proposition that the proximity of SPL land to Glenda Drive supports the enablement of AA-E3 or the proposed Trade Retail Overlay.

[475] Refer to Mr Long's evidence at 1056 of the Transcript.
[476] Transcript at 1053.

Issue: ***Would AA-E3 or the Trade Retail Overlay give effect to the objectives and policies of the operative District Plan?***

[553] We found Mr J Brown's evidence on whether AA-E3 would give effect to the operative provisions of the District Plan to be unhelpful as it was selective of the matters considered under the operative District Plan. He said:

> "[t]he Part 11 objectives and policies for business zones addresses the non-town centre type retailing, and I consider the provision of trade and home improvement and yard based retailing in Activity Area E3 is consistent with these provisions...[477].

[554] We were perplexed by Mr J Brown's focus on Section 11: Industrial and Business Areas. The undisputed evidence was that Section 11 of the operative District Plan is proving difficult for the District Council to administer with consents for non-complying retailing activities weakening the provision for industrial land[478] and so we wondered whether by focusing on Section 11 this is the statutory planning equivalent of a *straw man?* Be that as it may his evidence does not assist our understanding of whether, and the extent to which, AA-E3 would give effect to any of the Resource Management Issues and Zone wide objectives and policies or the higher order provisions of the operative District Plan when considered in the round.

[555] We conclude that AA-E3 would most likely develop as a fourth commercial centre and that its policies are strongly enabling of this result. However, there is nothing in its provisions that would ensure a mix of uses eventuates. At this location the Activity Area would be inconsistent with the District Council's policies which seek to keep the urban area compact (Section: District Wide Issues, clause 4.5.3, objective 1 and policies 1.1 and 1.2). We also find that the unmet growth demand in retail activities (such that there is) should be located in AA-E2 and in a manner that complements and reinforces the form and function of AA-C1 and that this would be the most appropriate way to achieve the purpose of the Act.

[556] And we find the QLDC's Trade Retail Overlay would have the same result.

[477] J Brown Supplementary Statement April at [28].
[478] Hutton Transcript at 1486 (residential activities), at 1501 (retailing) and at 1576 (loss of control generally over administration of District Plan's policy).

Outcome

[557] On the evidence provided we are not satisfied that AA-E3 or the proposed Trade Retail Overlay would give effect to the objectives and policies of the operative District Plan, and if a fourth commercial centre node emerges then it is likely to be inconsistent with those provisions. In short, we conclude that the AA-E3 objective is not the most appropriate way to achieve the purpose of the Act.

[558] We may have reached a different view on whether there should be provision for a Trade Retail Overlay had Remarkables Park Ltd (supported by SPL) not successfully applied for a private plan change enabling up to 30,000m^2 additional retail floorspace at the Remarkables Park Zone located near the periphery of its existing centre. PC34 (now operative) is to enable future expansion of the commercial centre, including large format retail activities. In making our determination on all activities areas we have taken into consideration that there is zoned land to accommodate large format retail activities in the Remarkables Park Zone.

[559] It follows from all our findings that we reject SPL's relief to zone its land AA-E3.

[560] And we reject the Trade Retail Overlay.

Part 12 Activity Area E4

Introduction

[561] In Part 2: Jurisdiction we held that there was no jurisdiction for the court to consider Activity Area E4 (AA-E4).

[562] Having done so two issues arise:

(a) whether the court should its exercise its discretion under section 293 and direct the District Council to amend the plan by including the new Activity Area?

(b) what matters arising in relation to FMC and Manapouri land can be determined at this hearing?

[563] Before we address these issues we briefly describe the history that led to the proposed Activity Area.

Background

[564] Under PC19(DV) land owned by Manapouri Beech Holdings Ltd is zoned AA-E1 and FM Custodians Ltd land is zoned AA-A and AA-E1. Manapouri and FMC propose their land be zoned Activity Area E4; this is a new Activity Area with its own objective, policies and rules.

[565] The genesis of Activity Area E4 is uncertain. As far as we can tell, it made its first appearance in the July 2011 planners' conference where the participants agreed to a new "Trade Retail Overlay" to apply to land bounded by SH6, the EAR, Road 2 and Glenda Drive.[479] Trade and Home Improvement Retail activities would be enabled within the Trade Retail Overlay.[480] However, during the course of the hearing Ms Hutton also told us that the Trade Retail Overlay was originally to be located south of Road 2 on land subject to an appeal by Trojan Holdings Ltd. We understood the

[479] Joint Witness Statement (Planners) at [7].
[480] Joint Witness Statement (Planners) at [16].

Overlay was a site specific proposal agreed to in order to settle the Trojan Holdings appeal and from there the Overlay has been considerably expanded.[481]

[566] At the same July conference the planners agreed that the FMC and Manapouri sites would be subject to a standalone Activity Area (AA-E4), which – because it was within the Overlay, would also enable trade retail activities.[482]

[567] As the planners do not give reasons for their agreement, we do not know what resource management issues either the Trade Retail Overlay or AA-E4 respond to. In agreeing to the provisions, the planners did not propose to amend the Resource Management Issues statement at the commencement of the plan change. While the content for the rules, standards and methods was scoped, the higher order provisions are not developed beyond noting that new provisions are required and that activities within this area are to have a high standard of amenity.[483]

[568] A second planners' conference was convened in December 2011. From the Joint Witness Statement subsequently produced we learn that FMC and Manapouri's land has different (but unstated) characteristics when compared with other land in AA-E1 and AA-E2, and secondly, that the planners supported a new Activity Area in order to manage the interface with the state highway. [484]

[569] Having heard the planners give evidence, it appears that there are three drivers for AA-E4 and the Trade Retail Overlay:

(a) an unmet demand for 30,000m^2 floorspace for Trade and Home Improvement Retail activities within Queenstown/Wakatipu;
(b) the management of the interface between land-use activities at this particular location and the state highway and also within the broader landscape and urban context; and
(c) the management of access in relation to this land and the state highway.

[481] Transcript at 1503.
[482] July 2012 Planners' Conference at [9].
[483] Joint Witness Statement (Planners) July 2011 at [18].
[484] Joint Witness Statement (Planners) December 2011 at [22].

[570] For now we respond briefly to the first issue – whether there is an unmet demand for 30,000m^2 floorspace for Trade and Home Improvement Retail within Queenstown/Wakatipu. As previously intimated, this belief appears to have arisen because of a misunderstanding of evidence to be given by SPL's witness, Mr Tansley, in support of a 30,000m^2 precinct.[485] Mr Tansley's precinct would accommodate a wider range of activities than Trade and Home Improvement Retail activities.

[571] QLDC's planner, Ms Hutton, belatedly comes to this realisation during the course of the hearing when she agrees that there are opportunities for Trade and Home Improvement Retail activities to locate either within consented developments or in areas already enabled through the District Plan. This includes Frankton Flats Special A Zone, Remarkables Park Zone (including the recently approved PC34) and in the Gorge Road Business Area.[486] We are not, however, harsh critics of Ms Hutton. The proposal for a 30,000m^2 precinct was poorly understood by other witnesses, being translated by most into the need for the Trade Retail Overlay. And throughout her evidence Ms Hutton expressed anxiety with the levels and location of retailing proposed (at least by SPL) in this plan change.[487]

[572] That said, it appears to us that in an endeavour to settle individual appeals the District Council gave little or insufficient attention to the strategic implications of the proposed Trade Retail Overlay or the new AA-E4. The District Council would have been better assisted if it had initially asked the question – to what resource management issues does the proposed Activity Area or the Trade Retail Overlay respond and are there any other responses that better meet the statutory tests? Secondly, what is the source of the court's jurisdiction to consider the amendments to the plan change?

Issue: ***Whether the court should exercise its discretion under section 293 and direct the District Council to amend the plan by including the new Activity Area***

[573] While FMC and Manapouri did not make a submission seeking that the court exercise its discretion under section 293, and because we find their relief goes beyond that sought under its notice of appeal, we have considered whether, on our own volition,

[485] Second Joint Witness Statement (Planners) dated December 2011 at 15.
[486] Transcript at 1503-1505.
[487] Transcript at 1505.

the court should do so recognising the importance of the new Activity Area to these parties.

[574] The purpose of section 293 is to give the court power to make changes to a proposed plan, change or variation which are otherwise not within the court's jurisdiction; *Remarkables Park Ltd v QLDC.*[488] While the court in *Remarkables Park Ltd v QLDC* was considering the post-2005 version of section 293, we find there is no change to the purpose of the section.

[575] We agree with Judge Jackson's interpretation of section 293 in *Gardez Investments Ltd v QLDC* where he said that first the amended relief sought must relate to the subject matter of appeal; and secondly, (as a matter of discretion) the amended relief is to have a rational connection to the original relief.[489]

[576] There must also be some appropriate basis for the court to determine to exercise its discretion; *J P Thacker v Christchurch City Council* (C026/2009) at [91].

Sub-issue: ***Is there a nexus between the extended relief sought in these proceedings and either the subject matter or relief sought in the notice of appeal?***

[577] To a large extent this sub-issue has been addressed in Part 2: Jurisdiction. To recap:

(a) in its notice of appeal, FMC supports the inclusion of its land within AA-E1. The higher order provisions for AA-E1 are not the subject matter of its appeal and by its relief (which is to extend the zoning on the balance of its land and to provide a connection to the site from a required road) FMC is not seeking to amend the AA-E1 higher order provisions;

(b) the higher order provisions of AA-E1 are likewise not the subject matter of Manapouri's appeal. In the notice of appeal Manapouri's relief (relevantly) is to change the status of three activities. This does not amount to a challenge to the underlying Activity Area – any argument to the contrary would admit to the use of rules, standards and method being as

[488] (2006) 13 ELRNZ 21 at [20].
[489] C95/2005 at [56].

a stalking horse for higher order objectives and policies and fails to recognise that rules, standards and methods are to implement policies and objective – not the other way around.

Sub-issue: Does the evidence support the case for extending relief?

[578] Given the findings above we do not need to consider the strength of the case for supporting the extended relief. However, in deference to the cases run by FMC, Manapouri and the District Council we briefly give our key findings.

[579] There was a considerable volume of evidence (particularly through cross-examination) directed towards this proposed Activity Area, underscoring the important contribution this land will make to the form and function of the wider urban area. In this regard it is noteworthy that the District Council did not seek Mr Mead's advice prior to agreeing to the extended relief, this is so notwithstanding that he was engaged by the District Council to give policy analysis in support of the plan change. Reflecting perhaps their different roles in these proceedings, Ms Hutton, also a planner for the District Council, does not offer any policy analysis of the new Activity Area.[490]

[580] We understand Mr Mead's eventual position to be that he can support a new Activity Area as a way to address discrete issues arising from the existing activities on the land, the land's close proximity to the state highway and to Glenda Drive and finally, the location of the land at the gateway to the Queenstown urban area.[491] Secondly, the new Activity Area evolved in response to a demand by Trade and Home Improvement Retailers for land within PC19 but outside of AA-C1/C2 or E2.[492] Mr Mead records that discussions between the District Council and FMC/Manapouri have become focused on the types of activities to be enabled on this land and not the outcomes [we interpose, informed by the relevant resource management issues].[493] His comments are insightful as to the disparate positions the parties have taken in their preferred objectives which we set out next in full.

[490] Hutton February Supplementary Evidence at [23-24, 39].
[491] Mead April 2012 Supplementary Evidence at [26.f] and from Transcript at 1370.
[492] Transcript at 1370.
[493] Transcript at 1374.

[581] In PC19(DV) the (joint) objective for AA-E1and AA-E2 which would apply to this land is:

> To create additional zoning for light industry and related business activity within the Frankton Flats Special Zone (B) (Activity Areas E1and E2).[494]

And policy 10.1 is:

> To enable predominantly industrial and trade service activities within Activity Area E1.

[582] In the Ferguson/Hutton version of the plan change the objective supported by FMC, Manapouri and the District Council for AA-E4 is essentially that the land can be developed. Light industry is presently undefined, business is also an undefined term and commercial activities means the sale of goods and services with few limitations. This objective is broadly stated as follows:

> Development within Activity Area E4 that supports light industry, business and commercial activity with a focus on a high standard of amenity alongside State Highway 6.

[583] This objective was subsequently revised by Ms Hutton in April 2012 this time with a greater focus on the desired outcomes for the Activity Area. The objective reads:

> To maintain and enhance the entry experience into the Queenstown urban area of a predominately enclosed, treed environment along the State Highway corridor east of the EAR, while allowing the opportunity for buildings of high architectural merit to create an alternative gateway experience.

[584] Amongst the supporting provision is QLDC's policy 9.1 which is:

> To enable predominantly light industrial service commercial and business activities along with related retail sales aligned to construction and trade service activities within Activity Area E4.

[585] However, FMC and Manapouri's planners, Messrs C Ferguson and S Freeman, disagreed and proffered a fourth alternative. Essentially an iteration of the version that appears in the Ferguson/Hutton version of the plan change, the objective is as follows:

[494] Objective 10.

To enable Activity Area E4 to develop as a mixed use industry, service and office environment, including Trade and Home Improvement Retail, with a high standard of amenity alongside State Highway 6.

Discussion and findings

[586] It was common ground between the retail analysts and Mr Copeland, an economist, that with access to, and exposure along the state highway, this land would be extremely attractive for retail development.[495] If AA-E3 was also approved, the two Activity Areas would operate as a single retail hub and if that were to be the case it would be preferable, as SPL proposed, to consider the integration of development on both sides of Road 2.[496] In short, there would be a strong commercial presence at the entrance to Queenstown.[497]

[587] We agree with this assessment and do not accept Ms Hutton's evidence that AA-E4 either strengthens or promotes land for industrial purposes.[498] While it is proposed that industrial activities be permitted, we find that it is more likely that the land will be used for retail activities (albeit these activities require resource consent).

[588] Fundamentally, the problem with AA-E4 as identified by Messrs Mead, Edmonds and S Brown, lies with the low likelihood that the objective and policies will be given effect due to the range in activity types promoted.

[589] FMC/Manapouri's proposed objective is to enable development of a wide range of activities, with development to have a high standard of amenity. The District Council's objective, which applies to a very similar range of activities, (broadly summarised) is to promote buildings with high architectural merit which actively address the state highway and to hide all other buildings behind landscaping.[499] Mr Mead observed that the District Council's objective, and to an extent its policies, are about explaining the range of activities that may establish in this area.[500]

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[495] Long Transcript at 1072, Copeland Transcript at 1021; Heath Transcript at 974; Tansley Transcript at 897-8. See also Edmonds (a planner) Transcript at 1732.
[496] Heath Transcript at 976.
[497] Mead Transcript at 529.
[498] Transcript at 232.
[499] Mead Transcript at 1386 and 1438.
[500] Transcript at 554.

[590] We find that the wide range of activities supported by FMC/Manapouri and the District Council could lead to considerable variation in the urban form of this Activity Area. Given this it is doubtful that the alternative sets of policies before the court would be given effect to.

[591] Mr S Brown illustrated the dilemma this way when he posed the rhetorical question what is a "high amenity" industrial building?[501] Mr Mead, for the District Council, shared his insight – the issue is not that there are buildings along the state highway but the proximity of the land to the state highway and types of activities that may establish.[502] He doubted landscaping controls would effectively respond to retail activity which would likely aggressively seek to establish an active frontage with the state highway through signage, building colour and design.[503]

[592] Finally, the opportunity to develop some or all of the land with direct access onto the state highway or Required Road 9 will have a significant influence on built form. Buildings could actively address the state highway, the Required Road or both. Whether a legible coherent development would emerge in this area is uncertain and the ability for landscaping to respond equally is unknown. We do not consider these outcomes could be managed effectively through FMC/Manapouri's proposed Urban Design Panel.

Outcome

[593] We find that there is no nexus or connection between the extended relief sought by FMC and Manapouri and either the subject matter of, or relief sought under, the notice of appeal.

[594] We are not satisfied that the objective for Activity Area E4 (either the District Council or FMC/Manapouri version) would achieve the purpose of the Act and doubt the policies could be given effect to. If it were open to the court to consider the merits of the competing provisions – and we have held that it is not, then we would have declined to exercise our discretion under section 293.

[501] Transcript at 412-421.
[502] Transcript at 534.
[503] Transcript at 531-2.

[595] In this respect, our findings are very similar to those of the first instance hearing Commissioners, who likewise felt constrained by the scope of submissions, and adversely commented on the appellants' motivation to keep open as many future options as possible without corroborating evidence as to their appropriateness, environmental effects or suitability.[504]

[596] Accordingly we decline to exercise our discretion pursuant to section 293 to direct amendments to the plan change.

Issue: ***What matters arising in relation to FMC and Manapouri land can be determined at this hearing?***

[597] All parties agreed that these strategically important parcels of land can be developed. The issues to be addressed are manifold and include the functional relationship between the land, Glenda Drive Industrial Zone and wider plan change area; the form (and related level of amenity) of urban development at the entrance to Queenstown; whether urban development at this location should afford views towards The Remarkables; the visibility of development from the state highway; the physical relationship of the land to the Glenda Drive entrance and whether the development is to have permanent access to the state highway, the Required Road or both.

[598] The Environment Court has an appellate jurisdiction and, as always, we are careful not to undertake the planning role which has been vested in the territorial authority; *Canterbury Regional Council v Apple Fields Ltd.*[505] To engage with policy development to address the important site specific issues that arise in relation to the FMC and Manapouri land would overstep the court's jurisdiction.

Outcome

[599] Within the limits of the court's jurisdiction, we have addressed the zone wide objectives and policies, and the objective and policies for AA-E1.[506]

[600] We are, however, satisfied that in line with the sub-zone that applies to the Manapouri site, and subject to the court's findings in relation to objective 1 and related

[504] Decision of the hearing Commissioners at [39].
[505] [2003] NZRMA 508 at [45].
[506] See Parts 6 and 13.

policies, AA-E1 can be extended over the balance of the FMC site. Otherwise we leave for the lower order hearing the rules, standards and methods – including the proposed rules enabling access to the state highway building height and setback.

Part 13 Activity Area D

Introduction

[601] There are the two industrial sub-zones: Activity Area E1 (AA-E1) and Activity Area D (AA-D). In this Part we consider Activity Area D and commence our decision recapping on how much land is required for industrial type activities.

Issue: ***How much land is required for industrial and yard based activities and where should this be located?***

[602] Over the next 15 years the 2006 Commercial Land Needs Analysis estimated that between 30 hectares (gross) of land was required for yard and transport-based activities in the Queenstown/Wakatipu area, of which Mr Mead estimates PC19(DV) enables up to 50% growth demand. As noted earlier these are types of industrial activities for which PC19 makes provision within AA-D. For SPL Mr Heath estimates 45 hectares (gross) is required for all industrial activities which he equates to be roughly equivalent to AA-D, E1 and E2.[507] We note that since Mr Health prepared his evidence the District Council no longer supports all categories of industrial activity within AA-E2

[603] We set aside any potential for industrial activities (other than light industry suitably defined) to locate in the mix use AA-E2 area, as unquantifiable and inappropriate.

Outcome

[604] Subject to our findings in this Interim Decision, the total land area available under AA-D and AA-E1 is approximately 35 hectares (net).[508]

Issue: ***What is the intended function of Activity Area D?***

[605] PC19(DV) objective for Activity Area D (objective 8) is:

[507] Heath EiC at [91].
[508] We arrive at 35 hectares net as follows AA-E4 (1.62hectares) + AA-E1 (20.39hectares) + AA-D (7.95hectares) plus rough estimate AA-C2 west Grant Road (5).

> To provide an area dedicated to industrial and yard based activities to meet and maintain the economic viability of these activities within the District – Activity Area D.[509] [Emphasis added].

[606] On appeal, this objective did not meet with the planners' approval and QLDC planners Ms Hutton and Mr Mead, QCL's planner Mr Edmonds and SPL's planner Mr Brown each proposed amendments. The amended wording proffered by QLDC's planners for this objective reads:

> An area dedicated to yard-based activities where there is a predominance of outdoor storage of goods, equipment and materials. [Emphasis added].

[607] While the two versions of the objective talk about "yard based activities" the term "yard based activities for the Frankton Flats (B) zone"[510] appears in the plan change and offers a definition through listing qualifying activities as follows:

> **Yard based activities for the Frankton Flats (B) zone:**[511]
> Yard based activity means the use of land and buildings for the primary purpose of the transport, storage, operation, maintenance or repair of goods and/or the storage and servicing of vehicles.

This definition is notably quiet on the question of retail sales, while admitting to the possibility of a secondary purpose. We also wonder what, paraphrased, a primary purpose of operating or repairing goods might authorise.

[608] While QLDC's revised objective concerns "yard based activities", subsequent policies address specifically industrial activities and the zone's Activity Table includes an even wider range of activities. From the Activity Table we learn four land use activities are contemplated (we include permitted activities and those activities that are not non-complying or prohibited), namely:

- industrial activities, services activities (including ancillary retail activities);
- yard based industrial activities;

[509] PC19(DV).
[510] PC19(DV) at J-79. We note that the term "yard based activities for the Frankton Flats (B) zone" does not appear in the plan change, but understand this term to mean "yard based activities".
[511] PC19(DV) at J-79.

- offices ancillary to any permitted or controlled activity (except buildings); and
- a range of activities including panel beating, spray painting, motor vehicle etc.[512]

[609] The Ferguson/Hutton version of the draft plan change adds to this list yard-based retail within 50m of the EAR where at least 60% of the area is devoted to sale of goods is located outside of a weatherproof building.

Discussion and findings

[610] It is not clear to us how QLDC could administer the District Plan in a way that ensures its preferred version of the objective is achieved i.e. that there is a "predominance of outdoor storage of goods, equipment and materials", if as the Activity Table suggests, a range of other activities may establish which are not yard-based activities (i.e. the Activity Table includes both industrial activities and yard-based industrial activities). More problematic is the inclusion of a series of activities, panel beaters and the like, which are unlikely to require 3,000m^2 land (being the minimum lot size in this Activity Area).[513]

[611] We note service activities, which are permitted, are defined in the District Plan as "the transport, storage, maintenance or repair of goods" which also has the potential to extend beyond outdoor storage. This is essentially the same definition as "yard-based activities for Frankton Flats (B) zone" save that the latter includes the operation and/or storage and servicing of vehicles.

[612] Either QLDC's version of the objective is too narrow or the definition of "yard based activities for the Frankton Flats (B) zone" is too narrow or both. Alternatively, and quite probably, the list of activities in the Activity Table is not sufficiently well aligned with the objective.

[613] We have made a minor amendment to the wording of objective, but consider a better approach is for the parties to do the following:

[512] PC19(DV) Rule 12.20.3.7 Table 1.
[513] PC19(DV) 12.20.5.2(xvi)(a) and clause 15.2.6.3.

(a) QLDC is to confirm its objective that this is an area dedicated to yard-based activities;

(b) review the range of industrial activities proposed in light of the objective and the minimum lot size for this Activity Area; and

(c) review the Activity Table and, if appropriate, exclude activities that are not yard-based activities.

[614] While we understand the background ebb and flow of the policy content for AA-E1 and AA-D in response to the various appeals, if the QLDC preferred objective is to be confirmed then the policies require substantial revision. We have considered the amendments proposed by the other planning witnesses; Messrs J Brown and Edmonds particularly struggled with this, however the amendments they propose do not adequately address the relationship between yard based activities and the range of activities contemplated for this zone. Fundamentally, our impression is that QLDC has yet to finalise its stance on policy for this Activity Area or (Activity Area E1) and we direct, that it is to do so.

Outcome

[615] Assuming that AA-D is dedicated to yard-based activities as QLDC's objective suggests (and indeed also the equivalent objective proposed by SPL) then this area may not be suitable for industrial activities that are not yard-based activities or manufacturing notwithstanding these activities are mentioned in the policies. In our revision of the policies we have excluded these activities. And secondly, we have assumed that it also important that sites in the sub-zone remain sufficiently large that they are available to and can accommodate the envisaged activities. The court has proposed an amended wording of QLDC policy 11.10 to make this more explicit. Ms Hutton also agreed with us that the policy needed rewording to reflect this intention.[514]

[616] While a formal decision on the Activity Table will be made later in the lower order provisions hearing it is to be reviewed now. When doing this the parties are to note that we reject that part of policy 11.7 as to the "future adaptive re-use" of buildings.

[514] Transcript at 1630.

Ms Hutton agreed with us that the policy is poorly expressed and without a parent objective.[515]

[617] Finally, the parties are to review the court's revisions and either confirm or suggest editorial changes.

Issue: ***Can the interface between AA-D and C2 be managed?***

Should we exercise our discretion under section 293 and direct that the plan change be amended to in the manner proposed by QCL (with QLDC's support)?

[618] A key point of difference between SPL on the one hand and QLDC/ QCL on the other, concerns the management of the interface between AA-D (the yard based Activity Area) and AA-C2 (the residential area). Specifically, this issue affects land located east of Grant Road in the vicinity of Road 5 (a required road).

[619] Related to this, is the question of whether we should exercise our discretion under section 293 and direct that the plan change be amended in the manner proposed by QCL (with QLDC's support)?

[620] Both issues are addressed in the following section.

Background

[621] In PC19(DV) the hearing Commissioners determined that the interface between AA-D and AA-C2 could be managed through road frontage controls and a range of controls were imposed on buildings and activities within AA-D, including (relevantly):

- a street scene setback of 5m;[516]
- a 10m landscape setback from Grant Road;[517]
- a minimum building set back from any internal boundary to an adjacent Activity Area of 5m;[518]
- a maximum building height of 10m;[519]

[515] Transcript at 1630.
[516] PC19(DV) clause 12.20.5.2(ii)(a).
[517] PC19(DV) clause 12.20.5.2(iii)(b).
[518] PC19(DV) clause 12.20.5.1(iv).
[519] PC19(DV) clause 12.20.5.1(f).

- a maximum building coverage of 30% (proposed in the Ferguson/Hutton draft to increase to 40% excluding hard surfaces for AA-D);[520]
- a minimum lot size of 3,000m^2;
- a standard of noise control relative to the boundary with AA-C;[521]
- site standards and zone standards restricting retailing;[522] and
- we also note that the hearing Commissioners had a relatively narrow band of AA-C2 on the southern side of Road 5 so the activity areas had a common boundary (unlike the SPL 4b arrangement where they are separate by Road 5).

[622] And within AA-C2 the controls include:

- an ambiguously worded minimum street set back of 25m from AA-D together with a front yard of not less than 3m;[523]
- a variable stepped height plane, but in the boundary of AA-C2 and AA-D height of 18.5m;[524]
- a maximum building coverage of 70%;[525] and
- a daytime sound level that is the same for AA-C2 and AA-D, with an even higher night time sound level – albeit over shorter period in AA-C2.[526]

[623] The PC19(DV) Structure Plan includes an indicative road (Road 5 equivalent) within AA-C2 set back from the Activity Area boundary with AA-D. The hearing Commissioners do not explain their rational for this configuration.

[624] Importantly PC19(DV) contains assessment matters for resource consents for buildings and activities within AA-C2 located within 20m of the boundary with AA-D, including:[527]

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[520] Ferguson/Hutton version of the draft plan rule 12.20.5.1(i).
[521] PC19(DV) clause 12.20.5.2 (iv)(b).
[522] Ferguson/Hutton version of the draft plan change, clause 12.20.5.2(xv).
[523] PC19(DV) clause 12.20.5.1(iv)(c).
[524] PC19(DV) clause 12.20.5.1(iv)(e).
[525] PC19(DV) clause 12.20.5.1(ii)(b).
[526] PC19(DV) clause 12.20.5.2(iv)(a).
[527] PC19(DV) clause 12.20.6(xv)(a-c).

Buildings and activities within Activity Area C2 Located within 20m of the boundary with Activity Areas D and E2

(a) The use of a building setback of at least 10m along the boundary with Activity Areas D and E2, with rear yard space to be used for car parking, accessory buildings, and landscaping, to prevent reverse sensitivity effects, outdoor living space should not be included within this area.

(b) The use of design that orientates main living areas/outdoor open spaces away from the boundary of industrial or business areas

(c) Residential units designed to achieve a suitable internal noise environment within habitable rooms through appropriate acoustic insulation and the provision of mechanical ventilation.

And for building and activities within AA-D, the following assessment matters apply:[528]

Buildings and activities within Activity Area D and within 20m of the boundary with Activity Area C2

(a) Whether and to what extent landscaping is proposed in order to effectively enhance the amenity of the streetscape and to break up and enhance the external appearance of the industrial buildings.

(b) Buildings should be designed so that vehicle access or loading doors, fans, air conditioning, equipment or air discharge devices are located away from the Activity Area C2 boundary

(c) Fencing and the use of a wide planted strip along the Activity Area C2 boundary to screen outdoor storage areas

(d) Location of lighting spill in contained within the site.

The position of the parties

[625] As previously traversed in Part 9: Activity Area C2 the evidence for SPL was that the interface between AA-D and AA-C2 could be managed through a combination of buffering afforded by a Required Road (Road 5), road frontage controls for buildings and finally landscaping.

[626] QLDC and QCL stepped back from the controls in PC19(DV) and proposed to buffer the residential C2 area east of Grant Road by rezoning part of it and the adjacent AA-D, AA-E2. AA-E2 (or QCL's AA-E2 (Grant Rd) would be a mixed use zone for

[528] PC19(DV) clause 12.20.6(xvi).

retail, office and light industrial activities.[529] QLDC proposed residential activities would also be located within this new mixed use zone. These activities would either be permitted or alternatively require resource consent as limited discretionary activities.[530]

Issue: ***Should we exercise our discretion under section 293 and direct that the plan change be amended?***

[627] In Part 2: Jurisdiction of this decision we found that the court did not have jurisdiction to consider either the rezoning AA-C2/D land east of Grant Road as AA-E2 (Grant Rd) or to rezone AA-D land west of Grant Road in the manner proposed by QCL and supported by QLDC.

[628] In the event the court held that we did not have jurisdiction QCL urged us to consider exercising our discretion under section 293 and directing the District Council to amend the plan change. QCL submitted:

> In this instance, while QCL's appeal has formally focused on the issues (inter alia) surrounding the form, function, size and location of an urban centre (Town/Village), within the original Activity Area C, such issues have been pursued due to the constraints that QCL perceived arose from the primary decision of the Council for optimal use of Activity Area C land on Grant Road. The same may be said of the E2 band proposed along the northern fringe of Road 5.
>
> In other words, if the Court were to exercise its jurisdiction under s293 to rectify the identified issues around broadening the activities that might be enabled on this former C land, then it would be applying s293 over the same land that QCL's notice of appeal covers. QCL submits that a clear nexus between the original relief and the additional relief would exist: both being for the purpose of relieving the land in question from inappropriate and wasteful constrains on use and development.[531] [Emphasis added]

Discussion and findings

[629] The court is cautious when exercising its jurisdiction under section 293 to amend a plan change and in this case we decline to do so. Noting the dicta in the High Court decision of *Canterbury Regional Council v Apple Fields Limited* [2003] NZRMA 508 at [37]:

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[529] QCL Activity Table, 3 May 2012.
[530] Matrix Table by QLDC dated 3 May 2012.
[531] QCL Closing at [220-221].

> Despite the best efforts of everyone involved in the process of preparing or changing a plan, the reality is that *unforeseen issues or proposals beyond the scope of the reference* can arise and that in some cases it will be more appropriate for the matter to be resolved at the Environment Court level than by referring it back so that the territorial authority can initiate a variation.

- there must, however, be a nexus between the notice of appeal and the changed relief sought (per *Hamilton City Council v New Zealand Historic Places Trust* [2005] NZRMA 145 at [25]).

[630] We accept that the Five Mile Holdings notice of appeal (to which QCL is a successor) includes land proposed to be rezoned AA-E2. However, we find that there is insufficient nexus with the notice of appeal and the expanded relief sought for the following reasons:

(a) contrary to what QCL submits the proposed AA-E2 east of Grant Road is not located on land within Activity Area C as notified in the plan change – or to the extent that it is, then only a very small area of land is involved;
(b) the notice of appeal does not challenge the underlying AA-C2 or AA-D zoning of the land either east or west of Grant Road;
(c) of the alternative relief in relation to Activity Area C, QCL seeks the retention of AA-C1 (the town centre) and its development as part of, and complementary to, the adjoining Frankton Flats Special (A) Zone; and
(d) QCL's proposed AA-E2 (Grant Road) would expand the town centre by the provision for retail (including LFR), office and light industrial activities.

[631] In terms of whether there is an appropriate basis for the court to determine whether to exercise its discretion, we find that there is a real prospect that if the court directed amendments to the plan change in the manner proposed by QCL and QLDC, the plan could end up in a form which could not reasonably have been anticipated by the public resulting in potential unfairness to persons who could otherwise have participated in these proceedings.

[632] Before the new mixed use area was proposed, QLDCs' strategic planner conceived of an urban area being a "second CBD".[532] While a "second" CBD is a non-sequitur, the import of this statement lies in the area's ability to be intensely developed for a wide range of activities and the function that the centre would develop, relative to other centres. This is not the same issue as that considered in Part 4: Land Use Demand, namely whether retail development would change trading patterns in the CBD and where we concluded that it would be unlikely to adversely affect the CBD.

[633] We conservatively estimate the area to be occupied by AA-C1 and AA-E2 (Grant Road) together with FF(A) Zone to be approximately 16-17 hectares. We include the FF(A) Zone and AA-C1 as they would likely have a strong functional relationship. The scale of the town centre and the role it may consequentially perform if augmented in the manner QCL seeks are matters we judge better left for a variation or for the district plan review due to be notified in October 2013.[533]

Outcome

[634] We decline to exercise our discretion pursuant to section 293 with the consequence that we make no directions to the District Council in relation to the proposed AA-E2 (Grant Road) zone.

Issue: Can the interface between AA-D and C2 be managed?

[635] We have already noted the mix of motivations driving this amendment, including a (then) unmet need for land for large format retail activity and secondly, managing the interface between the two Activity Areas. It was also suggested by QLDC's planner, Mr Mead, that the shift of the Airport's noise boundaries was the reason why he preferred rezoning this land, however, we struggled to understand this explanation.

[636] Dealing specifically with the interface of two Activity Areas, we are unclear whether it is the District Council's and QCL's position that the interface between AA-D and AA-C2 cannot be managed or that the rezoning of land for mixed use activities is an alternative (better) method.

[532] Mead EiC at [5].
[533] Transcript at 1546.

[637] The District Council planning evidence did not extend much further than offering unsubstantiated opinions that the plan change interface was not optimum;[534] it was not the best option[535] and that the AA-E2 (Grant Road) would function better,[536] and residents in AA-C2 would have a higher level of amenity.[537] We were not assisted by any evidence describing the amenity benefits of locating high density residential activities adjacent to, say, light industry or retail when compared with the alternative.

[638] We agree with Mr Mead's statement urban design can mediate between different land uses in order to achieve good outcomes and may be applied as an alternative method to zoning (or in this case Activity Areas).[538] We were disappointed this approach was not applied to PC19(DV)'s provisions before the District Council's witnesses reached their conclusion that the land area in question should be rezoned AA-E2. On the evidence before us, we are not satisfied that rezoning would be a more appropriate method for the following reasons:

(a) under both the SPL and QLDC's Structure Plan (which includes residential activities within AA-E2) residential activities would overlook AA-D;

(b) we do not accept that the amenity expectations of residents located within the AA-E2 would be significantly different from those living in a high density AA-C2 residential area;[539]

(c) under the QLDC Structure Plan (and to a much lesser extent QCL) residential activities within AA-C2 would locate adjacent to a mixed use zone. In contrast, the SPL and PC19(DV) Structure Plan physically separates residential activities from industrial and service activities by a required road (Road 5); and

(d) reverse sensitivity effects would arise under each of the Structure Plans (including PC19(DV)), in particular visual and noise effects emanating from adjoining non-residential activities.

[534] Transcript at 1450.
[535] Transcript at 1484/5.
[536] Transcript at 1484/5.
[537] Transcript at 1350/1.
[538] Transcript at 1375.
[539] Transcript at 1353.

Outcome

[639] We are satisfied that the interface between AA-D and AA-C2 can be managed. The interface controls will be formally considered in the hearing into the lower order provisions. As we have no jurisdiction to approve the rezoning of AA-D land west of Grant Road, any concerns with the interface controls in that area will also need to be addressed at that time.

[640] Mr J Brown proposed policies to manage the interface between AA-C2/D, AA-D/Grant Road and AA-D/ EAR (policies 10.3 and 11.4). These are important policies if the assessment matters for buildings and activities within AA-D are to be given effect, and we find that his proposed policy 10.3 is sufficient with some minor amendment. Finally, we generally approve the alignment of Required Road 5 shown on SPL's 4b Structure Plan.

[641] Finally, we agree that the zoning of land for industrial activities will make a significant contribution towards the growth in demand for this activity and in turn support sustainable urban growth in the Queenstown/Wakatipu area. The location of Activity Area D near the Airport is a sensitive choice given the natural environment and landscape values of the area (District Wide Issues: objective 4.9.3(1)) while not undermining the operations of the Queenstown Airport (District Wide Issues, objective 4.9.3(7) and (8)). The zoning of land will augment the Industrial Area at Glenda Drive and at Gorge Road which are near or approaching capacity.

[642] QLDC is to confer with the parties and respond addressing in general the matters in this Part and at paragraph [613ff].

[643] If, as we have assumed, AA-D is dedicated to yard-based activities then the parties are to comment on the court's revision to the policies. If it is not, and the objective for this Activity Area cannot be agreed, it is likely the court will direct further evidence be called.

[644] QLDC is encouraged to review its objective for this Activity Area together with AA-E1 which we come to next.

The court's revision

Objective 11: Activity Area D (Yard-based area)

To provide an area dedicated to yard-based activities where there is a predominance of outdoor storage of goods, equipment and materials. (QLDC objective 11)

Policies

11.1 To utlise Activity Area D for yard-based activities ~~and industrial activities~~. (QLDC policy 11.10)

11.2 To require ~~buildings design to allow for future adaptive reuseand to ensure~~ office spaces to be ~~are~~ insulated from noise from yard-based activities ~~industrial~~ activities. (QLDC policy 11.7)

11.3 ~~To ensure land is used for its intended purpose within this activity area, any~~ Office space and retail activities must be directly ancillary to and minimal in comparison with ~~to~~ the principal use of the site to ensure land is used for its intended purpose within this Activity Area. (QLDC policy 11.8)

11.4 To exclude retailing of goods unless ~~manufactured on site or~~ directly connected to the use of the site for the outdoor storage of goods. (QLDC policy 11.4)

11.5 To require all parking, loading and turning of vehicles that are based in, or service, yard-based areas to be contained internally within each ~~industrial~~ site. (QLDC policy 11.2)

11.6 To promote high quality design and layout of all sites and buildings at and near the interface with Grant Road, the interface with Activity Area C2 and the interface with the Eastern Access Road where additional controls for building and site design, landscaping and the screening of outdoor storage areas are necessary to avoid adverse effects on amenity values. (QLDC policy 11.3, SPL policy 10.3)

11.7 By ensuring sites ~~for industrial and business activities~~ provide an attractive frontage to streets, public places and neighbours. (PC19(DV) policies 9.2, 10.5)

11.8 To exclude activities (such as residential activities, custodial units and visitor accommodation) that conflict with the intended function of this Activity Area ~~activities of the intended uses in the Zone~~ and which would otherwise not be appropriate in close proximity to the Airport. (QLDC policy 11.5)

11.9 Limiting building coverage to ensure that yard-based sites are not compromised over time. (QLDC policy 11.1)

11.10 To maintain minimum lot sizes in the Activity Area to ensure that the sub-zone is available for activities requiring large sites. ~~To ensure that the use of industrial areas is maximized by requiring large minimum lot sizes and excluding further re-subdivision.~~ (QLDC policy 11.6)

11.11 Any yard-based retail activities may only occur at the interface with the Eastern Access Road. Such retail activities must be limited to goods ~~manufactured on site or~~ directly connected to the use of the site for the outdoor storage of goods. (QCL policy 11.4)

11.12 To promote pedestrian connections into adjacent Activity Areas and reserve areas. (QCL policy 9.7)

Explanation and principal reasons for adoption

The District ~~is extremely short on~~ requires land dedicated to ~~industrial land and land dedicated to undertake~~ yard-based activities. This shortage of land places pressure on existing land resources, pushing up prices and it may force some of these activities out of the District. Because of the nature of activities occurring on these sites, and the land is within the Outer Control Boundary, any form of residential or visitor accommodation activity is inappropriate. Yard based activities ~~land~~ also makes ~~a~~ a good neighbour for the Queenstown airport. It will be compatible with the existing and reasonably foreseeable future effects of the Airport operation. (SPL)

Part 14 Activity Area E1

Introduction

[645] We turn next to Activity Area E1. Having already dealt with the land area required for industrial and yard-based activities Part 13: Activity Area D there is a single issue for determination.

Issue: ***What is the intended function of Activity Area E1?***

[646] Is Activity Area E1, as the title to the objective suggests, an "industrial area" or is it more than that? We commence our examination of this issue summarising the relevant provisions.

[647] The objective for Activity Area E1 (objective 10) in PC19(DV) is:

> To create additional zoning for light industry and related business activity within the Frankton Flats (B) (Activity Areas E1 and E2). Emphasis Added

[648] This objective also did not meet with the planners' endorsement and alternative wording was proposed. The revised wording proffered by QLDC's planners, was as follows:

> **Objective 10** Area E1 (Industrial area)
> An area of industrial activities which have a standard of amenity pleasant to visit and work within while recognizing their function as workplaces.

[649] A review of the policies supported by the QLDC planners reveals that in addition to policies specifically for industrial activities there are policies for trade services and business activities. Notably there is a policy that addresses industrial areas and business areas, both of which may be located here.[540]

[650] The zone Activity Table contemplates five specific activities for this Activity Area (some of which may require resource consent).[541] These are:

[540] Proposed policy 10.7 in Hutton, Third Supplementary Statement of Evidence, April 2012 and QLDC Closing Annexure 2.
[541] Rule 12.20.3.7, Table 1 at J25.

- industrial activities, service activities (including ancillary retail activities); and
- industrial activities, service activities (including ancillary retail activities) within 50m of SH6;
- yard-based industrial activities;
- offices ancillary to any permitted or controlled activity (except buildings); and
- a range of activities including panel beating, spray painting, motor vehicle etc.

[651] This list is expanded in the Ferguson/Hutton version of the draft plan change by adding:

- yard-based retail located wholly within 50m of the EAR, otherwise this activity is non-complying;
- trade and home improvement retail, within the trade retail overlay;
- industrial activities, services activities (including ancillary retail activities) within 50m of SH6.

[652] The Activity Table makes no reference to "trade services" and "business activities" that are mentioned in the policies and these activities are not defined in the operative District Plan or plan change.

[653] The distinction between AA-D and AA-E1 is not entirely clear as the range of activities that could establish is similar. A quick review of the rules, standards and methods reveals many of these apply to both Activity Areas; although there are differences in frontage controls as AA-D has additional provisions which address the amenity of the adjoining Activity Areas.[542] That said, the principal difference appears to

[542] The relevant rules, standards and methods for AA-D and AA-E1 are: street scene setback of 5 for AA-D and AA-E1, a 10m landscape setback from Grant Road for AA-D; a minimum building set back from any internal boundary to an adjacent activity area of 5m for AA-D; the maximum height of any building in AA-D of 10m as opposed to 12m in AA-E1; both AA-D and AA-E1 have the same standard of noise control relative to the boundary with AA-C; and the same site standard restricting retailing in AA-D and AA-E1 applies; together with the same zone standard that requires the "open yard character" is to be maintained where there is retailing.

be the maximum building coverage and minimum lot size restrictions that apply, as follows:

- a maximum building coverage of (now) 40% excluding hard surfaces for AA-D;[543] AA-E1 has a maximum building coverage of 55% in the site standards[544] and 80% in the zone standards;[545] (we think these standards are inconsistent, but if not that then we are quite unclear how they are to operate) and
- a minimum lot size of 3,000m^2 in AA-D but no minimum lot size in AA-E1 (or in the other Activity Areas).[546]

Discussion and findings

[654] QLDC's amended objective substitutes "industry" for "light industry and related business activity" without making consequential changes to the policies. QLDC appears to have overlooked the fact that the PC19(DV) objective 11 applied to two sub-zones; AA-E1 and AA-E2. AA-E2 now sits under its own objectives and policies. If approved this may (indeed very likely will) have the unintended consequence of enabling general business to establish in this Activity Area.

[655] Mr J Brown, for SPL, attempts to deal with the plethora of activities by excluding from the policies reference to "business activities" and "business areas" and introducing to the objective "trade services". While we consider his general approach to be correct, we differ in the detail.

[656] The provision of land for industrial activities addresses an important resource management issue and a key objective (objective 1A) for this Zone. While we have revised the objective and policies further work is needed. It is important that the parties:

(a) identify the subject matter, and function, of Activity Area E1 (for example is it to include yard based activities?); and

[543] Ferguson/Hutton version of the draft plan rule 12.20.5.1(i).
[544] PC19(DV) 12.20.5.1(i)(a).
[545] PC19(DV) clause 12.20.5.2 (ii)(c) – note it is second clause 12.20.5.2 (ii).
[546] PC19(DV) clause 12.20.5.2 (xvi)(a) and clause 15.2.6.3.

(b) either confirm or suggest further editorial changes.

[657] In relation to the objective the parties are to consider whether it is correct that the "function" that is referred to concerns the "workplace". The reference to "workplace" was introduced by Ms Hutton without further explanation. Would it be more appropriate to refer to the "Activity Area"?

[658] The parties are to note that all references to "business" are to be removed from the objective and policies.

[659] QLDC policy 10.1 states that the area is to be used "predominately" for industrial activities. How would "predominately" be enforced? If it cannot, then the reference should be deleted. Moreover, we are unsure what "trade services means" and suggest it may be more accurate to refer to "related service activities". We have used "service" (singular) and without the added qualification "trade services" which does not appear in the Activity Table.

[660] QLDC policy 10.5 is concerned to ensure that the use of industrial land is maximised by ensuring "adequate minimum lot sizes". Zone standard 12.20.5.2 xvi(a) states that there is no minimum lot size for all Activity Areas, save AA-D. If this is what is intended, the policy cannot be given effect. But, in any event, we do not understand what is meant by "adequate" minimum lot size. Assuming that there is no minimum lot size, we have redrafted the policy for the parties' consideration. When responding, the parties are to confirm what is to apply in relation to minimum lot size in this Activity Area.

[661] In QLDC policy 10.7 we have deleted reference to the "principles of comprehensive development". These principles are not stated in the operative District Plan or plan change and as their content is not known the policy cannot be given effect.

Outcome

[662] Leave is granted the parties led by the District Council to review and propose a revised version of the objective and policies, subject to their overall direction being maintained.

The court's revision

Objective 10 Area E1 (Industrial area)

To provide an area for industrial and related service activities which have a standard of amenity, pleasant to visit and work within, while recognising the function of the Activity Area. ~~as workplaces~~. (QLDC objective 10)

Policies

10.1 To use ~~enable~~ ~~predominantly~~ Activity Area E1 for industrial and ~~trade~~ related service activities. ~~within Activity Area E1~~ (QLDC policy 10.1)

10.2 To enable yard-based retail activities on sites fronting the Eastern Access Road. (SPL policy 12.2)

10.3 To ensure that the use of industrial land is maximised by ensuring adequate minimum lot sizes. ~~and building design to allow for future adaptive resuse~~ (QLDC policy 10.5)

10.4 To ensure that sites are used for the intended function of the Activity Area, any office space and retail activities must be directly ancillary to, and minimal in comparison with, ~~to~~ the principal use of the site. (QLDC policy 10.8)

10.5 To exclude activities (such as residential activities, retail and visitor accommodation) that conflict with the intended function of Activity Area E1. (QLDC policy 10.4)

10.6 To ensure provision is made for adequate road access and on-site loading and manoeuvring areas, for heavy vehicles and to ensure that there is always sufficient area within all sites for large vehicles (truck and trailer units) to exit the site forwards. (QLDC policy 10.2)

10.7 To require a high quality of design and landscaping for buildings and activities that are viewed from the Eastern Access Road. (SPL policy12.3)

10.8 To require all outside storage to be appropriately screened from the Eastern Access Road in order to retain high amenity values. (SPL policy 12.4)

10.9 To ensure provision is made for adequate employee and public car parking in this Activity Area in the design and layout of subdivisions as well as at the time of development. (QLDC policy 10.6)

10.10 To promote high quality design and layout of new sites ~~industrial and business 10reas (consistent with the principles of comprehensive development)~~ that is sensitive to the amenity of neighbouring activities. (QLDC policy 10.7)

10.11 To require sites ~~By ensuring for industrial and related service activities~~ business ~~activity~~ provide an attractive frontage to streets, public places and neighbours. (QLDC policy 10.3)

10.12 To minimise the adverse effects created by poor street appearance, and the generation of noise, glare, traffic and dust within the Activity Area. (QLDC policy 10.9)

10.13 To promote safe and convenient pedestrian connections into adjacent Activity Areas and reserve areas. (amended QCL policy 12.8)

Part 15 Affordable housing and community housing

Issue: ***Should the policies, rules, standards and methods applicable to affordable housing and community housing be decided in the higher order hearing?***

Introduction

[663] The statement of resource management issues identifies that the primary goal of the Frankton Flats Special (B) Zone is to enhance the sustainable development of Queenstown. This area is acknowledged as one of a few left with the capacity to contribute significantly towards the need for affordable housing at densities not achieved elsewhere in the district. In keeping with this goal, development should create a livable community characterised by high quality urban design and include residential neighbourhoods containing affordable housing.

[664] To provide context we set out the relevant provisions together with their PC19(DV) parent objective (objective 2):

> **Objective 2**
>
> To enable the creation of a sustainable zone utilising a Structure Plan and an Outline Development Plan process to ensure high quality and comprehensive development.
>
> **Policies**
>
> 2.1 ...
>
> 2.2 To enable a range of residential housing including community housing with an emphasis on relatively high amenity and high density living environments;
>
> 2.3 To provide for a suitable range of local services and business activities including retailing, visitor accommodation, residential, education and associated commercial and short term residential uses, affordable housing, mixed live/work units, business, and both light and heavier industrial uses which provides for projected land use requirements;
>
> 2.4 ...

Plan Change 24

[665] Prior to the commencement of this hearing to lend focus and assist the parties who have become quite polarised, the court identified from the materials a range of

issues for determination including the provision for Affordable and Community Housing (these had been proposed by Queenstown Lakes Community Housing Trust in its notice of appeal and supported by QLDC).[547] The parties held a different view and advised that Affordable and Community Housing was a matter for the lower order hearing (i.e. the hearing to address the rules, standards and methods). On this basis the court understood that the higher order provisions were either not or no longer remained in contention.

[666] As it transpired nothing could be further from the truth as QLDC presumably with the support of the Queenstown Lakes Community Housing Trust proposed, with no evidential support (at least none that we could find), amendments to the PC19(DV) including:

(a) defining the terms "Affordable Housing" and "Community Housing";
(b) amending PC19(DV) policies 2.2 and 2.3 principally by introducing the term "Affordable and Community Housing" (an abbreviated reference to the terms in (a) above);
(c) introducing a guideline for residential development within AA-C2 of a minimum density of 75 dwellings per hectare which while it applies to any type of residential housing would support the implementation of the affordable housing policy;[548]
(d) amending the requirements for affordable homes by introducing into the relevant rule reference to Affordable Housing and Community Housing and specifying the number of Affordable Housing Units and Community Housing Units to be delivered within AA-C1/C2 and extending its application to AA-E2;[549] and
(e) confining the requirement to specify the legal instrument to ensure delivery of the policy to Community Housing only.[550]

[547] Foodstuffs, FM Custodians, Manapouri Beech Investments, QCL, SPL and Jack Point Ltd are parties to this appeal.
[548] Rule 12.20.3.3(iii)(k), Transcript at 1883.
[549] Ferguson/Hutton version of the draft plan change at J19-20.
[550] Ferguson/Hutton version of the draft plan change at J20.

The position of the parties

[667] During the course of the hearing SPL and QCL, whose land interests are not confined to the plan change area, submitted the "Affordable and Community Housing" provisions introduced by QLDC during evidence exchange should be rejected.[551]

[668] We understand (although this was never clearly stated) that the fundamental objection to these amendments lies in the introduction of terms and analogous rules, standards and methods to those that appear in PC24. In 2009 QLDC promulgated PC24 to address a shortage of affordable and community housing within its district. In 2010 a preliminary question of law was referred to the Environment Court[552] and then, on appeal to the High Court,[553] as to whether PC24 falls within the scope of the Act. The Environment and High Courts held that it did. Subsequently an application for special leave to appeal the High Court's decision to the Court of Appeal has been granted.[554]

[669] From the discussion between the bench and SPL and QCL, these parties wish to avoid the court's imprimatur of PC24 through the approval of its contested terms and concepts in this plan change.

[670] In submissions received following the completion of evidence QLDC and QCL, requested the policy for affordable housing be confirmed (with minor amendments) but that we not rule on the affordable housing "issue" (at least we understand to the extent that PC19(DV) adopts terms, rules, standards and methods that are the same or similar to PC24) and instead adjourn this part of the proceedings.[555] If this were done there would be sufficient strategic provision to determine Queenstown Lakes Community Housing Trust appeal at the lower order hearing.[556]

[671] The proposed adjournment was opposed by SPL on the basis that this would be inefficient and impractical.

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[551] Transcript at 1604-5.
[552] *Infinity Investment Groups Holdings Ltd v Queenstown Lakes District Council* [2010] NZEnvC 234.
[553] *Infinity Investment Groups Holdings Ltd v Queenstown Lakes District Council* [2011] NZRMA 321.
[554] *Infinity Investment Groups Holdings Ltd v Queenstown Lakes District Council* [2012] NZHC 750.
[555] QLDC and QCL memorandum dated 11 May 2012 at [6-7].
[556] Transcript at 1884.

Discussion and findings

[672] It was not clear from SPL's submission what the basis of its opposition to QLDC and QCL's request for an adjournment was, but we divine from its most recent memorandum that rather than leave relevant terms, rules, standards or methods to the lower order hearing SPL seeks now a determination from the court.[557] We decline to do so for the following reasons:

(a) PC24 proposes amendments to rules in the operative District Plan. The rule amendments provide that for most operative zones conditions may attach to consents granted for non-complying activities and for some discretionary activities.[558] For new zones PC24 envisages provision for affordable housing will be made in via the plan change process;

(b) QLDC is rightly concerned that there is provision for affordable housing in the higher order provisions of PC19;[559]

(c) to approve now SPL's proposed rules, standards and methods would be manifestly unfair to Queenstown Lakes Community Trust as it would be effectively deprived of its right of appeal.

[673] We did not understand there to be any real dispute that there should be provision for affordable housing and community housing in the district; the dispute is around the manner by which this is to be done. In this Interim Decision we deliberately use lower case when referring to affordable housing and community housing, noting these terms are as yet undefined.

[674] If the policies retain reference to affordable housing and community housing this will be sufficient for the court to consider at the lower order hearing the related definitions, rules, standards and methods. In our view it is a straight-forward drafting exercise to achieve consistency with the PC24 provisions (if these are eventually approved by the courts and assuming this is a suitable approach for this Zone). Nothing

[557] See, for example, SPL memorandum dated 14 May 2012 at [3.4-5] and memorandum dated 24 May 2012.
[558] PC24 at [L16 and 18].
[559] Transcript at 1880.

in this decision restricts the relief sought by Queenstown Lakes Community Housing Trust in its appeal. What is important here is that there is policy in PC19 and that this is capable of being implemented through rules (etc) in a way that enables high density residential units including in mixed use developments which (hopefully) will be accessible to those needing less expensive accommodation.

[675] Finally in Part 6: Objectives and Policies we approved a new objective (objective 1A) and related policies. Included within this policy suit are PC19(DV) policies 2.2 and 2.3 that address, amongst other matters affordable and community housing.

[676] Turning now to the relevant policies, under PC19(DV) policy 2.2 originally referred to "community housing" – and not "affordable housing".[560] QLDC submits that there does not need to be policy reference to "community housing" as this is to be achieved through a retention mechanism in the rules. As the concept of affordable housing includes the sub-category "community housing" it is sufficient that PC19 refer to and enable the former.

Outcome

[677] As recognised in the Resource Management Issues for the Zone, this land is one of the few areas remaining that has the capacity to contribute significantly toward the need for affordable housing at densities not achieved elsewhere in the District. These are important policies, and it is imperative that they remain in some form if the District is to realise objective 1A concerning urban growth and the sustainable management of resources. The policies also give effect to the higher order provisions in the operative District Plan including (importantly) Section: District Wide Issues, clause 4.9.3 objectives (3) and (4) and related policies.

[560] See PC19(DV) policy 2.1 where the wording is set out.

Part 16 Queenstown Airport

Introduction

[678] QAC's primary objective was to ensure that the importance of the ongoing operation of the Airport was recognised and that the Airport was protected against reverse sensitivity effects.[561]

[679] As discussed, during the course of the hearing the plan change provisions were substantially revised. Subject to some minor amendments QAC supports the amendments made by QLDC to the higher order provisions, including the reordering of the objective and policies.[562] QAC opposes SPL's revised objective and policies as it would preclude controls it supports in relation to Activities Sensitive to Aircraft Noise outside of the outer control boundary.[563]

The Plan Change Provisions

[680] The relevant objective in PC19(DV) is "[t]o ensure that the development of the Zone protects ongoing functioning of the Airport."[564]

[681] QLDC in its general reorganisation of the objectives and policies, has brought together discrete provisions relating generally to the management of infrastructure. Its [new] objective, objective 3 reads:

> **Objective 3: Managing the impacts on infrastructure**
>
> - The on-going functioning of the airport is protected and the adverse effects of noise from the airport on activities is controlled.
> - To manage travel demand to reduce reliance on the private car and to maximize transport network efficiencies and travel choices.
> - Stormwater is managed and a variety of open spaces are provided in a way that integrates with the built environment.

[561] QAC Closing submissions at [2 and 22].
[562] QAC Closing submissions at [22].
[563] Activities Sensitive to Aircraft Noise or "ASAN" is defined in the plan change.
[564] Objective 13, renumbered objective 3 in QLDC's general revision of the plan change.

[682] For the purposes of this discussion, we are interested in the first of these infrastructure objectives.

[683] QAC proposes alternative wording for the relevant part of the objective, as follows:

> The on-going functioning of the airport is protected and the potential reverse-sensitivity effects relating to the Airport are avoided.

[684] While QAC generally supports regrouping of Airport related policies under this objective, it submits policy 3.2 (adopting QLDC numbering) should be amended by deleting the reference to "vibrations", as this makes no sense in the context of requiring building and site design to achieve specified acoustic insulation.

[685] Finally in closing QAC proposed a new policy to apply to mitigate the noise effects arising from its operations, as follows:

> To require additional levels of insulation that what is normally required within residential and business zones to avoid the adverse effects of noise generated from the Airport, including reasonable foreseeable future effects.

Under its appeal, Air New Zealand Ltd seeks confirmation of the following provisions:

(a) to consequentially amend (renumbered) policy 8.2 in the District Wide Issues so that its applies to the Frankton Flats Special Zone (B);
(b) to approve (renumbered) PC19(DV) policy 13.3;
(c) to approve the definition of Activities Sensitive to Aircraft Noise; and
(d) to amend rule 12.20.3.7, Table 1 (also referred to in the decision as the Activity Table) to record the prohibited status of Activities Sensitive to Aircraft Noise within AA-A, C1 and C2.

Discussion and findings

[686] There appears to have been no critical review of the provisions relating to the Airport, apart from their grouping from various parts of the plan change under objective 3.

[687] Putting to one side the Airport's proposed no complaints covenant,[565] if the controls proposed for this Zone are more stringent than those in PC35, then it is our view that all provisions, including the objective and policies should be adjourned to the lower order hearing so that the court has a proper technical understanding of the issues to which these provisions respond. Directions have been made requiring QAC to respond within **ten working days** of this Interim Decision issuing.

[688] As for the wording proffered by the District Council and QAC for the objective we simply comment that it is an arid debate whether it is the community or the Airport that is to be protected from the effects of noise, including the reverse sensitivity effects. Both are relevant when considering an application for resource consent. We have revised the objective and if this does not achieve what the parties seek then, subject to QAC advice on the nature of controls that it supports in relation to the management of airport noise, it is our intention to approve PC19(DV) objective (corrected for grammatical expression).

[689] Turning next to the policies supported by QLDC (and set out at the end of this Part), the first part of policy 3.1 has been largely achieved through this plan change and can be deleted. For example, if ASANs are prohibited within the OCB (PC19(DV) policy 13.3) why include a statement to this effect in policy 3.1 which, with less exactness states: ASANs "are not at all appropriate within Activity Area D or otherwise within the Airport Outer Control Boundary". A similar comment could be made in relation to QLDC policy 3.3. The parties are to confer to determine whether they accept the court's changes, and if not, to propose alternative wording to give effect to decisions within this Part.

[565] Noble EiC [7.24-25].

[690] If the PC35 standard of mechanical ventilation and/or acoustic insulation is to apply to this Zone, then can QLDC policy 3.2 be amended to read:

> To ensure that Critical Listening Environments of all new and alterations and additions to existing buildings containing Activities Sensitive to Aircraft Noise achieve an Indoor Design Sound Level of 40 dB Ldn, based on the 2037 Noise Contours.

PC19(DV) contained an important policy (PC19(DV) policy 13.3) prohibiting Activities Sensitive to Aircraft Noise within the outer control boundary of Queenstown Airport. Air New Zealand, by way of relief, seeks confirmation of this policy. The policy is confirmed.

[691] Addressing QLDC policy 3.4 the reference to "reasonable foreseeable future effects" and "additional levels of insulation than what is normally required" appears coy when growth in the Airport's operations and measures to address the adverse effects arising from its existing and future operations has been addressed at least for other Zones within the District (in PC35 and the amendment to Designation 2). We have amended the policy to reflect this but note that QLDC policy 3.3 has equally ambiguous language.

[692] As the for balance of Air New Zealand's submission, the definition of Activities Sensitive to Aircraft Noise has been approved by the Environment Court in the context of the PC35 proceedings. The amendment proposed to the policy in the District Wide Issues Chapter is a logical extension and is approved pursuant to section 293. We will make a formal determination on the Activity Table in the lower order hearing, but for now note that the changes proposed by Air New Zealand appear to be consistent with these policy amendments.

Outcome

[693] The important role that the Airport performs is recognised and provided for in the Regional Policy Statement[566] and also the operative District Plan under section 4: District Wide Issues, objective 6, policies 6.1 and 6.2. Subject to QAC's advice as to the level of controls it would see imposed on land use activities that are in addition to

[566] See for example, Chapter 9 Built Environment.

those provided for under PC35, the revised PC19(DV) objective or the court's alternative would achieve the purpose of the Act.

[694] We have revised the objective and policies, reordering its provisions, in line with our comments.

Directions

[695] Within **ten working days** of receipt of this Interim Decision QAC is to file and serve a memorandum advising whether it would support controls that are in addition to those it supports in PC35.

[696] Assuming that there are no more stringent controls (that is apart from the no complaints covenant), then QLDC having conferred is to consider and respond to the following:

(a) whether QLDC policies 3.1 and 3.5 have (i) been achieved through this plan change in which case can they be deleted (or partially deleted); or (ii) revised to a single policy.
(b) the ambiguous use of language in QLDC policies 3.3 and 3.4.
(c) the application of PC35 with reference to the management of noise from the Airport;
(d) confirmation of the court's revisions or the suggestion of further editorial changes; and
(e) the District Council is directed pursuant to section 293 to prepare a change to the plan by amending policy 8.2 and to consult with the parties about the amended wording.

The court's revision

Part Objective 3:

To ensure that the development of the Zone protects the ongoing functioning of the Airport. (PC19(DV) objective 13).

OR

To ensure that the ongoing operation of the Airport is safeguarded including from adverse reverse sensitivity effects and that adverse effects of Airport noise on surrounding activities is controlled. (court)

Policies: Airport Operation

~~By using a structure plan which distributes Activity Areas and development opportunities in locations most appropriate to their needs and also which will best provide for the existing and reasonably foreseeable future operational capability of the Airport~~

3.1 Activities Sensitive to Aircraft Noise ~~(ASAN)~~ are most appropriate within those parts of Activity Areas C1 and C2 which fall outside the Outer Control Boundary ~~OCB~~ and are not all appropriate within Activity Area D or ~~otherwise~~ within the Airport Outer Control Boundary. (part QLDC policy 3.1))

3.2 To require in building and site design, compliance with performance standards to achieve specified acoustic ~~and vibration~~ insulation. (QLDC policy 3.2)

OR

To ensure that Critical Listening Environments of all new and alterations and additions to existing buildings containing Activities Sensitive to Aircraft Noise achieve an Indoor Design Sound Level of 40 dB Ldn, based on the 2037 Noise Contours. (court)

3.3 To prohibit Activities Sensitive to Aircraft Noise ~~(ASAN)~~ within the Outer Control Boundary ~~relating to the~~ of Queenstown Airport. (PC19(DV) policy 13.3)

3.4 To establish a buffer of industrial land between the airport and noise-sensitive activities in the Frankton Flats Special Zone (B). (QLDC policy 3.5)

3.5 To ensure that development will not adversely affect the ~~existing and reasonably foreseeable future operational capability and capacity of~~ operations of Queenstown Airport and to avoid the establishment of Activities Sensitive to Aircraft Noise ~~(ASAN)~~ in locations where reverse sensitivity effects may constrain the existing and future operations ~~operational capacity~~ of Queenstown Airport.(QLDC policy 3.4)

3.6 To ensure that development is complementary to the operations ~~current and reasonably foreseeable future operational capability~~ of Queenstown Airport. (QLDC policy 3.3)

Policy 8.2 District Wide Issues is amended as follows:

To prohibit all new Activities Sensitive to Aircraft Noise within the Frankton Flats Special Zone (B), Rural and Industrial Zones located within the Outer Control Boundary at Queenstown Airport, and to limit such uses in the Frankton Flats Special Zone (A).

Part 17 Landscape

Introduction

[697] In this section we examine two methods proposed by the parties to address the effects of the development on the views of the surrounding landscape. These methods (namely building height controls and the requirement to provide landscape views), are not the only measures proposed to manage landscape and visual amenity effects, but are discussed here as they make an important contribution to the urban framework.

The witnesses

[698] We heard from six witnesses including for SPL landscape architect Mr S Brown, urban designer Mr K Brewer and planning and resource management consultant Mr D Serjeant. Landscape architect Mr P Baxter and urban designer Mr N Barratt-Boyes gave evidence for QCL, and for QLDC we also heard from landscape architect Dr M Read.

Building Height Controls

[699] Two alternative methods were presented to manage views over, through and out of the plan change area. These being:

(a) PC19(DV)'s stepped height controls supported, with amendments, by QLDC and QCL; and

(b) an inclined height control proposed by SPL to apply to the land to the west of E4.

Stepped Height Controls

[700] The stepped height controls would permit development to occur within certain height limits at specified distances from SH6. The stepped height control denotes the extent to which the effects of screening of The Remarkables by development within the plan change area are considered acceptable.

[701] As supported by QLDC and QCL the stepped height control limits are set out in section 12.20.5.2 (iv) Zone Standards-Building Height.[567] QLDC has amended the zone standard in response to:

(a) the September 2010 primary evidence;

(b) the caucus statements;

(c) QLDC's experts' supplementary evidence;

(d) general editing.[568]

[702] The provisions of the QLDC's proposed amendments to the Zone standard are summarised in the following table (Table 8) with the amendments shown in underline or strike through:

Table 8

Stepped height control standards

Activity Area	Distance From State Highway (metres)	Maximum Height (metres)	Maximum Storeys Above Ground Level
A, C1, C2 and E2	Within 65	No buildings permitted	NA
C1, C2 and E2	65 - 100	6.5	2
C1, C2 and E2	100 - 150	9.5	3
C1, C2	150 - 200	15.5	5
C1, C2	More than 200	18.5	6
D	NA	10	NA
E1,~~E2~~ and E4	Within 65	9	NA
E1,~~E2~~ and E4	More than 65	12	NA
E2 Outside OCB (Residential buildings only)	More than 150	18.5	6
Other Provisions For C1, C2 and E2: • Mezzanines regarded as full floor levels. • Semi basement car parking does not count as storey for purposes of maximum number of storeys where roof is no more than 1.2 metres above ground level. • All building heights within 150 metres of state highway can be extended by 1.5 metres above maximum heights for purpose of roof articulation. Maximum number of storeys still applies.			

[567] Ferguson/Hutton version of the draft plan change at pages J-32 and J-33.
[568] Ferguson/Hutton version of the draft plan change at pJ-1.

[703] The location on the state highway where the horizontal distances are to be measured from was not defined in PC19(DV), although there does not seem to be any disagreement among the experts that this should be from the southern edge of the highway reserve. We return later to discuss the origin of the viewing point from a vertical perspective.

Inclined Height Plane

[704] The alternative method proposed by SPL to manage the visual effects of development was an inclined height plane. In Mr S Brown's opinion development up to the height limits proposed by QCL/QLDC would have a major adverse impact on views and perception of The Remarkables[569] and the development would render The Remarkables a subservient background role.[570]

[705] He said further:

> ... the fact that views to The Remarkables convey much of the very essence of the Queenstown experience, it is therefore not critical that the Frankton Flats are pristine or outstanding in their own right. However, it is important that the Frankton Flats, and development across them, avoid compromising the landscape experience associated with this connection to The Remarkables, as well as the key mountains and hills. In particular, it is highly desirable that:
>
> - activities and development on the Frankton Flats complement views to The Remarkables and other key mountains/hills; and
> - that the Frankton Flats landscape retains a certain visual appeal and coherence in its own right, notwithstanding the change and variable development that has already occurred and the prospect of further change around the airport.
>
> The Remarkables range is a distinctive feature of, and 'emblem' for Queenstown, it is much less visually accessible than might pre-suppose in the first instance. As a result, the views from State Highway 6 ... are highly influential and significant. They are not 'just another view of The Remarkables'.[571]

[706] Mr S Brown proposed an inclined height plane in order to visually contain urban development below the sight line of buildings closest to SH6 (some 65m south of the

[569] S Brown EiC at [46].
[570] S Brown EiC at [47].
[571] S Brown EiC at [38-39].

SH6).[572] Proffered as a simplification of the stepped height control,[573] when viewed from SH6 all buildings within the plan change area would not rise above 6.5m (or where roof articulation is provided 8m). The inclined height plane would offer the same development potential overall[574] and in Mr S Brown's view it would give greater certainty as to what views are to be protected, whilst allowing a greater area of The Remarkables to be viewed along the state highway.[575] Mr Brewer supported the inclined height plane as avoiding the potential for a series of flat planes stepped across the plan change area.[576]

[707] The inclined height plane was described in the following way:

(a) Activity Area A: 0 metres

(b) Activity Areas C1/C2, E1, E2, E3: 6.5m (or a 2 storey development) at 65m from SH6 graduating to a maximum of 12m (or a 4 storey development), providing all development stays below a 'height control' commencing 1.0m above the centreline of SH6 then rising to 6.5m above the natural ground level at 65m from SH6 and continuing to climb towards The Remarkables.[577]

[708] The method allows for an additional 1.5m for roof articulation for buildings within the 6.5m height limit.[578]

The issues

[709] The discussion which follows in this Part focuses on the screening effects of the buildings in the PC19 area along the frontage of the proposed Activity Area E4 (AA-4) as viewed from the state highway. The court heard evidence building heights on SPL's land proceeded on the basis that being located south of E4 and beyond about 65m from SH6, its buildings would not be seen above any building in the proposed AA-E4. We

[572] Transcript at 380.
[573] S Brown Transcript at 380.
[574] S Brown January 2012 Evidence at [8].
[575] S Brown Transcript at 428.
[576] Transcript at 674.
[577] S Brown Supplementary Evidence (Jan 2012) at [11].
[578] S Brown Transcript at 359-356.

note under PC19(DV) that beyond 65 m from the highway, the relevant height limit is 12m (assuming that it remains AA-E1). We will address the application of height controls together with set-backs for the Manapouri and FMC sites and height limits for AA-E1 at the lower order hearing.

[710] The over-arching issue to be determined was succinctly described by QCL's counsel. Acknowledging that development of land between SH6 and the airport will inevitably reduce views to The Remarkables from the state highway, the issue is "simply what planning regime strikes an appropriate balance between protecting those views, and efficiently making use of the land?"[579]

[711] More particularly, should:

(a) the building heights and storey limits in the District Council decision be confirmed? or

(b) an inclined height plane be adopted in preference to stepped heights for defining maximum building heights?

(c) any allowance be made for the fall off in ground levels from the highway to the south west of the site?

Before giving our findings on these issues, we examine in more detail the competing methodologies.

The evidence

[712] The landscape and urban design experts agreed on a protocol to be used to produce an accurate set of images as a common reference for analysis of views over the state highway.[580] The protocol, entitled *Protocol and Instructions to Surveyors for Height Planes November 2011* and produced as Exhibit 1, specified the work to be done to achieve this. Importantly, for the purpose of this discussion the anchor for the

[579] QCL Closing submission at [37].
[580] Landscape/Urban Design Witness Conferencing dated 23 November 2011 and Exhibit 1.

different height controls was agreed to be 1.5m above the southern edge of the highway reserve.

Photomontages

[713] Two sets of photographic montages were prepared by QCL and SPL witnesses, and produced in evidence by Mr P Baxter as Exhibit 2. The montages show the extent of screening of The Remarkables when viewed from the state highway west of FMC/Manapouri's land under the two height methods.[581]

[714] As the photographs in Exhibit 2 were taken from different viewpoints on the state highway, it is not possible to make an exact comparison of the extent of screening under the two height control methods. We record that it is counsels' responsibility to ensure that agreed protocols are adhered to by their witnesses or to provide an explanation for the departure that goes beyond mere description of the differences. Anything less simply reduces the utility of the evidence before the court. To complicate matters further, the witnesses used different approaches to show the extent of screening under the alternative height controls.

[715] QCL's photomontage at sheet 1 of Exhibit 2 shows that the projected extent of screening of the lower slopes of The Remarkables and Peninsula Hill using the stepped height control method would be greatest for the 15.5m/150m limit. There are then progressive reductions from this limit to the 18.5m/200m limit, then to the 9.5m/100m limit, then to the 6.5m/65m limit with this last limit having the least extent of screening. The extent to which The Remarkables are screened by development will differ depending on the location of the viewer. These differences were described in evidence by Mr Baxter, although not for the viewpoint shown in Exhibit 2.[582] A simple scaling of QCL's photomontage in Exhibit 2 indicates that, over the range of these different limits, when viewed from the state highway, The Remarkables at their highest point would be obscured for between 30% (for the 6.5m/65m limit) to about 40% (for the 15.5m/150m limit).

[581] Exhibit 2.
[582] February 2012 Supplementary Evidence.

[716] From sheet 1 of Exhibit 2, SPL's photomontage shows the projected extent of screening using the inclined plane method from an 8m height limit at 65m and a 6.5m building height with a 1.5m allowance for roof articulation. Again, simple scaling from this photomontage indicates that, when viewed from the state highway, The Remarkables at their highest point would be obscured for about 35% of their height.

[717] The second sheet of Exhibit 2 repeats the two photographs from the first sheet with a 15.5m/150m height limit superimposed on each. Both show screening of approximately 40% of The Remarkables at their highest point when viewed from the state highway. This is consistent with the extent of screening on the top photograph of the first sheet for this height limit.

Cross-sections

[718] The inclined height plane method continued to be developed during the course of the hearing, and is described in cross-sections attached to Mr K Brewer's supplementary evidence[583] as a drawing with two cross-sections extending more or less north-south across Activity Areas A, C1 and C2. These two cross-sections contrast the different methodologies, being Mr S Brown's inclined height plane and the building height limits from the PC19(DV) (see Table 8: Stepped height control standards).

[719] Whilst not explicitly defined, the cross-sections indicate that the horizontal distances have been measured from the southern edge of the highway reserve and that the vertical origin of the height control is 1m above the centre line of the highway.[584] In fairly simple terms, the cross-sections show that buildings developed in accordance with the stepped height control would rise above Mr S Brown's inclined height control in a number of locations across AA-C1 and AA-C2 whereas the SPL building heights, which have a maximum of 4 storeys beyond 200m from SH6, do not.

[720] Because of the court's concerns about the accuracy of the cross-sections produced, Mr Brewer produced another set of cross-sections (the **April 2012 cross-sections**).[585] The April 2012 cross-sections cover three different height limits,[586] 6.5m

[583] Dated 21 October 2011.
[584] Transcript at 670.
[585] These were filed in court by way of affidavit dated 10 April 2012.
[586] Brewer, Affidavit 10 April 2012.

at 65m and 8m at 65m, 9.5m at 100m, each starting at a point 1.0m above the centreline of the state highway. The distances are measured from the edge of the highway reserve which is shown as being 13.3m south of the centreline of the highway. The drawings also include a horizontal line depicting the 12m maximum height limit proposed by Mr S Brown in his supplementary evidence.

[721] The height limit lines shown in the April 2012 cross-sections are consistent with those shown on the cross-sections attached to Mr Brewer's rebuttal evidence in that their origin is 1m above the centreline of the state highway and the distances are measured from the edge of the highway reserve. However, the vertical origin taken from the evidence of Mr S Brown, differs from that agreed in the *Protocol and Instructions to Surveyors for height planes November 2011* (Exhibit 1)[587] which is 1.5m above the southern edge of the highway reserve, being the origin used to produce the marked up photographs of Exhibit 2 [our emphasis].

[722] Mr Brewer's affidavit also records that the ground levels on his April 2012 cross-sections are the levels which existed before the placement of materials excavated from the Frankton Flats Special (A) Zone as these levels will be used to calculate the maximum building heights at the consenting stage.[588] During the hearing it emerged that since the release of PC19(DV), material spread over QCL land on the PC19 site had increased ground levels by up to 2m in some locations. Unless there was a corresponding downwards adjustment to the proposed building height limits, this material, if left in place, would have a considerable impact on the actual levels of the tops of the buildings and the extent of their screening of the landscape. We return later to the advice during the course of the hearing that this excavated material is to be removed and that the ground levels to be used for defining the building heights are those that existed prior to the placement of the material.

[587] These protocols were also agreed to by SPL's witnesses Messrs Brewer and S Brown at the expert conference (Joint Witness Statement November 2011).
[588] Brewer Affidavit, 10 April 2012 at [4].

[723] SPL was a party to the *Protocol and Instructions to Surveyors for Height Planes November 2011* so it is not clear to us why two different origins were used.[589] Also, we do not recall hearing any evidence which provides an objective basis for choosing one or the other. Having said that, the slopes of the equivalent Exhibit 2 height limit lines are steeper than those shown on the April 2012 cross-sections with the consequence that the degree of screening of The Remarkables from the actual Brewer cross-sections will be slightly less than those shown on Exhibit 2.

Discussion and findings

[724] In Mr Brewer's April 2012 cross-sections all of the buildings in the QLDC/QCL stepped height control fall under the 8m/65m height control (6.5m plus an additional 1.5m for roof articulation) except for a small element at the top of the fifth storey of a building located just past 150m from the highway. Again, this is consistent with Exhibit 2 which shows that the 15.5m/150m building height limit has the greatest extent of screening of The Remarkables (we calculate about 40%).

[725] With the 8m/65m height control shown on Exhibit 2 (which has its origin 1.5m above edge of the highway reserve) screening about 35% of The Remarkables at their highest point, a height control anchored 1m above the highway centreline would result in screening slightly less than this.

[726] Counsel for QCL[590] also drew Mr S Brown's attention to a statement in his 2010 evidence[591] where he commented on the two viewpoints shown at his Annexure 14:

> Importantly from my point of view the reduction in potential building profiles means that even though the lower mantle of the Remarkables where its foothills meets the terraces around the Kawarau River and Wakatipu margins etcetera, nearly three quarters of their profile would be retained, helping to protect the Remarkables' visual presence, even pre-eminence, iconic form and sense of majesty.

[589] SPL witnesses Messrs Brewer and S Brown agreed to these at the expert conference: see Joint Witness Statement dated 23 November 2011.
[590] Transcript at 384.
[591] Brown, EiC 2010 at [83-84].

[727] When Mr S Brown refers here to the retention of nearly three quarters of the profile, this appears to be based on his viewpoint 13 on Annexure 14, which we take to be for a 6.5m/65m height control limit. This is different from his 8m/65m (6m plus 1.5m articulation allowance) height control limit shown on the first sheet of Exhibit 2 which indicates the retention of about two thirds of the profile.

[728] For her part, Dr Read, the landscape expert called by QLDC, agreed with counsel for SPL that she had not considered objective 1 and its related policies in the District Council decision requiring the protection of views of the surrounding landscape from the state highway. It was her view, nevertheless, that the level of development supported by QLDC and proposed in PC19 would not result in an unacceptable level of screening of the landscape.

[729] She concluded that "... the entry experience to Queenstown from the east does not involve a high level of exposure to the western ice scoured face of the Remarkable Mountains ..." and that "The vast majority of these mountains will remain unchanged as a result of this plan change". [592]

[730] While buildings on the land to the west of AA-E4 will screen views of the lower slopes of The Remarkables and Peninsula Hill from the state highway, none of the landscape or urban design witnesses argued against building on this land. As the evidence demonstrates, the extent to which The Remarkables are screened will depend on the location of the viewer.

[731] On the following matters there was general agreement as between the experts:

(a) the *horizontal* distances to the different height limits across the PC19 site are to be measured from the southern edge of the highway reserve; and
(b) the "ceiling" for the building heights across the PC19 land based on the 8m/65m height control (6.5m plus an additional 1.5m for roof articulation).

[732] The *vertical* anchor point for the height control, agreed to by the landscape and urban design witnesses in their protocol, is 1.5m above the southern edge of the highway

[592] Read EiC at [7.2, 7.3].

reserve. In contrast, the height controls in the cross-sections drawn by Mr Brewer in his affidavit of 10 April 2012 are anchored 1m above the centreline of the highway. As a consequence the inclined height planes shown on the cross-sections:

(a) cross the edge of the highway reserve (taken as being 13.3m from the centreline) at different heights depending on their upwards slopes and the camber of the highway with most likely to be in excess of a height of 1.5m;
(b) the slopes extend upwards at flatter angles than the angles agreed upon in the protocol; and
(c) will result in less screening of The Remarkables than the protocol height controls.

[733] We are not satisfied that Mr Brewer's cross-sections have been produced in accordance with the protocol and have sufficient doubt about the veracity of the cross-sections to accord them much weight. Further, we are not satisfied that the cross-sections demonstrate that the proposed stepped height controls would exceed the incline height plane for buildings located 150m from the edge of the state highway. Apart from discrepancies in the vertical anchor point, simple trigonometry applied to the cross-sections suggests that this may not be the case.

[734] Mr S Brown was asked by the court whether he considered it important for the 6.5m (or 8m) to be measured vertically across all of the 200m distance or whether the fall of the ground might allow some relaxation as you moved south. He responded that the fall of the ground was part of the reason why he had moved away from supporting the PC19(DV) stepped height control. He preferred an inclined height plane as this would provide greater certainty on the proportion of The Remarkables which would be screened by the PC19 developments.[593]

[735] Mr S Brown was also asked whether buildings in some locations to the south could be higher than his proposed maximum of 12m (i.e. 4 storeys) provided that they did not penetrate the inclined height plane. While accepting of this proposition, he advised that his proposed 4 storey limit was more to do with the continuity of urban form and to ensure that from within the newly developed area there would still be some

[593] Transcript at 427-428.

potential for views out to The Remarkables and Peninsula Hill. We are not aware of Mr S Brown's qualifications to give evidence on urban design matters and observe that the reduced height limit imposed across the entire site is a coarse method to address any intrusion over the vertical height limit at 15.5m.

[736] In that regard Mr S Brown did, however, agree with the proposition put to him by counsel for QCL that there was a need for balance between some loss of visual amenity at Frankton Flats and the desire for urban growth on the last area of available flat land within the urban growth boundary of Queenstown, provided this growth occurred under a specified height control.[594] This would be achieved through the ability to look over the urbanisation towards the important visual amenities of The Remarkables and Peninsula Hill.

[737] In summary, we prefer the evidence of Mr P Baxter. He adopted a methodology which was consistent within itself and has quantified, to our satisfaction, the reduction of views from the SH6 to The Remarkables. We find the loss of views to the surrounding landscape under the stepped height controls to be acceptable. It follows we do not accept the opinion of Mr S Brown as to the extent or significance of the reduction of views if the stepped height control were to be adopted.

[738] We consider that development built in compliance with the QLDC/QCL stepped height controls is less likely to offend visually than development built up to an inclining height plan, as the former will probably engender more variation and appear less shorn off. Finally, we foresee difficulties in the implementation of the inclined height plane due to the variable ground levels which exist across the plan change site as well as along the state highway.

Issue: ***How should height limits be measured?***

[739] There is no direction in PC19(DV) on the ground levels above which each of the height limits are to be measured. This was presumably based on the assumption that the PC19 land is flat – whereas the survey drawings attached to Mr Brewer's affidavit show that this is not the case. Mr Brewer's affidavit drawings also show that the centreline of

[594] Transcript at 380.

the highway along the length of the PC19 land is not level. At Grant Road the centreline is about 0.8m higher than at a point half way between Grant Road and the EAR. At the EAR itself, the centreline is about 0.5m lower than the centreline at Grant Road.

[740] We have concluded that to deal with the change in levels across the PC19 land, QLDC/QCL's stepped height control approach should be augmented by adding to each control a defined ground level.

[741] In his affidavit, Mr Brewer records that the topographical data/contours shown on his drawings are based on the Otago Datum. For consistency, it would seem sensible for the plan change to adopt ground levels which are related to this datum. The level to apply at each of the stepped height limits would then be the highest ground level within each Activity Area at the location of the height limit, all as determined from Mr Brewer's drawings.

Outcome

[742] For the area west of the FMC/Manapouri properties it follows we accept:

- subject to the directions which immediately follow, the maximum permitted height and number of storeys in the District Council decision as proposed to be amended by QLDC/QCL are approved,
- the District Council's stepped height control method is approved;
- all of the height limits are directed to be referenced in lower order provisions to a datum level (Otago Datum); and
- the ground level at the location of each height limit is to be defined as the highest ground level within the agreed Activity Area as determined from Mr Brewer's 10 April 2012 affidavit drawings.

Views, Vistas and Viewshafts

[743] Having considered the landscape screening effects of the PC19 built from viewpoints on the state highway *across the top* of the buildings, we now consider views *through* and from *within* the development to the surrounding landscape and features within the landscape.

[744] The terms "view", "viewshaft" and "vista" are referred to in landscape policies but are not defined in PC19(DV). Having considered all of the evidence on this matter our understanding is that when referred to as a "vista" the view is to the surrounding landscape and when referred to as a "viewshaft" the view is through the urban area to features within the landscape. It is on this basis that we have assessed the evidence.

Issue: ***Is the roading layout affording opportunities to view the landscape?***

[745] Mr S Brown strongly criticised reliance on viewshafts to protect views either of, or views over, the urban area to The Remarkables, particularly from the state highway.[595] In his opinion the views to The Remarkables afforded by EAR and Grant Road would, at best, exist short term. Longer term, the views would be restricted through a combination of tree planting, boundary planting, lighting structures and signage all of which would intrude into the viewshaft. He considered that, even with a road as wide as 30m, mature trees planted along the verges would interrupt the view as these could easily have crowns up to 15m across. Views would even be affected by other vehicles using the roads. However, he was not entirely dismissive of the function of viewshafts, and acknowledged some benefit from views to the surrounding landscape from within the urban area.[596]

[746] His opinion contrasts with those given by Dr Read and Mr Barratt-Boyes who both considered that the EAR and Grant Road would provide important viewshafts to The Remarkables. The proposed roundabout at the EAR intersection with the state highway would slow traffic and Dr Read's evidence was that it would serve to heighten the gateway experience for travellers from the east, providing a view to The Remarkables which is not available at present.[597] Indeed the EAR will be directly aligned with Double Cone.

[747] Dr Read disagreed with a proposition put to her by counsel for SPL that the wider the road, the better the view. A narrow viewshaft would give an intriguing glimpse which could stimulate interest much more so than a wide panorama. In contrast, viewshafts present glimpses which may attract the viewer to walk down the

[595] Transcript at 371-2.
[596] Transcript at 371.
[597] Read EiC at [4.14].

road to see a little more.[598] Likewise, Mr Barratt-Boyes was of the opinion that built form and the open spaces between the built form can be positioned in a way to provide views of the mountains and the range of mountains beyond and from within the development. These views through the urban area have to be considered together with the views over the urban area afforded by the proposed height planes.[599]

Issue: ***How are views from within the new urban area to the landscape to be afforded?***

[748] In addition to the viewshafts to The Remarkables afforded by the EAR and Grant Road, the proposed QLDC and SPL structure plans include three other indicative viewshafts[600] spaced more or less equally between the EAR and Grant Road and parallel with them. This is a change from PC19(DV) where four viewshafts are shown on the Structure Plan extending from the Activity Area A or SH6 to the southern boundary of the plan change area. The eastern most viewshaft that crosses Manapouri and SPL land has not been carried over into the parties' Structure Plans. In all other cases the viewshafts now terminate at Required Road 5. While we do not recollect any evidence explaining the removal and/or reduction of the viewshafts, subject to what we say next, we would nonetheless approve them as a consequential amendment. Firstly, if AA-E1 is to be extended to include FMC land any decision to do so would require additional policy addressing landscape treatment (revised objective 1, policy1.4). The viewshaft at Manapouri land would undermine this policy. Secondly, we doubt there is any utility in maintaining viewshafts over Activity Area D given its large yard sizes; this area is likely to be highly permeable to views.

Discussion and findings

[749] Returning now the viewshafts shown on the most recent Structure Plans, in discussing open space provisions, Mr D Serjeant promoted open spaces being collocated with viewshafts.[601] He notes that the three indicative viewshafts have a combined length of about 1200m and if each was, say, 20m wide, these would provide about 2.4 hectares of open space.

[598] Transcript at 251.
[599] Transcript at 594.
[600] These viewshafts are identified incorrectly as "vistas" on the QLDC structure plan.
[601] Serjeant Supplementary Evidence 5 April 2012 at [15].

[750] Subsequently at their November 2011 joint witness conference, the landscape/urban design witnesses supported the provision of these three viewshafts. This was on the basis that their locations on the Structure Plans were taken as being indicative only so that in the development of the ODP there was some flexibility around choosing their final locations.[602]

[751] The witnesses also agreed that rule 12.20.3.3(iii)(i) of PC19(DV) (concerning outline development plans) needed to be amended to give effect to the provision of these indicative viewshafts.

[752] If the function of the viewshafts, particularly those afforded indirectly by the location of the EAR and Grant Road, is to provide views over the new urban area of The Remarkables, then we would largely agree with Mr S Brown's evidence. The court is constrained in its ability to impose controls over the EAR in relation to matters such as roadside lighting structures and the planting of any central median strip which will be managed by the Road Controlling Authority. However, that is not the sole function of the viewshafts and the views they afford cannot be considered in isolation from all of the proposed measures to integrate the new urban area within the landscape.

[753] The landscape/urban design experts who attended the joint witness conferencing support the provision of the three indicative viewshafts shown on the QLDC Structure Plan crossing the C1, C2, E2 Activity Areas. The SPL Structure Plan delineates equivalent viewshafts. We agree with the witnesses that there is considerable benefit in nominating three indicative viewshafts to provide views to features within the surrounding landscape. It is not necessary to indentify these features and by "features" we do not use this term in any technical sense, more specifically the feature need not be an outstanding natural feature. The importance of this method lies in providing and maintaining visual permeability through the new urban area and secondly, that from within the urban area there is opportunity for visual connection to the wider landscape setting.

[754] The distinction between views, vistas and viewshafts needs to be clearly explained in the amendment to objective 1 and its associated policies. We suggest the

[602] Joint Statement of Landscape/Urban Design Witnesses, 23 November 2011.

term 'vistas' is confusing, and consider 'views' (from external viewing points) and 'viewshafts' (when referring to internal viewing points) to be clearer.

[755] We now turn to the EAR. Under the consent orders made by the Environment Court, from its intersection with the state highway to its intersection with Road 2 the EAR will be 32m wide. In each direction this provides for two lanes of traffic, a cycle lane, a footpath, berm and central median strip. The configuration of the EAR south of Road 2 has yet to be decided, although we note that if the cross-section in Exhibit 9[603] was to be adopted then the road corridor would be about 25m wide with a similar configuration to the section north of Road 2 including a median strip but with only one lane of traffic in each direction.

[756] The traffic experts agreed that the Structure Plan should have provision for Grant Road to have two lanes in each direction between the State Highway and Road 8, with one lane in each direction south of Road 8.[604] If adopted, these arrangements would result in Grant Road having similar corridor width and cross-sections to the EAR.

[757] Mr S Brown is concerned that most of the views of the background landscape along the EAR and Grant Road could be lost over time as the viewshafts become obscured through a combination of the previously described features. Mr Barratt-Boyes held a similar concern if the central median strip were to be planted with tall trees.[605]

[758] In response to Mr S Brown's concerns, we have concluded that lighting standards and tall trees located in the central median strip of the road cross-sections as shown in Exhibit 9 would interrupt the openness of the EAR and Grant Road viewshafts significantly reducing their utility.

[759] Policy 1.4 of objective 1 in the QLDC closing submission version of the plan change states:

> To ensure that the nature and location of landscaping proposed to complement development does not itself adversely affect background vistas and viewshafts to The Remarkables.

[603] Exhibit 9 18 Plans by SPL prepared by Airey Consultants.
[604] Traffic Joint Statement, December 2011, para 39.
[605] Transcript at 595.

[760] In our view a new policy needs to be developed along these same lines for protecting views and viewshafts through the careful design and placement of road furniture. This can only be done in the context of the role that the EAR will perform in integrating the new urban area.

[761] More cogently, Mr Barratt-Boyes considered it important to identify the contribution the EAR will make to urban form. In his opinion (and contrary we suspect to the SPL case) the function of the EAR is not limited to its role as an arterial route or the extent to which it affords views to The Remarkables. It will have an important role integrating the Activity Areas located along its route both with each other and separately the wider urban context.

Outcome

[762] We find that:

- consideration needs to be given by the parties for the drafting of a policy provision(s) for the protection of the three indicative viewshafts shown on the QLDC Structure Plan crossing the C1, C2, E2 Activity Areas to include minimum viewshaft widths and whether these should be free of all buildings;
- a new policy is required to describe the role of viewshafts in providing and maintaining visual connection through and from within the new urban area to The Remarkables and to clarify whether these may be provided within the roading network (in addition to EAR and Grant Rd);[606]
- all policies should use terms deliberately/consistently, and the parties are to review the same for consistent use of the terms views and viewshafts;
- the policies pertaining to "views" and "viewshafts" will need to be underpinned by lower order provisions along the lines of those set out in the Outline Development Plan requirement for development within

[606] See court's revision of objective 1 policies 1.2 and 1.3 where this has been done.

Activity Areas C1, C2, and E2 at 12.20.3.3 (iii) (i) of the Ferguson/Hutton version of the draft plan change (page J-19); and

- and a related policy to ensure that outside the EAR lighting structures, signage and roadside furniture and landscaping do not adversely affect background views and viewshafts to The Remarkables and are achieve the urban design function to be performed by the EAR.

Part 18 The Three Waters

Introduction

[763] *Three Waters* is a generic term used by the parties to describe water supply, stormwater disposal and wastewater disposal.

[764] In their joint witness statement of 15 June 2011, the two engineering/infrastructure experts, Mr G Essenberg for QLDC and Mr M Lee for SPL reached substantial agreement on a range of matters. This was particularly helpful given the concerns Mr Lee had raised in his earlier August 2010 evidence about QLDC's commitment to providing its share of the necessary infrastructure in a timely way.

[765] The joint witness statement records that QLDC will be responsible for preparing a water supply network plan, a wastewater trunk-main plan and a stormwater catchment management plan for PC19, with these to be prepared before any development commenced. The statement also describes the relative responsibilities between the District Council and individual landowners for the provision and funding of different elements of the infrastructure.

[766] We record that this statement was neither tested nor disputed before us. We also acknowledge that some of its content will likely change as the plans are developed and refined and agreements are reached between the District Council and developers for individual components of the plans.

Water Supply and Wastewater Disposal

[767] At the hearing there was very limited discussion on the water supply and wastewater disposal plans, with no matters of any real contention being raised. For completeness, we provide here brief overviews of the infrastructure required for water supply and wastewater disposal. As this has largely been drawn from the content of the joint witness statement it is presented in the context of the qualifications we make above.

[768] The water supply network plan will provide for the staged development of PC19 and the adjoining land at Frankton Flats. Infrastructure likely to be required includes an upgraded booster pump station at Queenstown, a new reservoir to the north of the state highway at Frankton, a new pipeline across the PC19 land and the connection of this pipeline to a new pipeline to be built around the eastern end of the airport runway to Remarkables Park. These facilities will be provided progressively to match the growth in demand from the new development.

[769] The wastewater trunk-main plan will include a general layout plan of the trunk sewer(s) required to service the PC19 area, the locations on these sewers of connecting nodes for feeder pipes and the estimated flows, sizes and invert levels for this network. The trunk sewers will discharge into a dedicated pipeline to be laid from the south eastern corner of PC19 to the Shotover Treatment Plant. This pipeline will be sized to serve the requirements of both PC19 and any potential developments in the upstream catchments.

Stormwater Catchment Management

[770] Two issues were raised about stormwater management, these being:

- the proposed methods for the discharge and treatment of stormwater within the plan change area; and
- the responsibility for the preparation of the proposed catchment management plan, the timing for this and the status of the plan as a planning document.

[771] In addition, there is a generic issue about the way in which QLDC proposes to provide for its commitments for stormwater disposal (as well as the water supply and stormwater disposal) within its Long Term Council Community Plan.

[772] The joint witness statement records that the PC19 stormwater catchment management plan will provide for primary reticulation, secondary flow paths, stormwater treatment and any attenuation requirements for managing stormwater

discharges. A stormwater outfall pipeline will be constructed from the south-eastern corner of the PC19 area to the Shotover River. QLDC will be responsible for obtaining any Otago Regional Council consents for the discharges from this pipeline. QLDC will also be responsible for the maintenance of any stormwater treatment systems, swales and soakage devices constructed in road reserves where these have been vested in the District Council.

[773] A distinguishing feature of the PC19 area is the absence of permanent watercourses, which in other circumstances would provide a focus for stormwater flows possibly in conjunction with some passive recreation use.

[774] The experts' joint written statement records that the PC19 stormwater outfall pipeline will be designed to allow for flows for the 20 – 100 Annual Exceedance Probability rainfall events with the 0 – 20 AEP events to be catered for by soakage in the gravel layers within the proposed lots or road reserve.

[775] It is our understanding that in Average Recurrence Interval terms, a 20 – 100 AEP has a chance of occurrence of up to 1 in 100 years whereas a 0 – 20 AEP has a chance of occurrence of up to 1 in 20 years.

[776] Mr Essenberg told us that it should be possible to accommodate the 20 year storm event through soakage on most of the proposed development sites.[607] The District Council would then be responsible for flows in excess of this event and this could result in some surface flooding of cycleways, footpaths, roads and road verges. Mr Essenberg said he was familiar with SPL's proposal for the EAR to be constructed with a saw tooth profile along its length with the low points providing storage for flood detention.[608] He indicated that with the rainfall at Frankton Flats flood flows from a 20 year event would be about half those of a 100 year event.[609]

[777] Mr Essenberg was asked by the court whether any land should be specifically earmarked in the structure plan for flood detention and treatment structures and overland flow paths. His response was that provided developers could accommodate up to a

[607] Transcript at 1077.
[608] Transcript at 1080.
[609] Transcript at 1086.

20 year flood event on their land, the District Council should have no difficulty in providing for flows from larger events without the need for dedicated facilities.[610]

[778] He advised that the EAR and Grant Road would be the principal overland flow paths, and that these roads in conjunction with some of the roads proposed to run across the site could accommodate the predicted flood events with some minor flooding of the road reserves in major events. He did not see this flooding as being problematic as it would be most unlikely for pedestrians and cyclists to be out and about in major storms.

[779] Responding to the court's question on the need for treatment of the stormwater,[611] Mr Essenberg advised that it was an Otago Regional Council requirement for pipe networks to include treatment and storage devices especially where flows originated from industrial and commercial areas. These devices pick up and store any sediments, residues, oils or greases which might find their way into the network during the first flush following rain. Any deposits in these devices would then be cleared periodically by the District Council.

[780] Mr Essenberg advised of the need for flexibility in the development of the catchment management plan to accommodate developers' progressive refinements of building footprints, foundation levels, car parks, landscaping and the like. Such refinements would inevitably require adjustments to be made to pipe sizes, swales and retention basins.[612]

[781] Mr Lee confirmed that the proposed stormwater disposal scheme for PC19 comprised a buried pipe network for the 5 year flood event; soakage on private land for the 20 year event and overland flow for events in excess of 20 years.[613] He also confirmed that the District Council would be responsible for the discharge from the boundary of the PC19 area to the Shotover River, for any discharge consents required, and for the preparation of the catchment management plan. This was all consistent with what Mr Essenberg told us.

[610] Transcript at 1088.
[611] Transcript at 1083.
[612] Transcript at 1091.
[613] Transcript at 1109.

[782] Mr Lee also spoke to plans which had been prepared at the request of SPL to demonstrate that the EAR could be developed with a profile which was lower than the adjoining properties, in particular those properties owned by QCL. The consequence of this would be that when the EAR functioned as an overland flow path, adjoining properties would not be flooded.[614]

[783] Mr Lee pointed out that while testing had still to be undertaken to confirm that the permeability of the PC19 land could accommodate soakage from a 20 year flood event, he was reasonably confident that this would be not be a problem. His reasons for this were that despite there being a large 60 hectare catchment north of the state highway with only small sized culverts under the highway, his understanding was that the highway did not flood. On the other side of the PC19 land, it was also his understanding that there had been no record of the airport having flooded. He used these examples to support his opinion that the ground at Frankton Flats has sufficiently high permeability to absorb soakage from a 20 year flood event.

[784] In his evidence, which he had prepared in August 2010, Mr Lee noted that his assessment of the requirements for the Three Waters for PC19 was based on SPL's alternative structure plan. For stormwater, it was his evidence that this structure plan would create less impermeable surfaces than the District Council structure plan primarily due to the creation of a sports field. It is not entirely clear to us where this sports field was to be located. We note, however, that Mr J Brown's August 2010 evidence referred to education playing fields in the SPL structure plan,[615] we presume for the secondary school proposed at that time for AA-C1. Since then, with decisions having been made for this school to be located in the RPZ, these playing fields will no longer be available as open surfaces. There should, however, be some offset for this loss from the open land to be created along the three view shafts in AA-C1 and AA-C2 assuming pervious surfacing.

[785] In response to a question from the court on this matter, Mr Lee agreed that unlike the areas north of the highway and at the airport, developments on the PC19 land would mean that large areas would be impermeable and that this would certainly influence

[614] Transcript at 1101.
[615] J Brown, EiC August 2010 at para [6.4].

absorptive capacity. If there was insufficient permeability to absorb a 20 year event, options could be to increase the size of the pipes in the underground network or to see whether more of the discharge could be accommodated through overland flow. This would be worked through as part of the interactive refinement of the catchment management plan.[616]

Arrow Irrigation Trench

[786] A large open drain identified as the Arrow Irrigation Trench runs from the state highway south across the SPL land. Mr Lee advised that it was intended to divert the flow from this drain into a buried pipe which would run down the EAR. The drain would then be filled in.[617]

Long Term Council Community Plan/Catchment Management Plan

[787] In his evidence[618] Mr Essenberg confirmed that the timing and funding of infrastructure throughout the district was managed through the LTCCP. The LTCCP includes a Three Waters' activity management plan (**AMP**) which provides for the maintenance and growth of these services. The LTCCP is implemented on a year by year basis through the District Council's annual plan. There is heavy reliance on co-operation between the District Council and developers to ensure that the District Council provided infrastructure is delivered in a timely way.

[788] In response to questions from the court on the status of the catchment management plan, Mr Essenberg advised that in essence this plan was a report on the assessment of effects for the treatment and disposal of stormwater. The plan would be appended to the District Council's application to the Regional Council for the stormwater discharge consent for PC19. While it was not a statutory document, the catchment management plan would become a sub-document to the AMP. It would be readily available to developers involved with PC19.[619]

[616] Transcript at 1111.
[617] Transcript at 1097.
[618] Essenberg EiC August 2010.
[619] Transcript at 1129.

Discussion and Findings

[789] Before considering the plan provisions, we set out here our findings on the parties' proposals for the provision of the Three Waters' infrastructure for PC19.

[790] We accept the advice from Mr Essenberg that QLDC will make provision within its Long Term Council Community Plan process for the infrastructure for which it will be responsible and that this will be done in a timely manner ahead of any development.

[791] We also accept Mr Essenberg's advice that the District Council will prepare a water supply network plan, a wastewater trunk-main plan and a stormwater catchment management plan with these to be completed before any development commences. In particular we note that the District Council made a commitment to complete the first draft of the catchment management plan by June 2012.

[792] With water supply and wastewater disposal within the PC19 area to be accommodated in pipelines buried along the road network, we accept that there is no need for specific provision to be made within the structure plan for these two waters.

[793] We accept the advice of both Mr Essenberg and Mr Lee that the treatment and disposal of stormwater within PC19 can be managed without the need for dedicated areas to be set aside in the structure plans for stormwater treatment, storage and overland flow paths.

[794] The PC19 QLDC 11 May 2012 plan provisions attached to QLDC counsel's closing submission includes only one brief reference to stormwater which is in objective 3:

> Stormwater is managed and a variety of open spaces are provided in a way that integrates with the built environment.

[795] As noted in Part 6: Objectives and Policies there are no underlying policies for this objective and indeed the objective itself is incomplete.

[796] Section 15 of the District Plan, *Subdivision, Development and Financial Contributions* contains a series of overarching issues, objectives and policies which include generic provisions for the Three Waters across the district. In this same section there are specific objectives and policies for individual subdivisions.

[797] While we acknowledge that *subdivision* is a category of activity distinct from *land use* activity, there are aspects of the Three Waters' networks which require specific objectives and policies as part of PC19, particularly for stormwater because of its critical interface with other development proposals.

[798] For example, we were told that stormwater discharge relies on a combination of primary reticulation, soakage, secondary flow paths, treatment and attenuation and that this would be achieved through a combination of the previously described methods.

[799] The soakage component relies on the availability of permeable surfaces with these directly affected by the extent of the buildings, hard surfaces and landscaped areas in each of the Activity Areas. Achievement of the soakage component also relies on the permeability of the underlying soils.

[800] The Ferguson/Hutton version of the draft plan change document at 12.20.50.1i(a) and (b) on page J-29 includes site standards for building coverage for AA E1, E2, E4 and D. In addition, 12.20.5.2 (ii) and (iii) on page J-33 include zone standards for building coverage in AA-C1, C2, E1, E2 and E4 and minimum areas of landscaped permeable surfaces in AA-C1 and C2.

[801] It is not clear as to what rationale has been used for determining these building coverages and landscape areas and whether the remaining unsurfaced areas would provide sufficient soakage capacity to meet the demands of the proposed stormwater management plan. It is also unclear as to which objectives and policies the Ferguson/Hutton rules sit under or indeed if such objectives and policies exist. Also, as an aside, we note that the building coverages defined in the site standards are different from those defined in the zone standards and also that there is a numbering overlap in the zone standards.

[802] In addition to permeable surfaces, the stormwater management plan also relies on the proposed roading network to provide for both stormwater attenuation and overland flow paths. We could find no references on these in the roading policies at 3.6 to 3.18 of the QLDC plan provisions (latest set filed 11 May 2012).

Outcome

[803] The parties are therefore directed to prepare for the court's consideration, objectives and policies which respond to the Three Waters' deficiencies in the May 2012 QLDC version of the plan provisions. We also require evidence at the lower order hearing on the integration of site and zone standards for building coverage with QLDC's stormwater management plans.

Part 19 Transportation and Traffic Management

Introduction

[804] Expert traffic and transport evidence for PC19 was provided by Mr T Penny (for SPL); Mr T Kelly (for QCL); Messrs L Daysh, D Mander and S Turner (for QLDC) and also Mr I McCabe (for NZTA). By the time the experts completed giving their evidence at the PC19 hearing, the key issues for consideration or resolution by the court had been considerably narrowed down. The parties were then directed by the court to undertake further conferencing in an endeavour to resolve the following outstanding issues:[620]

(a) the travel demand management plan, including:

  (i) the respective roles and responsibilities of the District Council and applicants for resource consent under this plan;

  (i) clarifying in the case of applicants for consents whether these obligations are limited by the size of affected enterprises (employee numbers);

  (ii) advising how the travel demand management plans (of the District Council and the consent holders) are to be monitored (and by whom).

(b) in light of this, review the objectives and policies to provide improved direction for the transport rules and other methods;

(c) clarify what the District Council intends by way of public car park(s), a "transport node" or park and ride/bus interchange facility:

  (i) if QLDC is not yet clear on location(s) the Plan should at least address responsibility for consenting (designation?), construction and operation;

  (ii) address what responsibilities, if any, are applicants to have in these areas.

(d) review the minimum/maximum parking rule;

[620] Minute dated 2 March 2012.

(e) clarify which objectives and policies are to be implemented through Plan rules and which are to be implemented through other methods, including non-RMA legislation administered by council;

(f) review the various transport-related assessment criteria to be applied to resource consent applications. Sub paragraphs (a)-(e) should assist this; and

(g) propose amendments to the operative Plan to include provision for an additional arterial road (EAR) and one collector road (Grant Road).

[805] An experts' conference arising from these directions was held on 28 and 29 March 2012 facilitated by Environment Commissioner Anne Leijnen. All of the traffic experts participated except for Dr Turner (QLDC's transport modelling expert). Planners Mr J Brown and Ms Hutton were also to assist with the preparation of the conference outcomes as these included the drafting of plan provisions for the traffic demand management plan, the travel plan and plan change objectives and policies as well as suggested provisions for lower order provisions. The outcomes of the conference were recorded in a conferencing statement with agreement reached on all matters except for the wording of rules for maximum parking levels.[621]

Consent Orders for NZTA and QLDC Roading Requirements

[806] By way of further background, in August 2012 the court (this division) made consent orders resolving the appeals by SPL against NZTA and QLDC's decisions on their respective notices of requirement. When built the designated roads will be an important element within the urban framework and so we include here a brief description of the consent orders made by the court. The consent orders were made in relation to:

- ENV-2010-CHC-223: NZTA's notice of requirement for a roundabout at the intersection of the proposed EAR and State Highway 6 (SH6), for a modified layout of the intersection of Glenda Drive and SH6, and for a proposed path/cycleway along the south side of SH6;

[621] Third Joint Witness Conference Statement (traffic) convened 28/29 March 2012.

- ENV-2010-CHC-191: QLDC's notice of requirement for roads proposed on Frankton Flats, these being the EAR from its intersection with SH6 to a new roundabout at its intersection with Road 2 and Road 2 itself which extends from this roundabout to an intersection with Glenda Drive.

[807] The location and alignment of the EAR between SH6 and Road 2 is particularly significant as the road alignment has moved west since the release of the District Council's decision on PC19(DV).

[808] Following their expert conference a third joint witness statement was produced. In it the traffic engineers agreed that while traffic signals may eventually be required at the SH6/EAR intersection, the roundabout proposed at this intersection should be built first with traffic conditions being monitored over time. They also agreed that the Road 2/EAR intersection[622] will need to be signalised in the future for capacity and for potential pedestrian safety reasons.[623] Having regard to this evidence, and while recording the possible need for the future signalisation of the two intersections, the court approved the consent orders on the basis that there would be no capacity or safety issues which would militate against these approvals.

The objective and policies for Improved Direction to Transport Rules and Other Methods

[809] Following the expert conference the parties were largely able to agree on amendments to the relevant objective and policies and so we do not repeat here the provisions in PC19(DV).[624] We have assumed that those parties that did not comment on the provisions have no interest in this matter.[625] The amendments proposed are substantial and address, principally, the implementation of these higher order provisions. These have been set out in Part 6: Objectives and Policies and again we do not repeat what we said there.

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[622] The traffic witnesses referred to this intersection to as the "Road 8/EAR intersection" by the traffic witnesses and by all other parties and their witnesses as "Road 2/EAR intersection". We use the term "Road 2/EAR intersection".
[623] Second Joint Witness Statement (traffic) at [34].
[624] SPL Closing submissions at [9.23], QCL Closing submissions at [128], QLDC Closing submissions, Annexure 2 – updated plan change.
[625] The parties that did not respond to the proposals in the third joint witness statement (traffic) in their Closing submissions are FMC, Manapouri, Foodstuffs and QAC.

[810] We next set out a brief summary of other agreements reached and the key transportation and traffic management issues for determination. While we have not discussed in any detail the lower order plan change provisions proposed in the agreement, unless noted otherwise, we accept that these should form a sound basis for the lower order provisions when the time comes for their preparation.

Travel Demand Management Plan

[811] The term Travel Demand Management Plan has now been defined by the experts and means: "Any initiative that modifies travel decisions so as to reduce the negative impacts of road transport". As well, a set of detailed travel demand measures have been prepared for inclusion under the *Methods of Implementation* in PC19, with these measures to be undertaken by the District Council or another public agent.

Travel Plan

[812] The term Travel Plan was defined by the experts as "An evolving package of measures, initiatives, and promotions aimed at developing and encouraging more travel choices for employees primarily and visitors. The scope of the travel plan will vary with the size of the organisation and the stage of development".

[813] Agreement has been reached on draft provisions for a new site standard for determining when a travel plan is required, with this to be based around the size and type of activity of a particular enterprise. The experts note that these draft provisions need more work to confirm their workability. As they are lower order matters, such refinements can follow later on.

Traffic Related Assessment Matters

[814] PC19(DV) contained two sets of traffic related assessment criteria, one related to transport networks[626] and the other related to transportation.[627] In Part 6: Objectives and Policies we noted the experts were in agreement of revisions required to these provisions.

[626] Clause 12.20.6(vii).
[627] Clause 12.20.6(xxii).

[815] The amended transportation criteria include the extent to which the EAR as an arterial road should provide for on street parking (or not), the way in which the street network should provide for viewshafts from the state highway to The Remarkables and the extent to which roads should provide for non-motorised uses. A new criterion needs to be added for the road network to be designed to accommodate overland flow paths and the detention of stormwater which we were told would be a requirement of the stormwater catchment plan (see Part 18: The Three Waters).

Public Carparks, Transport Node, Park and Ride/Bus Interchange Facility

[816] A public transport node is a facility where different bus routes come together for passengers to transfer from one route to another. This may not necessarily include a park and ride facility.

[817] The District Council has overall responsibility for these overall facilities, the experts propose an additional Implementation Method giving recognition to this:

> District Council Designation - The District Council will investigate the need for and possible locations for transport nodes and/or a park and ride bus interchange facility within this zone and may promulgate a designation for that purpose.[628]

[818] The experts do not consider that applicants for resource consent have a responsibility to provide these facilities although private initiatives could be initiated through a consent process.

Maximum/Minimum Parking

[819] The experts agree that the provision of excessive on-site parking is undesirable and that there should be rules which provide for less than what is typically required in Plan rules. In the third joint witness statement they propose the following policy:

> To encourage the need for less parking in instances where measures for reducing travel demand are proposed.[629]

[628] This would be inserted as Implementation method 12.19.4(ii)(f) under the Ferguson/Hutton version of the draft plan change.
[629] Third Joint Witness Statement at 10.

[820] While this policy was not included in the QLDC May 2012 version of the plan, we note that policy 3.11 of objective 3, which we have approved in Part 6:Objective and Policies, reads:

> To ensure that car parking is not over provided and does not exceed ~~a~~ rates necessary to service the development and the reasonable needs of future residents.

[821] Section 14.2 of the Ferguson/Hutton version of the draft plan change at Table 1B sets out rules (amended) governing maximum parking spaces in each Activity Area. The experts recommended an additional rule be included under this table requiring that a traffic impact assessment be submitted with each ODP with consideration given to whether the anticipated parking provision achieves the agreed objectives and policies of the zone.

[822] The experts recommended a notation be added to the rule 14.2.4.1, Table 1B as follows:

> In addition to these standards a traffic impact assessment that considers whether anticipated parking provision achieves the objectives and policies of the Zone shall be submitted concurrently with the Outline Development Plan for each of the areas where one is required.
>
> Where the proposed number of car parking spaces for an activity differs from the number required by more than the larger of one space or 15% of the car parking standards, then the activity will be considered as a limited discretionary activity.[630]

[823] The parking assessment criteria agreed by the experts include a requirement for these criteria to include a provision to control the supply of public or shared parking based on the results of monitoring of the uptake of development.

[824] However, the experts were unable to agree on rules for parking standards with Mr Penny in particular being concerned that the industrial parking provisions in the PC19 provisions were too high while those for supermarkets were too low.[631]

[630] At 9.
[631] Third Joint Witness Statement (traffic) at 10.

Discussion and findings

[825] While not initially well executed the travel demand management plan and travel plan, are commendable for their attempt to bring about change in the behaviour of the motoring public in an effort to reduce reliance on the use of private motor vehicles and with a view long term to achieve a sustainable roading infrastructure. No doubt our summary does not do justice fully to the District Council's goals in introducing these provisions but we apprehend their significance for the limited capacity of the local road network and the Frankton-Queenstown road in particular. We record our gratitude to the traffic experts who engaged with the court to explore ways which these goals can be realised through policy.

[826] On the matter of maximum and minimum car-parking no agreement was reached between the experts. These provisions are no less radical in their approach than the travel demand management plan and travel plan. PC19 departs from the usual approach of establishing minimum car-parking standards for activities and, we find, further time should be allowed for the experts to test their different approaches and/or values. This should be undertaken at the time the lower order provisions of the plan change are being formulated.

[827] While we have resolved that the new Implementation Methods and Assessment Matters for Resource Consent are to be determined in the context of the lower order hearing, the agreed definitions for "Travel Demand Management Plan" and "Travel Plan" are to be included in the plan change.

Other Issues

[828] As well as the issues for resolution identified in the court minute, a number of other traffic related issues require resolution, being:

(a) whether there should be provision for roadside parking on the EAR;
(b) confirmation of the road hierarchy;
(c) whether there should be restrictions on the use of Grant Road by heavy vehicles and if so, possible methods by which this could be achieved;
(d) whether the location of the Required Roads can be approved;

(e) roading related amendments to the Structure Plan;

(f) whether any roading matters can be left for an application for resource consent; including any outline development plan?

(g) access to the Event Centre.

Issue: ***Whether there should be provision for roadside parking on the EAR***

[829] This issue has been addressed in Part 10: Activity Area E2.

Issue: ***Confirmation of the road hierarchy***

[830] Mr Kelly proposed that the EAR should have arterial road status, as defined by the road hierarchy in the district plan, and that the whole length of Grant Road, up to its intersection with Road 12 should be a collector road with everything south being a local road.[632] There was no disagreement on this.

[831] To assist with where these hierarchies should be recorded, counsel for QCL helpfully points out that the roading hierarchies for the district were set out in Appendix 6[633] of the District Plan and that the PC19 roads could be added to this Appendix. We agree.

Issue: ***Heavy Traffic on Grant Road***

[832] In their second conference, the traffic experts considered a question raised by the landscape/urban design experts about whether measures could be introduced to limit the use of Grant Road by heavy traffic in the context of the EAR being the "heavy traffic" route within PC19.[634] The corollary being that if restrictions were not practicable, could Grant Road be designed safely with sufficient capacity to accommodate heavy traffic?

[833] The new urban area will provide for a number of activities that will generate heavy vehicular traffic.[635] The issue being whether the EAR, Grant Road or both should be the route for heavy vehicular traffic. While noting the retailing proposed by QLDC

[632] Transcript at 1195.
[633] Transcript at 1246.
[634] Second Joint Witness Statement (traffic) at 39-41.
[635] Second Joint Witness Statement (traffic) at 39.

and QCL in the locality of Grant Road, SPL submitted that the court should not endorse a policy that seeks to "discourage" heavy vehicles from using that road, submitting instead that retailing in this locality would raise "serious traffic issues".[636]

[834] The experts record their agreement that it would not be practicable to prevent or constrain the use of Grant Road by heavy vehicles. The development of FF(A) Zone and AA-D to the south would generate heavy vehicle traffic. They agree that Grant Road could be designed to accommodate the levels and types of traffic predicted from the traffic modelling. Safety measures to manage heavy vehicle usage could include signalised intersections, two lane approaches to intersections, the possible removal of on street parking and restrictions on the uses of mid-block pedestrian crossings.

[835] This issue was examined further during the hearing. Mr Kelly identified a range of measures to make Grant Road a less attractive route including traffic signals timed to introduce delays, priority settings at intersections and traffic calming measures such as speed humps.[637] Mr Kelly, endorsing Mr Mander's evidence, made the timely observation that the roading network is to be managed in accordance with the functions of the different roads. As the EAR is the arterial route, it should carry heavy traffic and Grant Road, being a collector route, should carry vehicles servicing development along its length.[638] Potential restrictions include bylaws, designing the intersections in such a way as to slow traffic, the judicious placement of pedestrian crossings and the use of side friction such as roadside parking. Mr Kelly went on to say that while all of these would influence travel speeds and the ease of use of the road, in the final analysis it would be very difficult to control the use of the road as individual drivers would make their own choices as to which was the best route for them.

Discussion and findings

[836] We assume SPL refers to QLDC's policy 3.8 when it submits "the court should not endorse a policy that seeks to "discourage" heavy vehicles from using that road" (being Grant Road).[639]

[636] SPL Closing submission at [9.24-9.30].
[637] Transcript at 1192. See also Mr Mander's responses at 1192.
[638] Transcript at 1192-3.
[639] SPL Closing submission at [9.24-9.30].

[837] We accept the evidence of the traffic experts that pedestrian and heavy vehicular movement can be managed. And secondly, that roads are to be managed in accordance with their function. Policy 3.22 requires the implementation of a safe, convenient network of transport routes[640] and is supported by detailed assessment matters including that there is safe and sustainable connections to the state highway[641] and the extent to which roads provide for motorised and active made safely.[642]

[838] In the event, we have approved in Part 6: Objectives and Policies QLDC's policies 3.8 (with a minor amendment) and 3.22 (the latter as worded by the traffic experts). These policies provide support for any measures that may be required by the Road Control Authority to manage traffic movement between AA-C1/C2 and AA-D.

Issue: Which roads on the Structure Plan are approved?

[839] Attached to the experts' December 2011 agreement, was a Structure Plan titled *December 2011, Traffic Engineers Conferencing Structure Plan.* This Structure Plan, which was used for the traffic modelling undertaken for PC19, shows the PC19 Activity Areas more or less in the same locations as the Structure Plans proposed by QLDC and QCL. Notwithstanding that SPL's proposed Structure Plan has alternative and different Activity Areas from those proposed by QLDC and QCL, all of the plans have a common roading layout, except Required Road 5.

[840] In their May 2012 agreement, the experts agreed on a number of changes to their December 2011 plan. Most of these changes were included in the QLDC's November 2012 Structure Plan.

[841] Dr Turner confirmed that the traffic modelling had taken account of traffic generated under both the QLDC/QCL and SPL structure plans. This had included the potential developments of a Pak'n'Save supermarket and a Mitre 10 store on SPL land.[643]

[640] Third Joint Witness Statement.
[641] Third Joint Witness Statement at p 6, assessment matter (vii)(d).
[642] Third Joint Witness Statement at p 6, assessment matter (vii)(g).
[643] Transcript at 1212.

Discussion and Findings

[842] In this Part of the Interim Decision we record that the location of Required Road 2 and the Eastern Access Road as shown on QLDC's Structure Plan (November 2012) are approved.

[843] In Part 10: Activity Area E2 we record our approval of the location of Required Road 5 as shown on SPL's 4b Structure Plan. From what we can tell, all other Required Roads on SPL's 4b Structure Plan are at the same location shown on the parties' Structure Plans. SPL's 4b Structure Plan also records a potential right of way from Required Road 8; this is not approved.

[844] Subject to counsel's confirmation that the court has the correct understanding as to the location of Required Roads, the roading layout shown on SPL's 4b Structure Plan (but not the Activity Areas) is otherwise confirmed.

Issue: Roading related amendments to the Structure Plan

[845] The traffic experts agreed, and the court approves the following amendments to the QLDC Structure Plan (November 2012) as it pertains to the roading network:

(a) that Grant Road is to be shown as a Required Road and secondly, to correct the spelling of Grant Road;

(b) the Wakatipu Trail be included as an indicative cycle trail.[644]

The traffic experts were also agreed that Road 10 and Road 11 not be shown as roads to be stopped. As these roads are not shown on the QLDC Structure Plan (November 2012), the parties are to confirm that this has been attended to.

[644] Third Joint Witnesses Statement (traffic), 4 July 2011 at 13.

Issue: ***Whether any roading matters can be left for an application for resource consent; including any outline development plan***

[846] The following roading issues are suitable for the resource consent process, including as applicable an outline development plan:

(a) pedestrian linkages - while the court heard evidence that it was desirable that pedestrian linkages be shown on the Structure Plan, there was insufficient evidence to determine the location of any linkages;
(b) any cycleways that are in addition to the indicative Wakatipu Trail;
(c) whether there should be a laneway separating AA-C2 and AA-E2 discussed during the course of the hearing;
(d) enabling the future four laning of Grant Road at the intersection of SH6 and Grant Road.

Issue: ***Access to Events Centre***

[847] In response to a question from counsel for SPL, Dr Turner advised that the traffic modelling for PC19 had been undertaken with the existing Joe O'Connell Drive access to the Events Centre in place as no decision had been made as to whether this access might be closed sometime in the future. In terms of the capacity of Grant Road to accommodate the additional Events Centre traffic if Joe O'Connell Drive were to be closed, it was Dr Turner's view that the peak traffic for PC19 and the Events Centre would be at different times so he did not see that there would be any problem.[645]

[848] We note that the QLDC March 2012 and the SPL 4b Structure Plans both include provision for possible future access to the Events Centre from the intersection of Grant Road and Road 12.

[645] Transcript at 1204. Ms Hutton advises that the legal access to this land has yet to be obtained in her Supplementary Statement, April 2012 at [14] hence its indicative status.

Part 20 Discrete Issues

Introduction

[849] In this final Part we deal briefly with the discrete issues arising on appeal, commencing with the appeal filed by Trojan Holdings Ltd.

Trojan Holdings Ltd

[850] Trojan Holdings Ltd has an interest in land situated at two separate locations.

[851] One parcel of land is located within the plan change area, between Grant Road and the EAR, and is to be zoned AA-D. Trojan supports the proposed zoning of this land AA-D, and seeks the court's approval.

[852] Located east of the EAR, the second area of land is only partly located within the plan change. This land is zoned AA-E1 under PC19(DV) and the balance is Industrial and (possibly) Rural General under the operative District Plan. We understand that the land in question is the subject of a subdivision application lodged by SPL with the District Council. Trojan withdrew its appeal in relation to this land at the commencement of this hearing.[646]

Outcome

[853] The partial withdrawal of the Trojan Holdings appeal in relation to its interest in land located east of the Eastern Access Road is noted.

[854] The zoning AA-D of Trojan Holdings' land (located west of the EAR) is approved.

[646] Memorandum of Counsel dated 16 February 2012 at [16].

New Zealand Transport Agency

[855] In these proceedings, Ms J Macdonald entered an appearance as agent on behalf of the New Zealand Transport Agency's counsel.

[856] The New Zealand Transport Agency seeks confirmation of the following:

(a) the location of the EAR;
(b) the location of required Road 2; and
(c) that required roads are numbered on the Structure Plan and referred to in the plan change.

[857] Addressing matters (a) and (b), the location of the EAR and Required Road 2 was practically determined when the court issued consent orders in August 2012 resolving SPL's appeals against decisions made by the New Zealand Transport Agency and Queenstown Lakes District Council (in their capacity as requiring authorities) in relation to roading designations.[647]

Outcome

[858] We approve the location of the EAR and required Road 2 shown on the QLDC Structure Plan dated November 2012.

[859] We approve the method of numbering required roads to be shown on the Structure Plan.

Shotover Park Limited

[860] In closing submissions SPL raised three discrete matters for determination by the court.

[647] Court references: ENV-2010-CHC-223 and ENV-2010-CHC-191.

Issue: ***Does AA-E1/E2 zoning render SPL land incapable of reasonable use (section 85 of the Act)?***

[861] In its closing submissions SPL submits section 85 of the Act is relevant and that the restrictions proposed by the District Council and QCL in relation to its land are disproportionate, unreasonable and unfair. In particular, not to allow trade and home improvement retail on its land is unreasonable given the demand for use of its land.[648]

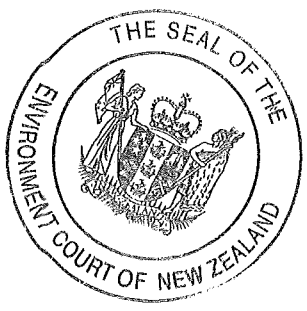
Discussion and findings

[862] We accept that there is demand for use of SPL's land and that this is evidenced by the resource consent applications of Foodstuffs (South Island) Ltd and Cross Roads Properties Ltd.

[863] Section 85 is not, however, concerned with the aspirations of an individual landowner in relation to the future use of its land; rather the focus is on whether the Act's statutory purpose is achieved. Judge Sheppard in *Hastings v Auckland City Council* described the test in section 85 in this way:

> The test to be inferred from section 85 is not whether the proposed zoning is unreasonable to the owner (a question of the owner's private rights), but whether it serves the statutory purpose of promoting sustainable management of natural and physical resources (a question of public interest). The implication is that a provision that renders an interest in land incapable of reasonable use may not serve that purpose.[649]

[864] On our review of SPL's submission on the notified plan change, its notice of appeal and even the opening submissions, we could not find reference to where this issue was raised. Even if it was raised, more saliently, there is no evidence called on behalf of SPL that by approving the rezoning of land from General Rural to AA-E1/E2, as proposed by the District Council and QCL, this would render the land incapable of reasonable use. It is our understanding that, if upheld on appeal, the land use consents granted by the Environment Court[650] may be exercised notwithstanding that the underlying zoning would not provide for this activity.



[648] Closing submission at [8.22-8.25].
[649] A068/01 at [98].
[650] [2012] NZEnvC 135 and [2012] NZEnvC 177.

Outcome

[865] The submission that the proposed zoning of SPL land AA-E1/E2 renders the land incapable of reasonable use is rejected.

Issue: Whether the court should make provision for a no complaints covenant

[866] Extensive submissions were received from SPL regarding QAC's proposed no complaints covenant.[651] As this is a matter reserved for the hearing into the lower order provisions (being a rule, standard or method) we make no determination on this provision at this stage.

Issue: Whether the court should exercise its discretion pursuant to section 293 and direct the plan change include land within the Air Noise Boundary

[867] SPL seeks an order pursuant to section 293 of the Act directing the District Council to amend the plan change by rezoning land located outside the plan change near the Glenda Drive cul-de-sac. The land affected includes a small area within the air noise boundary (established by PC35 and the Notice of Requirement to extend Designation 2). It is proposed this land be rezoned from (we assume) General Rural to AA-E1.

[868] While supportive of the orders being made, QAC points out that PC19 does not include land within the air noise boundary, and given this there are no objectives or policies as to how activities within the air noise boundary are to be managed. As a consequence there would need to be a new rule that within the air noise boundary Activities Sensitive to Aircraft Noise are prohibited.[652] QAC's final position is that subject to the air noise boundary being appropriately acknowledged and provided for in the objectives, policies and rules it has no objection to its inclusion in the plan change.

[869] We note that the other landowners and Air New Zealand support the orders being made.

[651] SPL Closing submission at [9.42-9.63].
[652] Refer policy 8.2 pp 4-58 latest version of PC35.

Outcome

[870] While raised during the course of the hearing and in final submissions, SPL did not address the proposal to extend the plan change area in the subject matter or the relief sought in its notice of appeal.[653]

[871] But in any event, we are not satisfied that an appropriate case has been made out for our discretion to be exercised. We agree with QAC that new objectives and policies would need to be developed addressing land-use activities within the airport noise boundary. QAC does not go as far as to suggest that activities other than Activities Sensitive to Aircraft Noise are appropriate.[654]

[872] Having heard no evidence about the management of land use activities exposed to airport noise within the ANB we are not satisfied that a case has been made out to direct changes to the District Plan by including this land within PC19. It is worth noting that land use activities anticipated under the proposed AA-E1 zoning include outdoor activities such as yard based industry and yard based retail.[655]

[873] We decline to exercise our discretion under section 293 to direct the District Council to amend the plan change.

Progressive Enterprises Ltd

[874] Finally, represented by Mr H Lochan in these proceedings, Progressive Enterprises is not a landowner within the plan change area but intends to operate a supermarket in the Frankton Flats Special Zone (A) Zone.

[875] Progressive Enterprises was generally supportive of the relief sought by Foodstuffs (South Island) Ltd and QCL and does not propose any amendments to the plan change. It wishes to ensure that the zoning proposed by PC19 is consistent with, and complementary to, the Frankton Flats Special Zone (A) and supports the retention of the outline development plan method.

[653] The subject matter includes, for example, the higher order objectives and policies or the extent of the plan change area.
[654] QCL Memorandum dated 14 September 2012
[655] QLDC Matrix Table filed 3 May 2012.

[876] Evidence from its planning witness Ms K Hanson was admitted by consent and has been considered by the court.

Part 21: Key Findings in this Interim Decision

[877] We summarise the key findings in this Interim Decision in this Part.

[878] Findings on jurisdiction – the court finds that it does not have jurisdiction to grant the following extended relief:

(a) QLDC and QCL amendment that land west of Grant Road zoned AA-C2 in PC19(DV) be rezoned AA-C1;
(b) QLDC and QCL amendment that land west of Grant Road zoned AA-D in PC19(DV) be rezoned AA-E2;
(c) QLDC and QCL amendment that land east of Grant Road and north of proposed Road 5 extending towards the EAR zoned AA-D/AA-C2 in PC19 (DV) be rezoned AA-E2;
(d) QLDC and QCL amendment that Manapouri/FMC land fronting SH6 in AA-A and AA-E1 in PC19(DV) be rezoned AA-E4;
(e) SPL amendment that the Manapouri/FMC land fronting SH6 zoned AA-A and AA-E1 in PC19(DV) be rezoned AA-E3.

[879] The court finds that it has jurisdiction to consider the extension of AA-C1 into sub-zone AA-C2 and approves the configuration of AA-C1 and AA-C2 east of Grant Road as shown on QLDC's November 2012 Structure Plan.

[880] The court rejects:

(a) AA-E3;
(b) the extension east of AA-C2 to the Eastern Access Road; and
(c) the Trade Retail Overlay.

[881] The court approves:

(a) the location of the Eastern Access Road as shown on QLDC's November 2012 Structure Plan;

(b) the relocation of AA-E2 in association with the Eastern Access Road to a depth 50m either side of the Eastern Access Road terminating on its southern boundary at Required Road 5;

(c) subject to the directions made, the location of Required Road 5 as shown on SPL's 4b Structure Plan; and

(d) subject to the directions made, the location of the remaining Required Roads as shown on SPL's 4b Structure Plan.

[882] The court declines to exercise its discretion to make directions pursuant to section 293 as follows:

(a) rezone Manapouri/FMC land fronting SH6 zoned AA-A and/or AA-E1 in PC19(DV) to AA-E4;

(b) rezone QLDC's AA-C2 land located west of Grant Road to AA-C1;

(c) rezone QLDC's AA-D land located west of Grant Road to AA-E2;

(d) rezone QCL's AA-C2 and AA-D land located east of Grant Road and north of Required Road 5 extending towards the Eastern Access Road to AA-E2; and

(e) rezone General Rural land owned by QAC and others outside the plan change area to AA-E1.

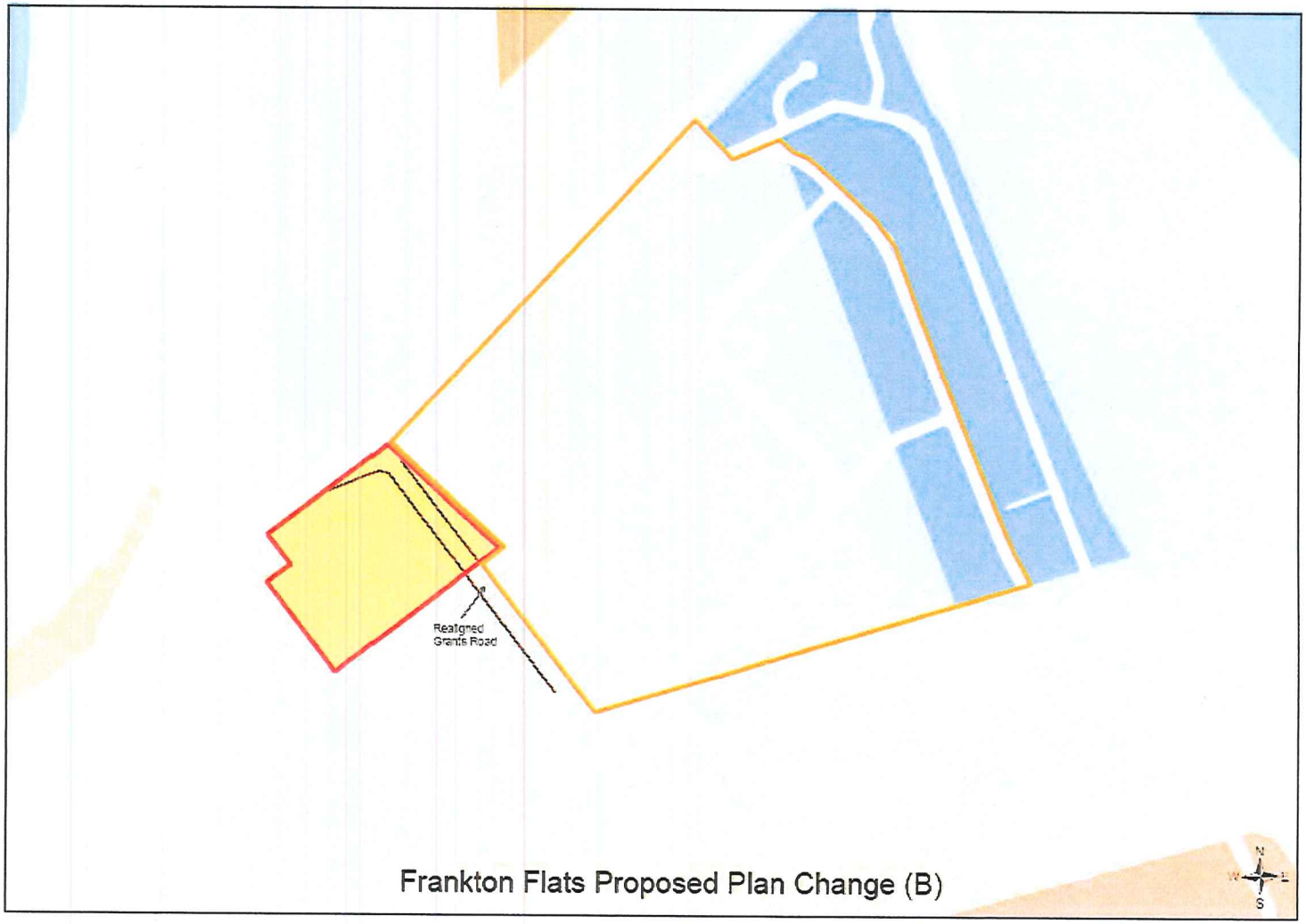
For the Court:

J E Borthwick
Environment Judge

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Annexure 1
Structure Plan Area

7. *Amend the District Plan Maps to show the extent of the Frankton Flats (B) zone (outlined in yellow)*



Annexure 2

Glossary of Terms for Plan Change 19

Abbreviated Term	Fully Defined Term
2006 Report	2006 Commercial Land Needs Analysis
AA	Activity Area
AA-C1	Activity Area C1
AA-C2	Activity Area C2
AA-D	Activity Area D
AA-E1	Activity Area E1
AA-E2	Activity Area E2
AA-E3	Activity Area E3
AA-E4	Activity Area E4
ANB	Air Noise Boundary
CBD	Central Business District
EAR	Eastern Access Road
FF(A)Z	Frankton Flats Special (A) Zone
FF(B)Z	Frankton Flats Special (B) Zone
FMC	FM Custodians
GFA	Gross Floor Area
gm	General merchandising sales
ha	Hectare
LFR	Large Format Retail
m	Metre(s)
NOR	Notice of Requirement
OCB	Outer Control Boundary
QAC	Queenstown Airport Corporation Limited
QCL	Queenstown Central Limited
QLDC or District Council	Queenstown Lakes District Council
RPZ	Remarkables Park Special Zone
SPA	Structure Plan area
SP Map	Structure Plan map
SPL	Shotover Park Limited and Remarkables Park Limited

Annexure 3
Structure Plans

A. PC19 (Notified Structure Plan)
B. PC(19(DV) Structure Plan
C. QLDC Aerial Structure Plan (November 2012) and Structure Plan showing net land areas (May 2012)
D. QCL Aerial Structure Plan (April 2012) and Structure Plan showing net land areas (May 2012)
E. SPL Aerial Structure Plan 4b (April 2012) and Structure Plan 4b showing net land areas (May 2012)

LEGEND

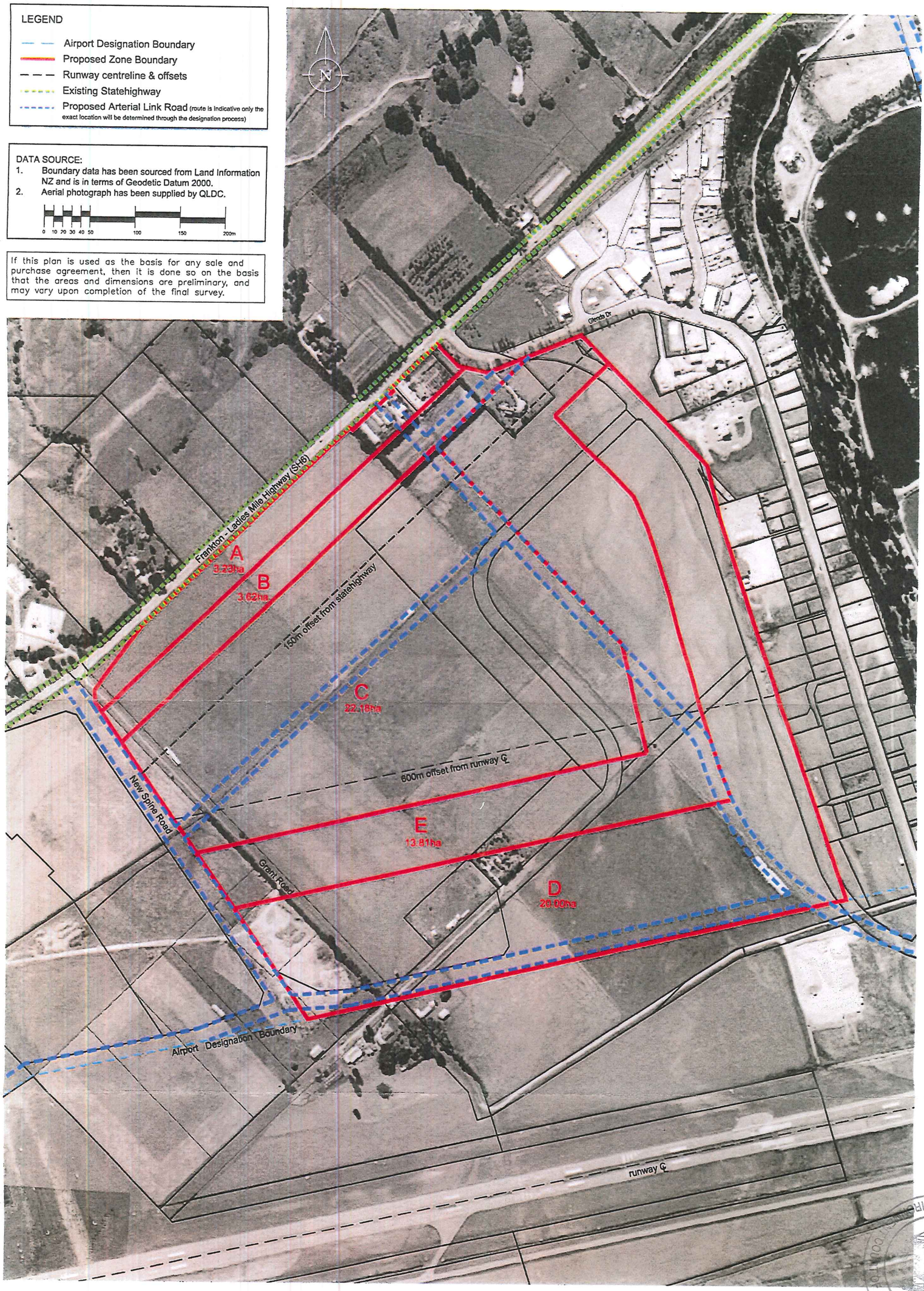
- Airport Designation Boundary
- Proposed Zone Boundary
- Runway centreline & offsets
- Existing Statehighway
- Proposed Arterial Link Road (route is indicative only the exact location will be determined through the designation process)

DATA SOURCE:

1. Boundary data has been sourced from Land Information NZ and is in terms of Geodetic Datum 2000.
2. Aerial photograph has been supplied by QLDC.

0 10 20 30 40 50 100 150 200m

If this plan is used as the basis for any sale and purchase agreement, then it is done so on the basis that the areas and dimensions are preliminary, and may vary upon completion of the final survey.



REV.	DATE:	REVISION DETAILS:	BY:
A	14.06.07	Initial Issue	EJD

WARNING NOTE:
This resource consent plan has been prepared for QLDC from field survey and existing records for the purpose of a proposed subdivision on the land. It is to be read in conjunction with our terms of engagement. It should not be used by the client company for any other purpose. The plan is not to be relied on by any other person for any purpose what so ever.

TITLE:

STRUCTURE PLAN FOR FRANKTON SPECIAL ZONE B
FRANKTON FLATS, QUEENSTOWN
for QLDC

DATE: 14 Jun 07
BY: Emily Dennison

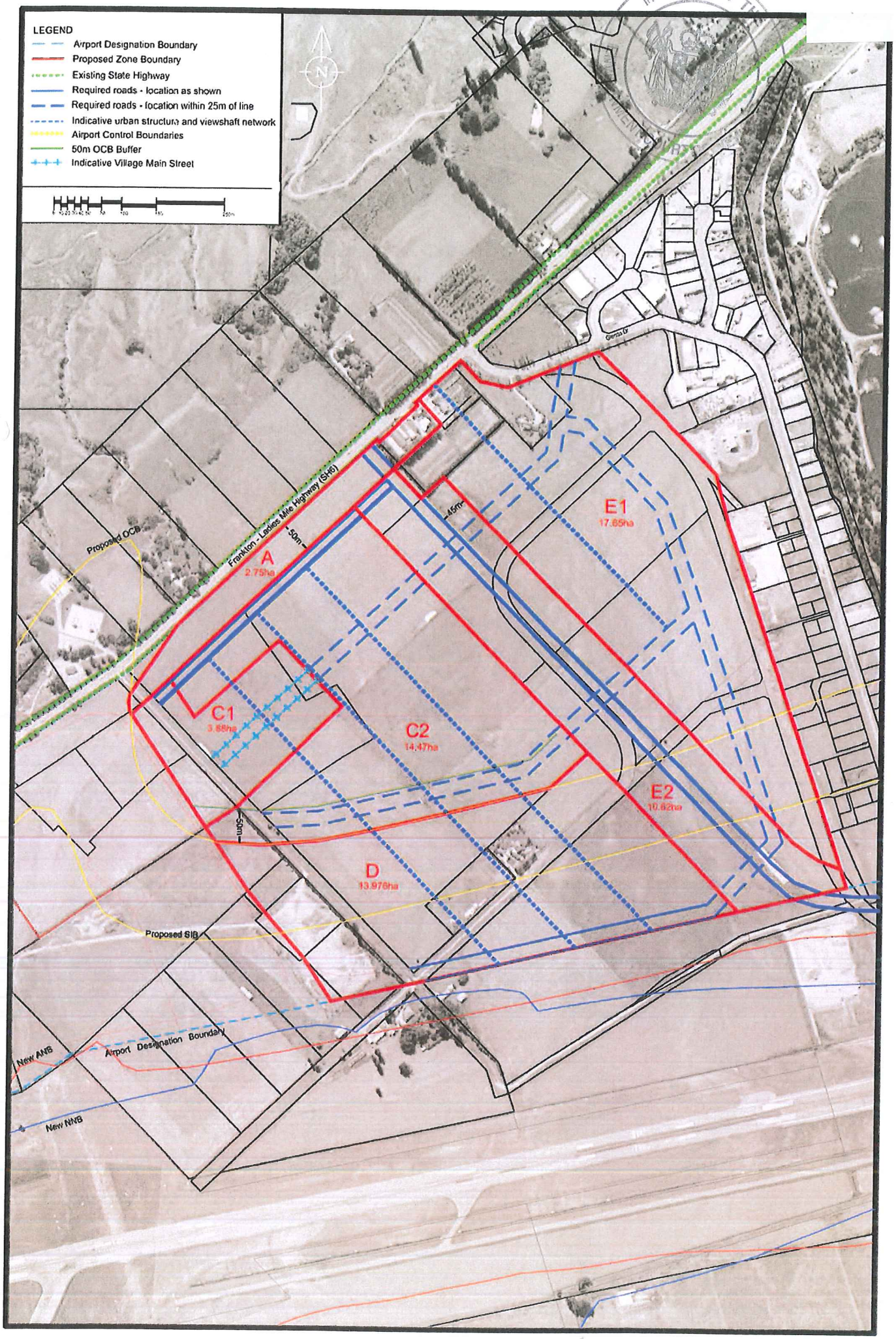
Scale 1:2000 Original Plan A1

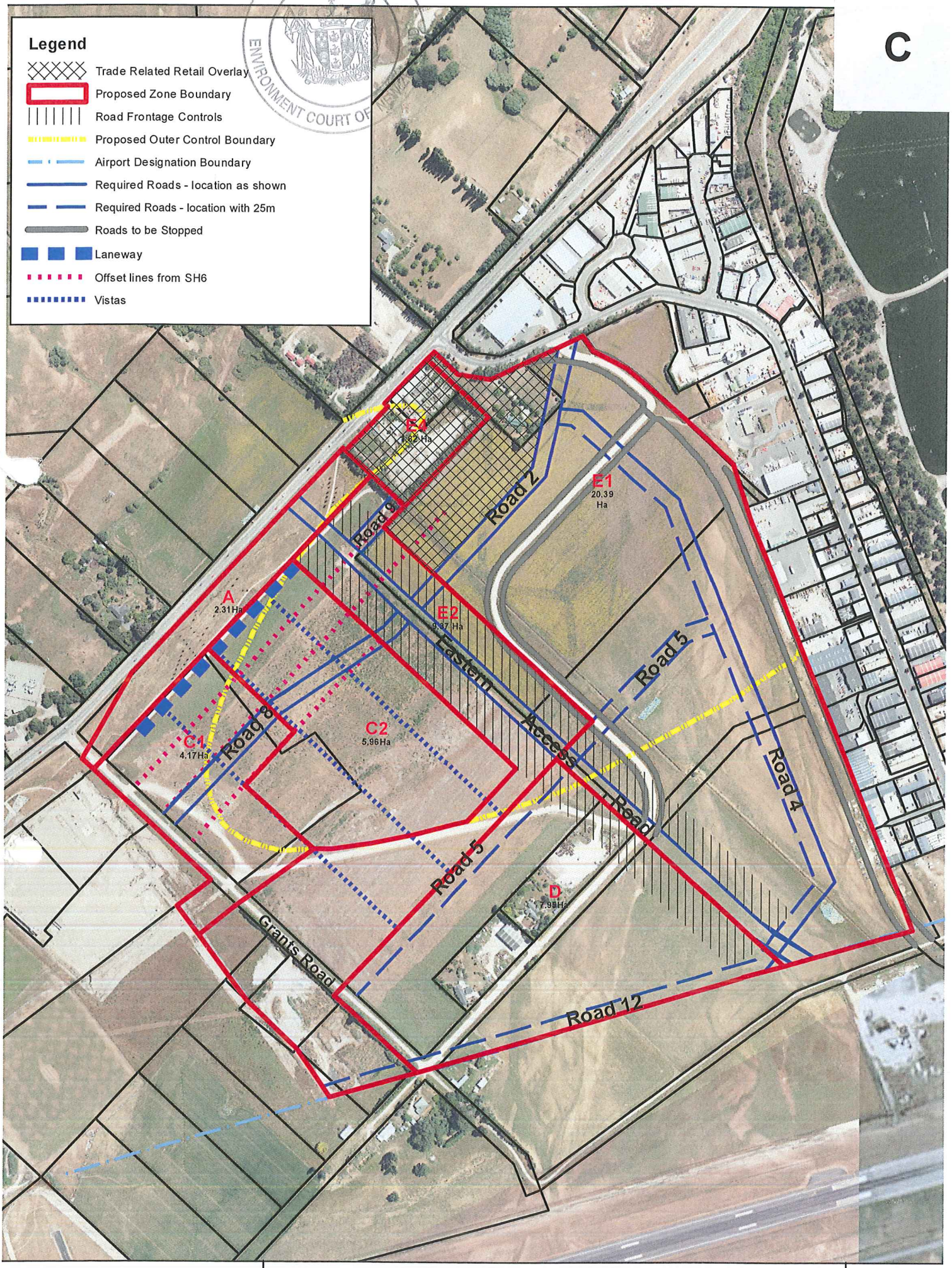
DRAWING & ISSUE No. 2486.20R.1A

AURUM
PO Box 1493
Queenstown
Ph 03 442 3466
Fax 03 442 3469
Email admin@ascl.co.nz

A

B

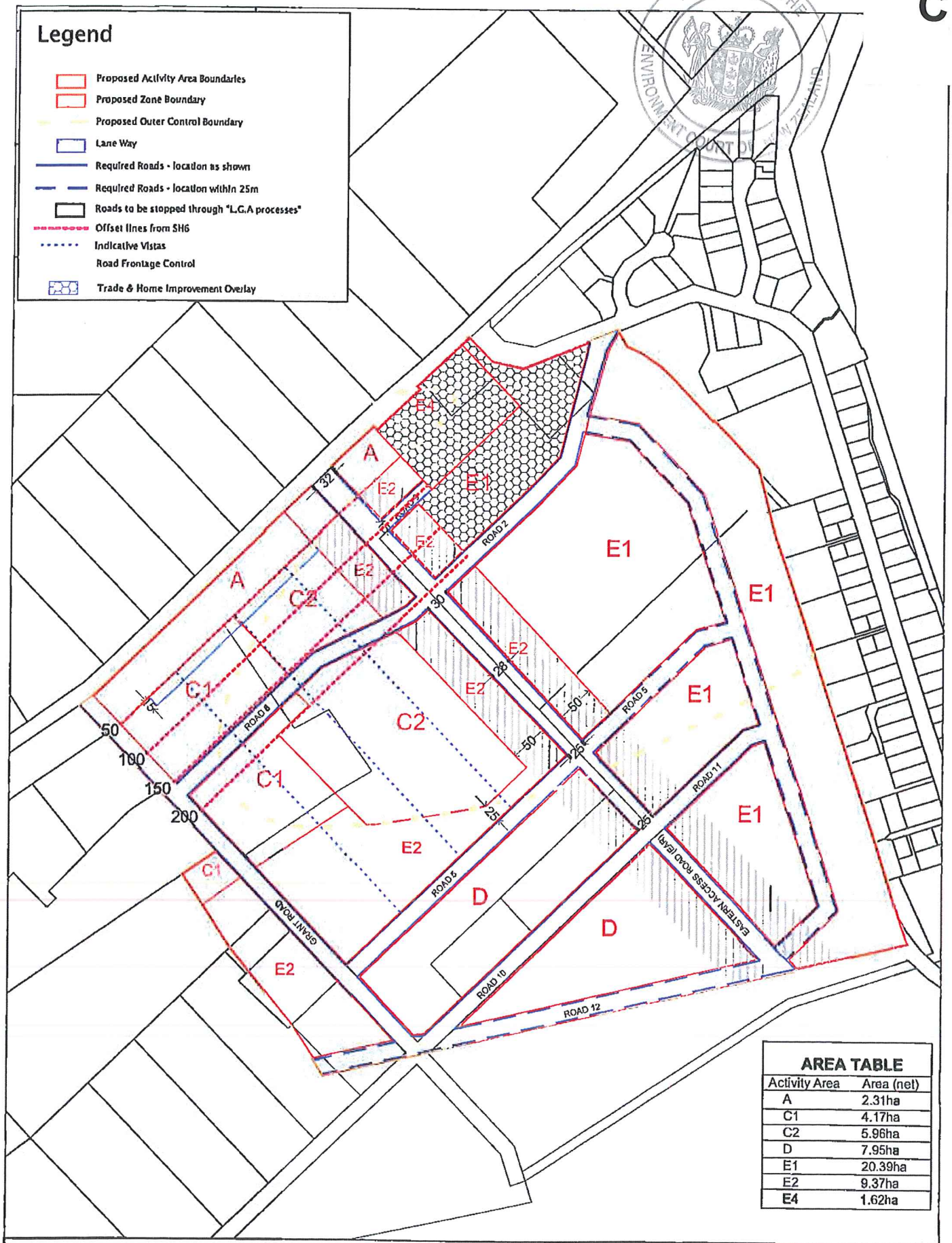

LEGEND
Airport Designation Boundary
Proposed Zone Boundary
Existing State Highway
Required roads - location as shown
Required roads - location within 25m of line
Indicative urban structure and viewshaft network
Airport Control Boundaries
50m OCB Buffer
Indicative Village Main Street
Franklton - Ladies Mile Highway (SH6)
Proposed OCB
Proposed SIB
New ANB
New NNB
Airport Designation Boundary
A
2.75ha
C1
3.88ha
C2
14.47ha
D
13.976ha
E1
17.65ha
E2
10.62ha
50m
45m



November 2012
QLDC Structure Plan

QUEENSTOWN LAKES DISTRICT COUNCIL

C



AREA TABLE	
Activity Area	Area (net)
A	2.31ha
C1	4.17ha
C2	5.96ha
D	7.95ha
E1	20.39ha
E2	9.37ha
E4	1.62ha

N

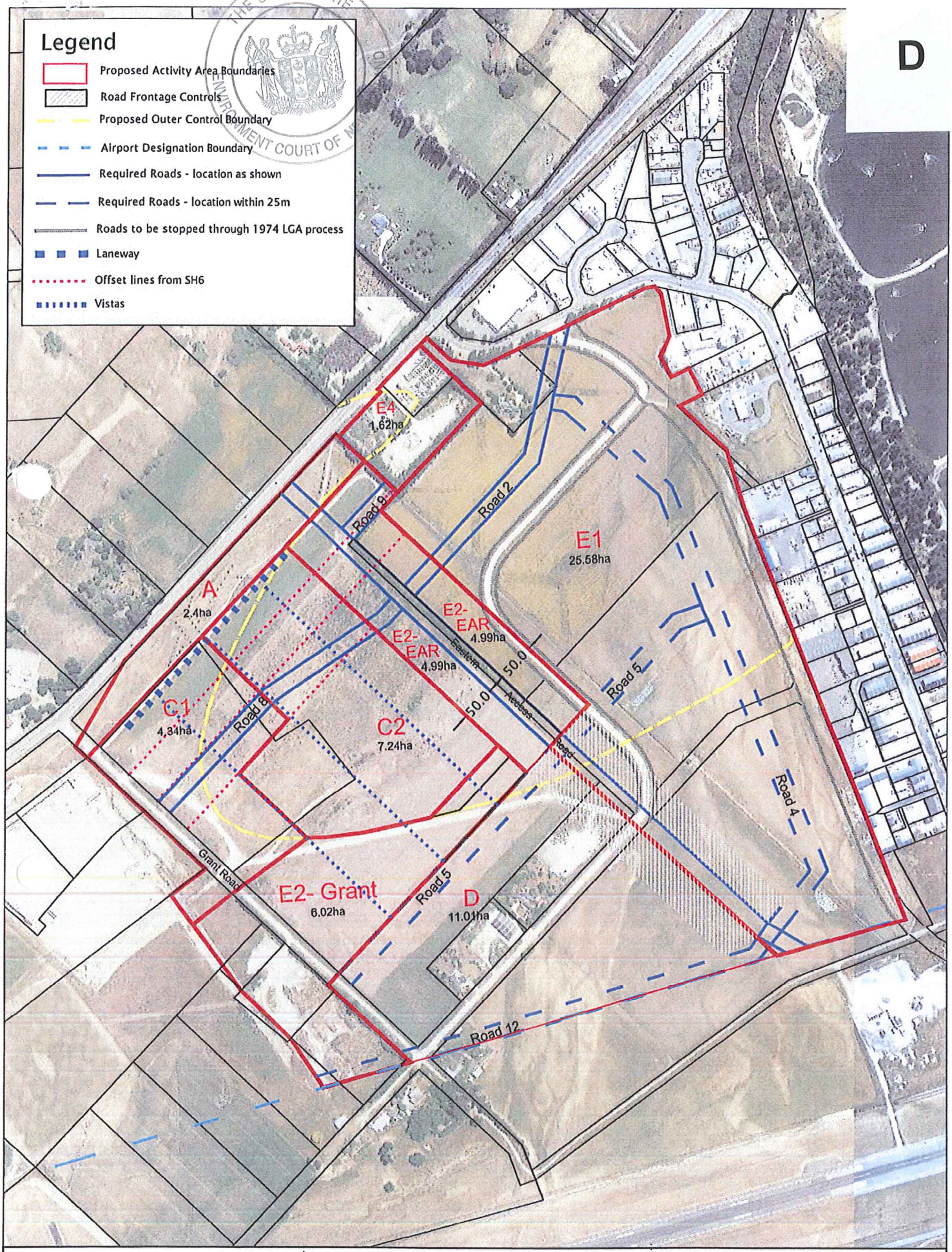
0 100 200

Metres

May 2012
QLDC
Structure Plan

Clark Fortune McDonald & Associates

Job No.	Drawing No.	Rev.
10503	10	
Drawn	Date	
HK	04.05.2012	



N

0 100 200

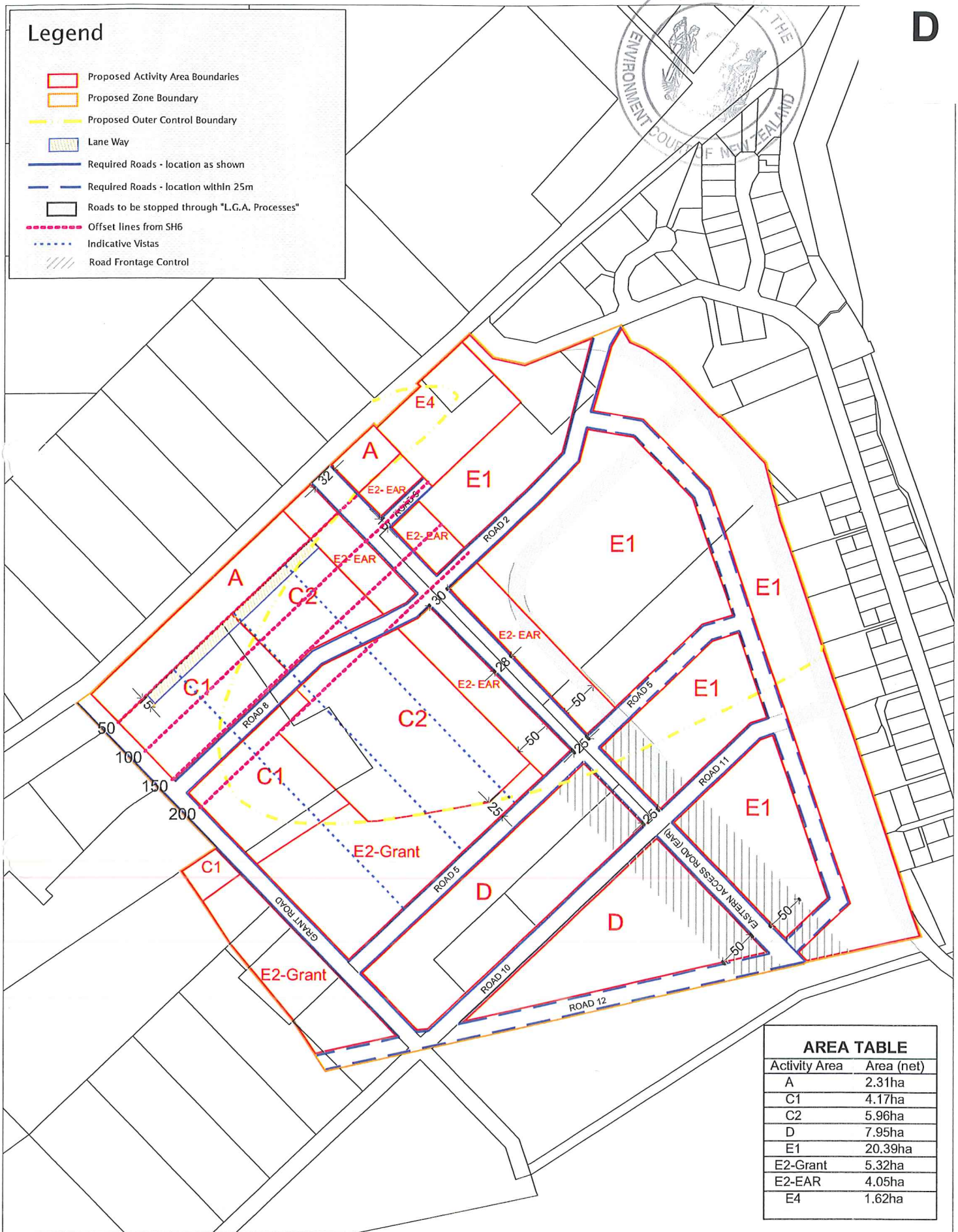
Metres

April 2012
Queenstown Central Ltd.
Structure Plan

Clark Fortune McDonald & Associates

Job No.	Drawing No.	Rev.
10503	09	
Drawn	Date	
HK	4.04.12	

D



AREA TABLE

Activity Area	Area (net)
A	2.31ha
C1	4.17ha
C2	5.96ha
D	7.95ha
E1	20.39ha
E2-Grant	5.32ha
E2-EAR	4.05ha
E4	1.62ha

N

0 100 200

Metres

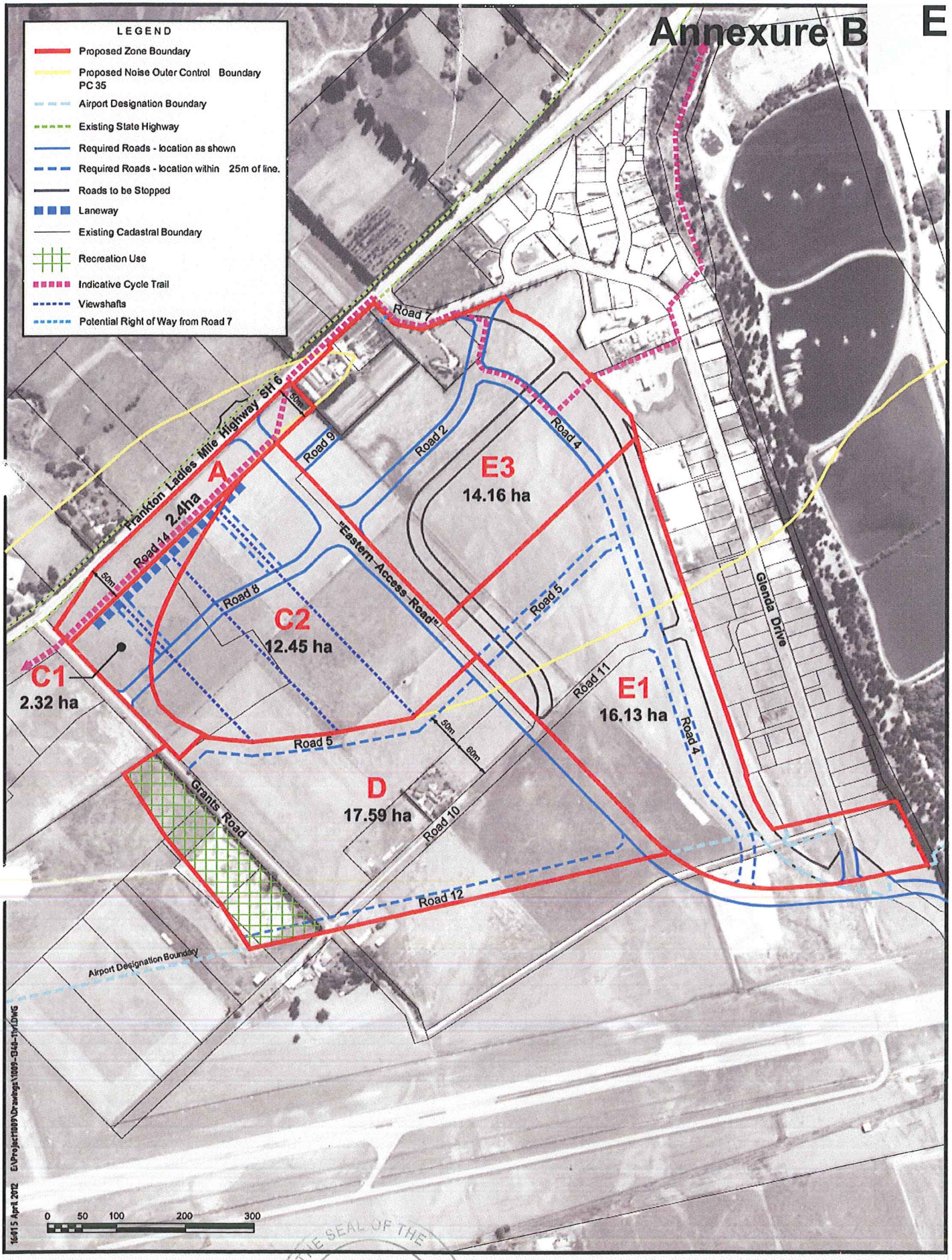
May 2012
Q.C.L
Structure Plan

Clark Fortune McDonald & Associates

Job No. 10503 | Drawing No. 7 | Rev. E

Drawn HK | Date 01.06.2012

Annexure B E



SPL 4 Structure Plan

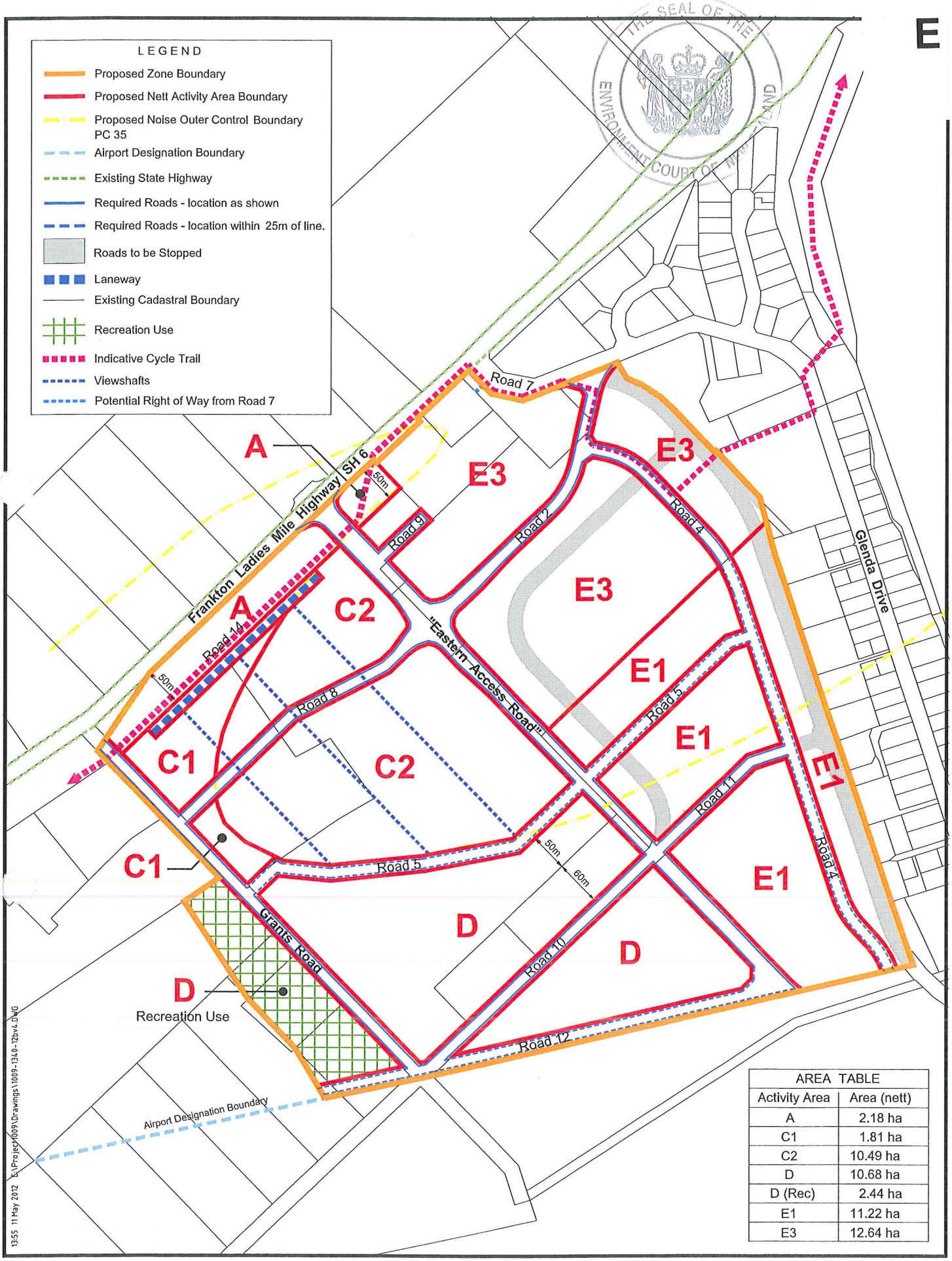
Plan Change 19 - Frankton Flats

Scale : 1:5000 (A3)

Date : April 2012

Apex Surveying Limited
86f Bush Road, Albany, Auckland, New Zealand
Private Bag 300 766 Albany
ph 64-9-414 7171
fax 64-9-414 2021
email office@apexsurveying.co.nz
web www.apexsurveying.co.nz

Our Ref : 1009 - 1340 - 11



AREA TABLE	
Activity Area	Area (nett)
A	2.18 ha
C1	1.81 ha
C2	10.49 ha
D	10.68 ha
D (Rec)	2.44 ha
E1	11.22 ha
E3	12.64 ha

SPL 4b Structure Plan - Nett Activity Areas

Plan Change 19 - Frankton Flats

0 50 100 200

Date : May 2012

Apex Surveying Limited
86f Bush Road, Albany
Auckland, New Zealand
Private Box 300 766
Albany
ph 64-9-414 7171
fax 64-9-414 2021
email office@apexsurveying.co.nz
web www.apexsurveying.co.nz

Our Ref : 1009 - 1340 - 12b