

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

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Hearing Streams 1A
and 1B – Introduction,
Strategic Direction,
Urban Development,
Tangata Whenua and
Landscape chapters

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

**HEARING STREAMS 1A AND 1B – STRATEGIC CHAPTERS IN PART B OF THE
PROPOSED DISTRICT PLAN**

4 March 2016

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FEBRUARY 2016**

1. INTRODUCTION

- 1.1 These legal submissions are made on behalf of Queenstown Lakes District Council (**Council**) in respect of submissions made on the Strategic chapters in the Proposed District Plan (**PDP**). The provisions that are the subject of Hearing Streams 1A and 1B consist of the following Strategic chapters:

Hearing Stream	PDP Chapters
Hearing Stream 1A	1. Introduction 5. Tangata Whenua
Hearing Stream 1B	3. Strategic Direction 4. Urban Development (except the diagrams sitting under Objectives 4.2.3, 4.2.5 and 4.2.6 showing the location of the Urban Growth Boundaries (UGBs)). 6. Landscapes

- 1.2 Where these chapters from Part B of the PDP are referred to collectively in these legal submissions, they are referred to as the **Strategic chapters**.
- 1.3 We also address and confirm wider matters relating to the partial District Plan Review (**DPR** or **Review**), such as the scope of each of the two stages of the Review, and the matter of whether five categories of submissions are "on" Stage 1 provisions. The latter relates to submissions where the validity and/or availability of relief sought in such submissions is questioned by the Council.
- 1.4 The Council's situation is unique in the context of land use planning in New Zealand. Significant population and urban growth pressures¹ are bringing about consequences that are usually regarded as "big city issues" (i.e. major housing supply and affordability issues, but without the majority of residents necessarily having equivalent big city incomes).

1 Evidence of **Mr Fraser Colegrave**, paragraphs 4.8 to 4.14, and section 5 on visitor growth projections.

1.5 When coupled with a high quality natural environment,² which is largely the reason for the growth in the first place (via tourism and the corresponding growth in residents/workers), this creates significant resource management tensions and challenges that require careful management.³ In response to these challenges, the Strategic chapters of the PDP include a strong and directive regulatory approach in some senses (urban development and landscapes), together with a more flexible and permissive approach in others (centres strategy⁴ and provision for higher density development in identified areas).

2. OUTLINE OF LEGAL SUBMISSIONS

2.1 These legal submissions:

- (a) outline the Council's functions and statutory obligations;
- (b) outline relevant legal considerations, particularly under the Resource Management Act 1991 (**RMA**);
- (c) confirm the scope of Stage 1 of the Review more generally (the scope of Hearing Streams 1A and 1B is set out in paragraph 1.1 above);
- (d) provide an overview of the Strategic chapters and set out the Council's approach to the Key Issues / Goals – focusing on those that have been materially challenged;
- (e) set out the Council's position on categories of submissions where the validity and/or availability of relief sought in such submissions is questioned – these submissions set out the Council's approach to all of the Stage 1 chapters;
- (f) outline the witnesses that will be called in support of the Strategic chapters; and
- (g) address the Panel's memorandum to the Council dated 16 February 2016.

2 Evidence of **Dr Marion Read**, paragraphs 4.1 to 4.2.

3 Evidence of **Mr Ulrich Glasner**, section 5 on integrated land use planning.

4 Evidence of **Dr Philip McDermott**.

3. COUNCIL FUNCTIONS AND STATUTORY OBLIGATIONS

- 3.1 Under section 31 of the RMA the broad functions of the Council are 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 Queenstown Lakes District.
- 3.2 In addition to its obligations under the RMA, the Council also has broader powers and obligations under the Local Government Act 2002 (**LGA**) and the Land Transport Management Act 2003 (**LTMA**).

4. RELEVANT LEGAL CONSIDERATIONS

- 4.1 The Panel's power to make a recommendation to Council sits within a framework established under the RMA and with decisions of such significance to be made, it is helpful to outline the key parts of the RMA that lay the foundation for those recommendations.
- 4.2 The RMA requires that there shall at all times be one district plan for each district prepared by a territorial authority in the manner set out in Schedule 1 of the RMA.⁵ The purpose of the preparation, implementation and administration of a district plan is to assist a territorial authority to carry out its functions in order to achieve the purpose of the RMA.⁶
- 4.3 The purpose of the RMA, and therefore of this exercise, is under section 5 of the RMA, to promote the sustainable management⁷ of natural and physical resources. It is of fundamental importance to the Panel in that it directs the goal of delivering a district plan which achieves the sustainable management of the District's natural and physical characteristics. Applying section 5 of the RMA involves an overall broad judgment of whether a proposal will promote sustainable management. Exercising this judgment allows for the balancing of conflicting considerations in terms of their overall relative

⁵ Section 73, RMA.

⁶ Section 72, RMA.

⁷ As that phrase is defined in section 5(2) of the RMA.

significance or proportion in the final outcome. The appropriate outcome is ultimately an issue of weight and emphasis.

- 4.4 In light of the challenges that this District faces in terms of balancing economic and population growth, and consequential housing demand, with the use and protection of the natural environment that in turns sustains the District, it is submitted that the management function in section 5 of the RMA is of critical importance and should be given particular weight and emphasis.
- 4.5 Under section 6, identified matters of national importance⁸ must be recognised and provided and, under section 7, particular regard is to be had to the "other matters" listed there, which include kaitiakitanga, efficiency, amenity values and ecosystems. Under section 8, the principles of the Treaty of Waitangi are to be taken into account.
- 4.6 Section 31 provides that a function of territorial authorities is, through the establishment of objectives, policies and methods, to achieve integrated management of the effects of the use, development or protection of land and natural resources.
- 4.7 Under section 32, an evaluation report on a proposed plan must examine whether proposed objectives are the most appropriate way to achieve the purpose of the RMA, and whether the provisions are the most appropriate way of achieving the objectives. To do that, the Council is to identify reasonably practicable options and is to assess the efficiency and effectiveness of the provisions through identifying the benefits and costs of the environmental, economic, social and cultural effects, including opportunities for economic growth and employment.
- 4.8 When preparing or changing a district plan the Council, in terms of section 74, *shall have regard* to the instruments listed there, which include any proposed regional policy statement, a proposed regional plan and management plans and strategies prepared under other

8 Relating to the protection of outstanding natural features and landscapes, significant indigenous vegetation and habitats, the maintenance and the enhancement of public access to lakes and rivers, the relationship of Maori and the culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga and the protection of historic heritage and customary rights.

Acts. The Council *must take into account* any relevant planning document recognised by an iwi authority.

4.9 Under section 75 it *must give effect to* any national policy statement, any New Zealand coastal policy statement and any regional policy statement, and *must give effect to* a water conservation order or a regional plan (for any matter specified in subsection 30(1)). Finally, under section 75(1), district plan policies must *implement* objectives, while any rules must *implement* the policies. Section 76 requires rules to achieve the objectives and policies of a plan.

4.10 The Environment Court gave a comprehensive summary of the mandatory requirements in district plans in *Long Bay-Okura Great Park Society v North Shore City Council*.⁹ Subsequent cases have updated the *Long Bay* summary following amendments to the RMA in 2005, the most recent and comprehensive of which was provided by the Environment Court in *Colonial Vineyard Limited v Marlborough District Council*,¹⁰ the content of which is set out in **Schedule 1** to these submissions.

5. SCOPE OF STAGE 1 OF THE PDP

5.1 The Council notified Stage 1 of the PDP on 26 August 2015. Since notification of Stage 1, the Council has withdrawn the following provisions under clause 8D of Schedule 1 of the RMA (the text of the public notice is in **Schedule 2** of these submissions):

- (a) all provisions as they relate to the geographic area addressed by Plan Change 50 (**PC50**);¹¹ and
- (b) specific Visitor Accommodation provisions from residential chapters 7 to 11 of the PDP.

5.2 As all provisions that apply to the geographic area addressed by PC50 have been withdrawn, this area is now excluded from Stage 1 of the Review.

⁹ *Long Bay-Okura Great Park Society v North Shore City Council* EnvC Auckland A078/08, 16 July 2008, at [34]. This case related to the district plan provisions controlling urban development behind Long Bay and Grannie's Bay within the North Shore City.

¹⁰ *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55.

¹¹ PC50 - Queenstown Town Centre Zone. PC50 is currently under appeal in the Environment Court.

5.3 Set out in the table below is a summary of the scope of the PDP chapters notified in Stage 1, and an indication of what is intended to be notified in Stage 2, at the time of filing these submissions.

Table 1 – clarification of scope of staged (partial) Review

PDP	Stage 1 chapter	Stage 2 chapter/provisions
Part 1	Introduction	
	1. Introduction 2. Definitions	
Part 2	Strategy	
	3. Strategic Direction 4. Urban Development 5. Tangata Whenua 6. Landscapes	
Part 3	Urban Environment	
	7. Low Density Residential 8. Medium Density Residential 9. High Density Residential 10. Arrowtown Residential Historic Heritage Management Zone 11. Large Lot Residential 12. Queenstown Town Centre* (part withdrawn) 13. Wanaka Town Centre 14. Arrowtown Town Centre 15. Local Shopping Centres 16. Business Mixed Use Zone 17. Queenstown Airport Mixed Use	<ul style="list-style-type: none"> • Townships • Industrial • Visitor Accommodation provisions within Urban zones
Part 4	Rural Environment	
	21. Rural Zone 22. Rural Residential and Lifestyle 23. Gibbston Character Zone	
Part 5	District Wide Matters¹²	
	26. Historic Heritage 27. Subdivision and Development 28. Natural Hazards 30. Energy and Utilities 32. Protected Trees 33. Indigenous Vegetation and Biodiversity 34. Wilding Exotic Trees 35. Temporary Activities and Relocated Buildings 36. Noise 37. Designations	<ul style="list-style-type: none"> • Affordable and Community Housing • Transport • 'Financial Contributions' (for the Hydro Generation Zone only) • Solid and Hazardous Waste Management • Hazardous Substances • Open Spaces Recreation • Open Space Zone – Landscape Protection • Appendices: <ul style="list-style-type: none"> • Appendix 6: Road Hierarchy • Appendix 7: Traffic Design Standards • Appendix 12: Standards for a Registered Holiday Home or Registered Homestay.

¹² The District-wide chapters cover all of the District, not just the geographic area covered by the notified Stage 1 zones. The only exception to this is that they do not cover the geographic area covered by PC50, given the Council's withdrawal of *all provisions as they relate to the geographic area addressed by Plan Change 50 – Queenstown Town Centre Zone*.

Part 6	Special Zones	
	41. Jacks Point Zone ¹ 42. Waterfall Park 43. Millbrook Resort Zone	<ul style="list-style-type: none"> • Frankton Flats (A) • Frankton Flats (B) • Rural Visitor • Penrith Park • Bendemeer • Remarkables Park • Quail Rise • Meadow Park • Mt Cardrona Station • Ballantyne Road • Three Parks • Kingston Village • Shotover Country • Hydro Generation

5.4 The following zones/matters from the Operative District Plan (ODP) are not part of either Stages 1 or 2 of the Review:

- (a) the geographic area addressed by PC50 – Queenstown Town Centre;
- (b) District Wide chapters:
 - (i) Signs (Chapter 18); and
 - (ii) Earthworks (Chapter 22);
- (c) Special Zones:
 - (i) Arrowtown South (within Chapter 12); and
 - (ii) Northlake (within Chapter 12).

6. OVERVIEW OF COUNCIL'S APPROACH TO STRATEGIC CHAPTERS

Consultation

6.1 Throughout 2012-2015 a substantial amount of monitoring, issue identification and consultation occurred on various ODP provisions and early draft PDP chapters.² In total, some 38 monitoring reports³ were prepared on each chapter of the operative district plan, and some topic specific matters, and were presented to the Council's then Strategy Committee. Monitoring identified issues with the operative provisions and informed comprehensive community consultation. Feedback was sought through a variety of mechanisms including the preparation of a series of brochures on specific issues and/or

1 The matter of Hanley Downs / PC44 is being considered at the time of this hearing, as raised in the Panel's Memorandum of Counsel dated 15 February 2016.

2 Queenstown Lakes District Proposed District Plan – Stage 1; Section 42A Hearing Report - Strategic Directions and Urban Development, 19 February 2016, at paragraph 6.6.

3 Available on the QLDC website: <http://www.qldc.govt.nz/index.php/planning/other-planning-information/monitoring/>

locations, and written feedback was received and recorded.⁴ Elected Councillors and Council officers also manned stalls at A & P shows and supermarkets, as well as more formal 'drop in sessions' held at Council offices.

6.2 In the development of the Strategic Direction chapter, the policy analysis underpinning it included consideration of the operative Chapter 3, which sets out 'A vision of Community Aspirations for a Sustainable District', and Chapter 4, which identifies a broad range of 'District Wide Issues'. The proposed Strategic Direction chapter is broadly based upon combining these operative chapters into a clear, concise statement of Strategic Direction, and was informed by reviewing monitoring reports and the outcomes of community consultation. In late 2013 there was also consultation on an early draft of the Strategic Direction chapter, which was pivotal in the development of the chapter (although it is noted that the chapter has evolved significantly since that consultation).⁵

6.3 For the Tangata Whenua chapter, consultation has been ongoing since early 2014.⁶ This has involved officer level meetings and communications, a Mayoral visit and a Council led hui on 27 February 2015, and a further hui on Tangata Whenua's wider input into the PDP on 27/28 July 2015.⁷ Following the last hui, representatives of Kai Tahu Ki Otago (**KTKO**) and Te Ao Marama Incorporated (**TAMI**) have had direct input into the content of this chapter.⁸

6.4 Public consultation on draft versions of the Landscape chapter occurred in early 2015 (as was the case for draft versions of the Residential and Rural chapters).⁹ The consultation was well advertised across a variety of forums, and involved a significant number of drop-in sessions.¹⁰ The material subject to this consultation crossed over into some of the key planning issues addressed in the Strategic chapters notified in Part B of the PDP, and

4 Section 42A Report - Strategic Directions and Urban Development, at paragraph 6.6.

5 Section 42A Report - Strategic Directions and Urban Development, at paragraph 6.9.

6 Queenstown Lakes District Proposed District Plan – Stage 1; Section 42A Hearing Report – Tangata Whenua, 19 February 2016, at page 6.

7 Section 42A Report – Tangata Whenua, at page 6.

8 Section 42A Report – Tangata Whenua, at page 6.

9 Section 42A Report - Strategic Directions and Urban Development, at paragraph 6.12.

10 Section 42A Report - Strategic Directions and Urban Development, at paragraph 6.12.

this allowed for further reflection, reconsideration and some amendment.¹¹

6.5 It is also worth noting that extensive public communications and drop-in sessions were held before and during the notification of the PDP. Of particular relevance is the publication of two issues of the Council's Scuttlebutt newsletter (sent to all ratepayers) shortly after notification, and again during the submission period, where the Strategic Direction chapter was set out in full.¹² This was undertaken so as to bring, as far as possible, some of the key planning issues and proposed policy responses to the community's attention.¹³

6.6 Overall, although the timeframes for the development of the PDP were compressed, it is submitted that good community involvement was facilitated on key issues.¹⁴

Introduction chapter

6.7 The Introduction chapter does not include any objectives or policies. Instead it provides the overview and background information regarding the matters covered by the plan and how it is to be used. The chapter explains, for example, the structure of chapters within the plan, consenting, information and notification requirements, what existing use rights and designations are, and the Council's powers to enforce compliance with the plan.

6.8 Changes are recommended to the chapter by Council to further clarify the relationship of the PDP with National and Regional Plans, and consultation obligations under consent applications. The section setting out what information is required to be submitted with a Notice of Requirement has been deleted. This is in response to submissions, as it simply repeats various sections of the RMA and Form 20 of the Resource Management (Forms, Fees and Procedure) Regulations 2003.¹⁵

11 Section 42A Report - Strategic Directions and Urban Development, at paragraph 6.12.

12 Section 42A Report - Strategic Directions and Urban Development, at paragraph 6.13.

13 Section 42A Report - Strategic Directions and Urban Development, at paragraph 6.13.

14 Section 42A Report - Strategic Directions and Urban Development, at paragraph 6.14.

15 **Mr Tony Pickard** report, paragraphs 6.4.1 – 6.4.3, and Revised Chapter in Appendix 1 of his report.

- 6.9 Although not a regulatory chapter of the PDP, the Introduction chapter forms part of the plan and any changes to it need to be within the scope of submissions made on it (or progressed through a variation or plan change under Schedule 1 of the RMA). It is the Council's position that the Introduction chapter is not an appropriate location for a diagram or explanation that relates to the mechanics of delivering a (partial) District Plan Review, as it would represent a snapshot in time and would swiftly become out-of-date. If the Introduction chapter was to include a clear explanation as to what is within and what is outside of Stage 1 of the Review, new text would need to be added in Stage 2 to explain that Stage as well. Until the full Council approves notification of Stage 2, there is no certainty as to what it will contain, so including that information at the time of notification of Stage 1 would have been premature and possibly confusing.
- 6.10 In addition, any withdrawal of further provisions by the Council would likely necessitate changes to the Introduction chapter if it were to include a diagram or explanation regarding the mechanics of a partial review. However an *amendment* to the Introduction chapter to update the explanation would not be possible under Clause 8D which allows for withdrawals only. The Council would have to initiate a variation to amend/update the explanatory text or a diagram, which is not a desirable outcome for Council or ratepayers.
- 6.11 The Council does however recognise that its guidance on the scope of the stages of the Review could be improved and will update the information on the PDP website and produce a pamphlet better explaining the staging of the Review. The Council will also keep the public up-to-date with anticipated timing of notification of Stage 2 of the Review.

Strategic Direction chapter

- 6.12 The Strategic Direction chapter provides the strategic context for the PDP and the overarching direction for the other chapters within the plan, including those other chapters within Part 2 of the PDP. In particular the chapter:

- (a) describes the key resource management issues and goals for the District; and
 - (b) sets out high-level, strategic objectives and policies, for the District as a whole.
- 6.13 The level of detail that is included in the Strategic Direction chapter is intentional and directly responds to the Council's seven key goals. This chapter, along with the other Strategic chapters, identifies and sets out a framework for dealing with the key resource management issues facing the District, and provides clarity around the appropriate locations for specific activities while providing guiding principles as to the overall objectives sought by the Council.
- 6.14 The chapter largely shapes and determines the PDP's strategic management approach. The approach taken by the Council allows specific chapters to develop detailed policies that relate to the particular issues, in different environments and circumstances. The Strategic Direction chapter also provides clarity around the appropriate locations for specific activities while outlining guiding principles as to the overall objectives sought by the Council.
- 6.15 It is submitted that it is not appropriate for the chapter (nor the other Part 2 "Strategy" chapters) to provide detailed direction on the wide range of activities and circumstances that will be covered by the PDP – detailed direction is more appropriately outlined in the more specific zoning and district-wide chapters.
- 6.16 The Strategic Direction chapter provides the overarching direction for the other chapters within the plan, including those other chapters within Part 2 of the PDP. In particular the Strategic Direction chapter sets out high-level, strategic objectives and policies for each of the seven goals, for the District as a whole.¹⁶ Submissions seeking that various goals be deleted (or additional goals be added) have been recommended to be rejected. The goals have been identified by the Council for the entire District, bearing in mind their importance and influence, and have taken into account various interests and industries (not just that of one sector or submitter). It is however

16 The purpose and scope of the Strategic Direction Chapter is discussed in more detail by **Mr Matthew Paetz** in his report, paragraphs 8.3 and 8.4.

submitted that the Council's inclusion of an additional objective and policy within Goal 1 in relation to tourism, is an alternative solution that addresses submitters' requests for an additional Goal at the Strategic Direction level identifying the importance of tourism to the District.

Goal 1: *Develop a prosperous, resilient and equitable economy*

6.17 The material changes recommended by Council in response to submissions relating to Goal 1 are:

- (a) to include an additional suite of objectives and policies to recognise Frankton as a commercial centre;¹⁷
- (b) changes to further recognise the civic and cultural functions of the town centres;
- (c) a new objective and policy that more explicitly recognises tourism activity;
- (d) an amendment to Policy 3.2.1.2.3 so that it is less absolute;¹⁸
- (e) an amendment to Objective 3.2.1.6 to remove the reference to a 'sensitive approach' being taken to rural amenity etc, instead recommending that adverse effects are avoided, remedied or mitigated; and
- (f) amendments to Objective 3.2.1.7 and a new policy to recognise 'regionally significant infrastructure' (and a new definition of that term).

6.18 Dr Philip McDermott will give evidence as to the strategic function of retail and business centres, the roles they serve and their importance in pursuing Goal 1. This extends to recognising the important role tourism plays in the District's economy and New Zealand's tourism industry.

Goal 2: *The strategic and integrated management of urban growth*

6.19 An approach embedded within the objectives and policies of the Strategic Direction chapter relates to the introduction of the Urban

17 This is supported by Mr Geoff Brown but he has proposed further amendments to the new provisions in his evidence for Queenstown Park Limited, Remarkables Park Limited, Shotover Park Limited and Queenstown Wharves (GP) Limited.

18 So that it is non-industrial activities 'not related to or supporting' industrial activities that should be avoided. See **Mr Matthew Paetz** report, at paragraph 12.24.

Growth Boundaries (**UGBs**) for Queenstown and Wanaka, and the roll-over of operative UGBs for Arrowtown. The intention is to intensify development within those boundaries, co-ordinate and integrate development, and avoid urban development outside of them. This approach is also central to the objectives and policies of the Urban Development chapter. Recognising the repetition however, Mr Paetz has recommended deleting the six policies in the notified Strategic Direction chapter that were specific to UGBs, instead leaving the detail for the Urban Development chapter. We return to the Urban Development chapter below.

Goal 3: A quality built environment taking into account the character of individual communities

6.20 The submissions on the objectives and policies sitting under Goal 3 are relatively limited. Mr Clinton Bird's evidence is that the notified provisions appropriately address urban design matters, without necessarily using the phrase 'urban design', such as the promotion of development responding to character and context, and the need for development to be comprehensively designed.

Goal 4: The protection of our natural environment and ecosystems

6.21 A noteworthy change recommended is the deletion of Policy 3.2.4.2.2 as it too readily contemplates adverse effects on nature conservation values, if environmental compensation can be provided, but also because the policy is considered to be too fine-grained and specific for inclusion in the Strategic Direction chapter. Some rewording has also been recommended to make the provisions relating to indigenous biodiversity less absolute.

Goal 5: Our distinct landscapes are protected from inappropriate development

6.22 As submitters have acknowledged, Queenstown's landscapes are critical to Queenstown's image and its reputation and are worthy of

recognition and careful management.¹⁹ You will hear evidence from Dr Marion Read for the Council, endorsing the need to protect the District's landscapes. The key issues raised in submissions on landscapes are:

- (a) the mechanism for protecting landscapes (in particular, the mapping of outstanding natural landscapes and features) – although Mr Paetz has confirmed that overall there is support, or at least neutrality, in submissions on mapping;²⁰
- (b) the location of the mapped lines that define outstanding natural landscapes and features (this is not a matter for this hearing);²¹ and
- (c) the language used in provisions.

6.23 Mr Paetz has accepted that there is repetition between notified policies in the Strategic Direction and Landscape chapters, and as such has recommended deletion from the Strategic Direction chapter of the policy that points to the mapping of outstanding natural landscapes and features, as a method. We come back to the Landscape chapter below.

Goal 6: Enable a safe and healthy community that is strong, diverse and inclusive for all people

6.24 Submissions on the objective and policies under Goal 6 were limited. The key change recommended by Mr Paetz is an appropriate change from the word "protect" to "enabling" access to and opportunities for housing that is more affordable.

19 Legal Submissions for Queenstown Park Limited, Remarkables Park Limited, Shotover Park Limited and Queenstown Wharves (GP) Limited, paragraph 8.1.

20 The notable exception is the Upper Clutha Environmental Society (Inc), who seek that the ODP approach of a case by case approach to categorising landscapes be retained, including the role of the Environment Court in deciding on landscape lines under specific consent applications.

21 As the location of the outstanding natural landscapes and features is directly relevant to those submitters seeking rezoning requests (ie, some submitters seek that a ONL be removed from their land and they be rezoned to an urban zoning), we understand that this will be addressed in the "Rezoning Hearings", currently scheduled for 2017, and that there may be a specific "Landscape" mapping hearing, prior to the Rezoning Hearings.

Goal 7: Council will act in accordance with the principles of the Treaty of Waitangi and in partnership with Ngāi Tahu

6.25 Again only a small number of submissions were received on the two objectives under Goal 7. The submissions seeking that the words Tangata Whenua and Ngāi Tahu be replaced with the word Manawheuna have been rejected, although this is addressed in more detail in the Tangata Whenua report (and below in these submissions). Objective 3.2.7.1 is recommended to be "softened" away from requiring protection of Ngāi Tahu values, to recognising and providing for those values.

Urban Development chapter

6.26 The Urban Development chapter largely builds on Goal 2 by addressing key urban growth management issues and the tools by which they will be achieved, in particular the establishment of new UGBs around Queenstown and Wanaka, and the continuation of UGBs around Arrowtown. It sets out the objectives and policies for managing the spatial location and layout of urban development within the District. The Chapter will guide planning and decision making for the District's major urban settlements and smaller urban townships. The Council's approach is to direct future urban development within these UGBs and also to encourage intensified development within certain areas within these boundaries.²² The Council seeks to coordinate and integrate any new development of the District's townships within UGBs for the reasons outlined in Mr Ulrich Glasner's evidence.²³

6.27 You will hear evidence from the following Council witnesses that support the need for both UGBs and intensification:

- (a) Dr Marion Read, who explains the intrinsic value and importance of the District's landscapes. She is of the view that when these factors are coupled with the high level of population growth in the District, it is necessary to manage growth;

22 The purpose and scope of the Urban Development Chapter is discussed in more detail by **Mr Matthew Paetz** in his report, paragraphs 9.1 to 9.3.

23 Evidence of Mr Ulrich Glasner, paragraphs 4.4 to 4.5.

- (b) Mr Clinton Bird, who from an urban design perspective outlines the threat posed by urban sprawl on the District's outstanding landscapes, together with the highly attractive and characterful towns of Queenstown, Wanaka and Arrowtown in particular; and
- (c) Mr Ulrich Glasner, chief engineer at QLDC, whose evidence is that a planning approach based around the utilisation of UGBs and the promotion of intensification in particular strategic locations, results in much greater certainty in terms of infrastructure planning and funding, and generally provides a more cost effective approach with a range of community benefits. Mr Glasner seeks a planning outcome that encourages sustainable and efficient use of existing physical resources by encouraging growth where there is capacity within the existing infrastructural network, to accommodate such growth.

6.28 The location of the UGBs and rules and standards that would apply within the residential high and medium density zones is of course not within the scope of this hearing. It is the policy direction endorsing those methods that is at issue. Council seeks to move towards a greater level of certainty in its growth management approach, and the use of UGBs assists the Council in achieving sustainable management. The real risk of *ad hoc* planning outcomes would not promote sound long term infrastructure and asset planning, and would not readily assist Council in achieving its functions under section 31 of the RMA.²⁴

6.29 It is worth mentioning that the inclusion of UGBs in the PDP should not have come as a surprise. Mr Paetz' evidence is that a common theme in various consultation forums between the Council and the community over the past 10 years has been that significant expansion of the urban footprint in the District is undesirable and unsustainable. The Queenstown Growth Management Strategy (2007) and Wanaka 2020, are two strategic planning documents that the Council has prepared under the LGA, which have been strongly informed by community consultation. The fundamental message contained within

24 Achieving integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district.

these strategies is the need to better manage and co-ordinate growth, and to limit urban sprawl.²⁵

Tangata Whenua chapter

- 6.30 The Tangata Whenua chapter replaces the Statutory Acknowledgement section and part of Section 4 District Wide Matters (Takata Whenua) of the ODP. It draws on Goal 7 by expressly stating the Council's intention to act in accordance with the principles of the Treaty of Waitangi, especially the principles of partnership and active protection. The chapter also assists users of the plan to assess any effects on Tangata Whenua values, through the assessment of consent applications.²⁶
- 6.31 As mentioned above, KTKO's submission requests that all references to "Tangata Whenua" and in some instances "Ngāi Tahu" be replaced with "Manawhenua". Mr Tony Pickard has expressed a concern at making this change, in the absence of the view of TAMI,²⁷ which was the third party involved in preparation and drafting of the chapter. He has recommended that the word Tangata Whenua be used as is the case in the RMA and the Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**).
- 6.32 Legal submissions by Remarkables Park Limited and Queenstown Park Limited confirm that they support the intention of the Tangata Whenua chapter. However, they raise concerns about the absence of the identification of wahi tupuna on the planning maps. Map 40 shows the three topuni that are referenced in 5.8 of the Tangata Whenua chapter. These areas are known to Council given their inclusion in the NTCSA. Council has consulted with iwi prior to notification of Stage 1, and agreed on a process where iwi would provide further information to feed into notification of further areas in Stage 2.
- 6.33 The Historic Heritage Chapter 26, is the location where further sites of significance identified by iwi will be protected (through the rules

25 Mr Matthew Paetz report, paragraphs 12.51-12.53.

26 The purpose and scope of the Tangata Whenua Chapter is discussed in more detail by **Mr Tony Pickard** in his report, paragraphs 4.2 and 4.3.

27 Te Ao Marama Incorporated.

included in Stage 1). However, as iwi are still to provide that information, the location of them will need to be notified in Stage 2.

Landscape chapter

- 6.34 The Landscape chapter expands Goal 5 and provides a more detailed policy framework to recognise the significant conservation, economic and intrinsic value the landscape has to the District. It establishes the framework for categorising landscapes to align with the RMA, by recognising Outstanding Natural Features and Landscapes as matters of national importance.²⁸
- 6.35 Under the ODP every proposal for residential subdivision and development that is a discretionary or non-complying activity in the Rural General Zone needs to prove that the development would be appropriate in terms of effects on the landscape (and other facts such as rural production issues). Every time an assessment needs to be made as to the landscape classification of the site and its vicinity determined. Dr Read's evidence describes how a number of problems have arisen and refers to the assessment matters for all landscape classifications as being "confusing, challenging and frustrating".²⁹ Ultimately when such questions end up before the Environment Court this still does not place the landscape lines in the ODP – they simply apply to the specific facts before the Court.
- 6.36 Some submissions made claim that the PDP approach is too weak, and others that it is too restrictive. After considering submissions the Council's fundamental approach to the Landscape chapter has not changed – it is submitted to be more efficient and effective, and to provide far more certainty than the ODP approach.
- 6.37 Submissions also claim that the policies over-emphasise farming and that other activities based in the rural areas have been overlooked, particularly within the Wakatipu Basin and surrounds. However, the Landscape Chapter applies not only to the Wakatipu Basin but across the entire District and it has been drafted so that it will be relevant and

28 The purpose and scope of the Landscape Chapter is discussed in more detail by **Mr Craig Barr** in his report, paragraphs 6.6 and 6.7. See also **Dr Marion Read's** evidence regarding the important of protecting the District's landscapes.

29 At paragraph 5.8.

effective across the District. The circumstances of the local context can be applied through a specific development application. Separating the landscape and rural policies into specific areas is not efficient or the most appropriate way to meet the purpose of the RMA.

6.38 Mr Barr has recommended some changes to the chapter. Of note (and referring to the Revised Chapter clause numbers):

- (a) a new policy 6.3.1.12 has been recommended for inclusion in the chapter to recognise the importance of the contribution that regionally significant infrastructure makes to social and economic wellbeing and health and safety, notwithstanding the importance placed on landscape values and location constraints in the District for location of infrastructure;
- (b) an amendment to Policy 6.3.1.4 so that it specifies that it applies to urban development, and removes the potential for unintentionally including all development, such as rural living;
- (c) an amendment to Policy 6.3.1.5 to recognise that resort zones are also important for tourism and commercial recreation based activities to the District;
- (d) an amendment to Policy 6.3.1.7 so that it is more focused on the impacts of development on the night sky landscape; and
- (e) an amendment to Policy 6.3.5.5 so that it better acknowledges that development could be appropriate without having to locate in the least visible locations on a site.

6.39 Recognition and management of rural character, including by productive farming, has been identified as an issue that is not being appropriately managed by the ODP.³⁰ While a large portion of the District's high quality landscapes are located within the Conservation Estate, much of the landscapes within the ambit of the Council is utilised for farming.

6.40 Mr Barr's evidence is that rural character is one of many elements, or subsets of the landscape, and that the provisions in the Landscape chapter do address the matter of rural character.³¹ Character is specified in many of the Landscape chapter's objectives and policies, and you will hear evidence from Mr Barr that where elements of rural character primarily relate to visual aspects, that they are a subset of landscape and as such this chapter is an appropriate location. Where the matter affecting rural character is more to do with other elements such as the type and intensity of traffic generation, noise or lighting, or whether the proposed activity would be sensitive to permitted or legally established rural activities, the provisions are provided for within the respective zone chapters.³²

7. LEGAL ISSUES – WHETHER VARIOUS SUBMISSIONS ARE 'ON' STAGE 1 OF THE PDP

7.1 Various submissions have been lodged that are not considered to be "on" Stage 1 of the PDP.³³ The Council has categorised submissions raising scope issues into five categories and this approach will be applied across the Stage 1 hearings in its analysis and recommendations on submissions. The five categories, and the Council's position on them, are summarised in the Table in **Schedule 3**. Where the Council considers a submission is not "on" one of the Strategic chapters, this has also been indicated in Appendix 2 of the various Council reports.

7.2 For those submissions (or submission points) in categories not "on" Stage 1 of the DPR (ie, Categories 1, 2, 3 and 5 in **Schedule 3**), Council considers that the Panel can simply disregard them. This also applies also to further submissions that have been made on a primary submission that has not satisfied the legal requirements of a submission. Importantly for those submitters who fall into this category:

- (a) where an area of land or District-wide chapter is to be notified in Stage 2, Council's position is that a person whose

31 Report of Craig Barr, paragraph 9.43.

32 Report of Craig Barr, paragraphs 9.52-9.53.

33 As required by clause 6 of the First Schedule of the RMA.

- submission was not "on" Stage 1 will need to make a *new* submission when Stage 2 of the DPR is notified – the disregarded submission will have no legal status for Stage 2 and will not "transfer over" to Stage 2 under the RMA; and
- (b) where the submission was on an area of land or District-wide chapter that is specifically excluded from the DPR (ie, as listed in paragraph 5.4 above), Council's position is that this Review is not the opportunity to make changes to the ODP provisions, and there is no opportunity to pursue the change sought through this process.

Legal principles / case law regarding 'scope'

- 7.3 Whether a Council is considering a partial review under section 79(1) of the RMA (as is the case here), or a plan change under Schedule 1, submissions are made under clause 6 of Schedule 1 of the RMA:

*once a proposed policy statement or plan is publicly notified under clause 5, the persons described in subclauses (2) to (4) may make a submission **on it** to the relevant local authority. (our emphasis)*

- 7.4 The legal principles regarding scope and the Panel's powers to recommend and subsequently the Council's power to decide are:
- (a) a submission must first, be *on* the proposed plan; and
- (b) a decision maker is limited to making changes within the *scope of the submissions made on the proposed plan.*

- 7.5 It is acknowledged at the outset that the case law discussed below largely deals with discrete plan changes rather than plan reviews. Plan changes are typically directed at a specific issue or geographic area, and targeted towards achieving a certain end, whereas plan reviews will inevitably involve a broader and less confined approach to the question of scope – albeit that this has in turn been complicated by the Council's approach of initiating a partial review in stages. This is because the Council through section 79 must, even after reviewing operative provisions and deciding they do not need to be changed, notify them as part of the PDP. In other words, there may be no change to the "status quo" in a Review, and therefore

those words in the first limb of the test set out below has limited relevance to this Review.

7.6 The meaning of "on" was considered by a superior court in *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519. The High Court in *Motor Machinists* firmly endorsed the two-limb approach from *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003. The two questions that must be asked are:

- (a) whether the submission addresses the change to the pre-existing status quo advanced by the proposed plan; and
- (b) whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.

7.7 A submission can only be fairly said to be "on" a proposed plan if it meets both these limbs. The High Court in *Motor Machinists* clearly confirms that "on" should *not* be treated as meaning "in connection with". The principles that underlie these decisions are those of fairness and due process, which are embodied in the RMA by its emphasis on public participation in decision making.

7.8 While *Motor Machinists* does endorse the *Clearwater* approach, the decision indicates a tightening of the two-limb approach. The Court began by stating that for a submission to be "on" a plan change, it must directly address the degree of change in the proposed plan/change itself. The first limb is the dominant consideration and acts as a 'filter'.

7.9 As set out in paragraph 7.5 above, a notified PDP will not always change the status quo, and the inclusion of those words in the first limb are arguably inimical to the purpose of a plan review. However, the first limb is submitted to still be of relevance in the context of this Review, in terms of defining the geographic area notified in Stage 1 for the zoning chapters (ie. residential and rural zones only, plus three Special Purpose zones – Jacks Point, Millbrook and Waterfall Park). The District Wide chapters require different treatment, as they apply

across the District, including to geographic areas of the land not notified in Stage 1 (ie, the Industrial and excluded Special Zones).

- 7.10 The first limb in the *Motor Machinists* case has more recently been considered in an application for declarations in the Environment Court, *Palmerston North Industrial and Residential Developments Limited v Palmerston North City Council* [2014] NZEnvC 17. The Court concurred with the following extract from the Palmerston North City Council's legal submissions:³⁴

Palmerston North City Council is entitled to put forward changes to provisions in its district plan at any time to provide for urban growth in particular areas (in this case Whakarongo Residential Area), without risking opening the debate to a much wider one of where else growth should occur. Proposing an area to be rezoned does not open the door to submission on 'where else', but 'whether and how'. This is the point of Palmerston North City Council v Motor Machinists Ltd.

- 7.11 This extract is relevant to the question of whether submissions are on a geographic area of land notified for zoning in Stage 1. The Courts have endorsed the approach where "me too" submitters are not "on" a plan change (or proposed plan) and therefore can be disregarded by the Panel. As mentioned above, the District wide chapters require different treatment as they apply across the District (and are addressed in the following paragraph).³⁵

- 7.12 The *Motor Machinists* judgment also proposes several tests for determining whether a submission falls "within the ambit" of the plan change. For example, if the submission seeks a new management regime, it must be in response to a plan change that alters the management regime. If the submission raises matters that should have been addressed in the section 32 evaluations and report, then it is unlikely to be within the ambit of the plan change. This suggests a more rigorous test than that in *Clearwater*, as it seems that where the submission addresses matters that could be addressed by other means, the submission will not be "on" the plan change. These tests are most relevant in considering those submissions that seek to add a management regime for District wide matters that have not been

³⁴ Paragraph [57].

³⁵ Except for the geographic area covered by PC50 – Queenstown Town Centre, as all provisions that relate to that area of land have been withdrawn under clause 8D of Schedule 1 of the RMA.

notified in Stage 1 – for example those that seek to add Transport provisions into Stage 1 zoning chapters.

Council's position on four specific categories of submissions

- 7.13 There are in general, two types of situations where analysis is required as to scope. The first is a matter of the geographic area which is included within the scope of the review (for zoning chapters in Parts 3 and 4 and 6 of the PDP), the second is the policy/rule change (i.e. the subject matter) itself (generally an issue for District Wide chapters in Part 5 of the PDP).
- 7.14 Set out in **Schedule 3** is the Council's position on five specific types of categories of submissions that have been made on the PDP. These categories apply not just to the chapters within the scope of Hearing Streams 1A and 1B, but also to the remainder of the Stage 1 hearings, and will be referred to and adopted during the course of those hearings.
- 7.15 The Council acknowledges that there is likely to be specific factual circumstances within these categories that the Panel will need to carefully consider through the hearings as they arise, and that will require case by case consideration and possibly specific legal submissions. The Council also wishes to foreshadow that it will be seeking a minute or guidance note from the Panel to assist submitters with the Panel's general approach to scope for the remainder of Stage 1 hearings.

8. COUNCIL'S EVIDENCE

- 8.1 The Council is calling the following evidence in support of its position:
- (a) Mr Tony Pickard – Council officer – Introduction and Tangata Whenua Chapters;
 - (b) Mr Clinton Bird – urban design;
 - (c) Mr Fraser Colegrave – population / visitor accommodation projections;
 - (d) Dr Philip McDermott – centres;
 - (e) Dr Marion Read – landscape;

- (f) Mr Ulrich Glasner – Council officer, infrastructure;
- (g) Mr Matthew Paetz – planning consultant – Strategic Direction and Urban Development chapters; and
- (h) Mr Craig Barr, Council officer – Landscape Chapter.

9. PANEL'S MEMORANDUM REGARDING SCOPE AND MINOR ERRORS

9.1 We now respond to and address matters raised in the Panel's Memorandum to the Council dated 16 February 2016. A response to each matter raised is set out in **Schedule 4**, including the proposed action from the Council. In response to a number of the matters raised, Council officers intend to:

- (a) use clause 16(2) of Schedule 1 of the RMA to make an amendment to the PDP, as the alteration is one of minor effect or is to correct a minor error; or
- (b) to recommend to the full Council to withdraw parts of the PDP under clause 8D of the Schedule 1 of the RMA.

Clause 16(2) of Schedule 1 of the RMA – amendments to the PDP

9.2 Clause 16(2) of Schedule 1 to the RMA relates to amendments of proposed policy statements or plans and states:

- (2) *a local authority may make an amendment, without further formality, to its proposed policy statement or plan to alter any information, **where such an alteration is of minor effect**, or may correct any minor errors."*

9.3 What constitutes a "minor effect" for the purposes of sub-clause (2) was discussed in *Re an Application by Christchurch City Council* [1996] NZEnvC 97; (1996) 2 ELRNZ 431. The Court held that the test for "minor effect" is whether the amendment would affect the rights of some members of the public (prejudicially or beneficially), or whether it is neutral. Whether an alteration is of minor effect is a question of fact and requires examination of the likely effects of altering a public document without public input. If it is neutral, amendments may be made under clause 16(2).

- 9.4 The other option to amend the PDP is under the same clause 16(2) of Schedule 1 but the reason for making the change is to correct a minor error. The Environment Court in *Re an application by Christchurch City Council*³⁶ stated:

An error is simply a mistake or inaccuracy which has crept into the plan. The obvious example is a spelling mistake or reference to a wrong paragraph number where there can be no doubt what number is intended. It is analogous to the use of the slip rule in other Court Proceedings. Thus rule 12 of the District Courts Rules 1992 make provisions for correction of a judgment which contains a clerical mistake or error arising from an accidental slip or omission. The fundamental principle applicable to the use of the slip rule is that it may only be used to correct a slip in the "expression" of a judgment not the "content".

- 9.5 The Court determined a change would be within clause 16 of Schedule 1 if the draftsman seeks only to clarify what is clearly intended by the document, and does not in any way make a change to it which alters its meaning.³⁷

Clause 8D of Schedule 1 of the RMA – withdrawal of provisions

- 9.6 In response to other matters raised by the Panel in its memorandum, Council officers intend to recommend to the full Council that certain provisions be withdrawn under clause 8D of Schedule 1 of the RMA. The decision to withdraw sits with the full Council, and therefore the positions set out in **Schedule 4** as to withdrawal are the recommended position of Council officers only. Any withdrawal decision by full Council will be publicly notified pursuant to clause 8D.

DATED this 4th day of March 2016



J G A Winchester/S J Scott
Counsel for Christchurch City Council

³⁶ *Re an application by Christchurch City Council* [1996] NZEnvC 97; (1996) 2 ELRNZ 431, at page 11.

³⁷ At page 11.

SCHEDULE 1 – CASE EXTRACT

Colonial Vineyard Ltd v Marlborough District Council [2014] NZEnvC 55 at [17] (bolder emphasis original)

- A. *General requirements*
1. A district plan (change) should be designed to **accord with**¹⁸ – and assist the territorial authority to **carry out** – its functions¹⁹ so as to achieve the purpose of the Act²⁰.
 2. The district plan (change) must also be prepared **in accordance with** any regulation²¹ (there are none at present) and any direction given by the Minister for the Environment²².
 3. When preparing its district plan (change) the territorial authority **must give effect to**²³ any national policy statement or New Zealand Coastal Policy Statement²⁴.
 4. When preparing its district plan (change) the territorial authority shall:
 - (a) have regard to any proposed regional policy statement²⁵;
 - (b) give effect to any operative regional policy statement²⁶.
 5. In relation to regional plans:
 - (a) a district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section 30(1) or a water conservation order²⁷; and
 - (b) **must have regard to** any proposed regional plan on any matter of regional significance etc²⁸.
 6. When preparing its district plan (change) the territorial authority must also:
 - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations²⁹ to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities³⁰;
 - **take in account** any relevant planning document recognised by an iwi authority³¹; and
 - **not have regard to trade competition**³² or the effects of trade competition;
 7. The formal requirement that a district plan (change) must³³ also state its objectives, policies and the rules (if any) and may³⁴ state other matters.
- B. *Objectives [section 32 test for objectives]*
8. Each proposed objective in a district plan (change) **is to be evaluated by** the extent to which it is the most appropriate way to achieve the purpose of the Act³⁵.
- C. *Policies and methods (including rules) [the section 32 test for policies and rules]*

9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies³⁶;
10. 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 objectives³⁷ of the district plan **taking into account**:
 - (i) the benefits and costs of the proposed policies and methods (including rules); and
 - (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods³⁸; and
 - (iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances³⁹.

D. Rules

11. In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment⁴⁰.
12. Rules have the force of regulations⁴¹.
13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive⁴² than those under the Building Act 2004.
14. There are special provisions for rules about contaminated land⁴³.
15. There must be no blanket rules about felling trees⁴⁴ in any urban environment⁴⁵.

E. Other statutes [sic]:

16. Finally territorial authorities may be required to comply with other statutes.

F. (On Appeal)

17. On appeal⁴⁶ the Environment Court must have regard to one additional matter – the decision of the territorial authority⁴⁷.

18 Section 74(1) of the Act.

19 As described in section 31 of the Act.

20 Sections 72 and 74(1) of the Act.

21 Section 74(1) of the Act.

22 Section 74(1) of the Act added by section 45(1) Resource Management Amendment Act 2005.

23 Section 75(3) RMA.

24 The reference to "any regional policy statement" in the *Rosehip* list here has been deleted since it is included in (3) below which is a more logical place for it.

25 Section 74(2)(a)(i) of the RMA.

26 Section 75(3)(c) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

27 Section 75(4) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

28 Section 74(2)(a)(ii) of the Act.

29 Section 74(2)(b) of the Act.

- 30 Section 74(2)(c) of the Act.
- 31 Section 74(2A) of the Act.
- 32 Section 74(3) of the Act as amended by section 58 Resource Management (Simplifying and Streamlining) Act 2009.
- 33 Section 75(1) of the Act.
- 34 Section 75(2) of the Act.
- 35 Section 74(1) and section 32(3)(a) of the Act.
- 36 Section 75(1)(b) and (c) of the Act (also section 76(1)).
- 37 Section 32(3)(b) of the Act.
- 38 Section 32(4) of the RMA.
- 39 Section 32(3A) of the Act added by section 13(3) Resource Management Amendment Act 2005.
- 40 Section 76(3) of the Act.
- 41 Section 76(2) RMA.
- 42 Section 76(2A) RMA.
- 43 Section 76(5) RMA as added by section 47 Resource Management Amendment Act 2005 and amended in 2009.
- 44 Section 76(4A) RMA as added by section 47 Resource Management Amendment Act 2005 and amended in 2009.
- 45 Section 76(4B) RMA – this "Remuera rule" was added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.
- 46 Under section 290 and Clause 14 of the First Schedule to the Act.
- 47 Section 290A RMA as added by the Resource Management Amendment Act 2005.

SCHEDULE 2

**TEXT OF PUBLIC NOTICE WITHDRAWING PROVISIONS UNDER CLAUSE 8D OF
SCHEDULE 1 OF THE RMA**

Withdrawal of Provisions from the Proposed District Plan - Visitor Accommodation and the geographic area addressed by Plan Change 50 (Queenstown Town Centre Zone).

Pursuant to Clause 8D of the First Schedule of the Resource Management Act 1991, Council resolved at its meeting on 23 October 2015, to authorise the withdrawal of the following provisions relating to visitor accommodation, from the Proposed District Plan:

- Fourth paragraph of Section 7.1 Zone Purpose Low Density Residential Zone
- Policy 7.2.1.3
- Objective 7.2.8 and policies 7.2.8.1 and 7.2.8.2
- Rules 7.4.18, 7.4.21, 7.4.22
- Sixth paragraph of Section 8.1 Zone Purpose Medium Density Residential Zone
- Objective 8.2.9 and Policies 8.2.9.1, 8.2.9.2, 8.2.9.3
- Rules 8.4.17, 8.4.22, 8.4.23, 8.4.28
- Rules 9.4.8, 9.4.9, 9.4.10, 9.4.11, 9.4.12, 9.4.13, 9.6.2.2
- Policy 10.2.5.1
- Rules 10.4.7, 10.4.8, 10.4.9, 10.4.10, 10.4.20
- Policy 11.2.2.3, Rules 11.4.5, 11.4.6 and 11.4.7

At the same meeting the Council also authorised to withdraw (in part) the following provisions of the Proposed District Plan to remove reference to visitor accommodation:

- Rule 7.5.12
- Policy 8.2.1.1
- Rule 8.5.11
- Objective 9.2.1 and 9.2.2
- Policy 9.2.1.1
- Rule 9.4.6 and 9.5.10
- Policy 10.2.5.2
- Fifth paragraph of Section 11.1 Zone Purpose Large Lot Residential Zone
- Rule 11.2.2.4
- All Visitor Accommodation references in paragraphs 2 and 5 of 9.1 High Density Zone purpose

The reasons for the withdrawal are:

- Provides greater public certainty as to Council's position with regard to visitor accommodation.
- Removes the potential perceptions of inconsistency and uncertainty in Council's approach, compared to if the provisions were not withdrawn but Council made a corporate submission opposing the provisions.

- Allows for a more in-depth and robust study and analysis of issues and policy options, and for potential non-statutory consultation with key stakeholders.

Pursuant to Clause 8D of the First Schedule of the Resource Management Act 1991, Council resolved at its meeting on 29 October 2015, to authorise the withdrawal the following provisions from the Proposed District Plan:

- All provisions as they relate to the geographic area addressed by Plan Change 50 – Queenstown Town Centre zone.

The reasons for the withdrawal are:

- To avoid the cost and expense of unnecessarily duplicating the Plan Change 50 process as part of the Proposed District Plan process;
- Section 79 of the Resource Management Act states that it is not necessary to review district plan provisions that have been the subject of a plan change process within the last 10 years, such as the provisions of the Operative District Plan that apply to the Plan Change 50 area;
- To correct an error in the Proposed District Plan (Stage 1)'s mapping of the Plan Change 50 area as it relates to the block bounded by Man, Lake, Beach and Hay Streets;
- To make it clearer that the Plan Change 50 area remains subject to the Operative District Plan and not the Proposed District Plan (Stage 1) in all regards (including designations, historic heritage features and protected trees).

SCHEDULE 3

COUNCIL'S POSITION ON SCOPE OF CATEGORIES OF SUBMISSIONS

CATEGORY OF SUBMISSION	COUNCIL'S POSITION
<p>Category 1: Submissions on the provisions that have been withdrawn since notification, specifically, submissions on:</p> <ul style="list-style-type: none"> • All provisions as they relate to the geographic area addressed by Plan Change 50 (PC50); and • Specific Visitor Accommodation provisions in the PDP. 	<p><i>Plan Change 50:</i> All provisions that apply to the geographic area to which PC50 relates have been withdrawn pursuant to clause 8D of the First Schedule of the RMA. This withdrawal includes the Queenstown Town Centre zone on the planning maps for that area.⁵⁰ As all provisions that apply to this discrete area have been withdrawn, they now do not form part of the PDP and no submissions can seek relief in relation to them. The geographical area of PC50 is shown within the black dashed line on planning maps 35 and 36, with the legend indicating the black dashed line to be the "Plan Change boundary".</p> <p>Submissions made on the same zone provisions, for land other than the geographic area covered by PC50, remain valid and must be considered by the Panel.</p> <p><i>Specific Visitor Accommodation:</i> Specific Visitor Accommodation provisions (which were previously located within various PDP chapters) have also been withdrawn under clause 8D of the First Schedule of the RMA. As those provisions no longer form part of the PDP, no submissions can be "on" them and no relief can be sought.</p> <p>All submissions that fall into these two categories should in the Council's view be disregarded by the Panel.</p>

⁵⁰ Note – the entire Queenstown Town Centre zone has not been withdrawn, only the part that applied to the geographic area covered by PC50, which is shown within dashed black lines on planning maps 35 and 36.

CATEGORY OF SUBMISSION	COUNCIL'S POSITION
<p>Category 2: Submissions seeking to zone land that was not notified/shown on the Stage 1 planning maps with a Stage 1 proposed zone (whether the submitter is seeking to rezone that land either a notified Stage 1 or to-be notified Stage 2 zone, or a zone excluded from the DPR).</p> <p>This land was shown on the Stage 1 planning maps with an ODP zoning, for information purposes only.</p> <p>For clarity: this category relates to land not included within Stage 1 of the PDP, in terms of zoning. The proposed Stage 1 District-wide chapters do however apply across this land.</p>	<p>The land in question has not been notified with a proposed zone on the Stage 1 PDP planning maps, and any submissions are therefore not "on" an area of land subject to a zoning decision in Stage 1 of the PDP.</p> <p>This land will either be notified with a proposed zone on the Stage 2 PDP planning maps (at which time a submission can be made "on" the appropriate zoning), or the land has been excluded from the Review altogether (ie. the Northlake Special Zone).</p> <p>Any submissions seeking a zoning of land that was not notified on the Stage 1 planning maps with a Stage 1 proposed zone, is in the Council's view not "on" Stage 1, and should be disregarded by the Panel.</p>
<p>Category 3: Submissions seeking to make changes to ODP zone provisions that have not been notified in Stage 1 of the PDP (ie. industrial, and a number of the ODP special zones). These submissions fall into the following two sub-categories:</p> <ul style="list-style-type: none"> - Full zones that have not been notified as a proposed zone in the PDP nor on the Stage 1 planning maps; or 	<p>Any submissions under both of these sub-categories are not "on" Stage 1 of the PDP, as the provisions have not been notified as part of the PDP.</p>

CATEGORY OF SUBMISSION	COUNCIL'S POSITION
<ul style="list-style-type: none"> - Full District-wide chapters (ie. topics/matters) from the ODP that have not been notified as a PDP chapter. 	
<p>Category 4: Submissions seeking to rezone land that, was notified on the Stage 1 planning maps with a Stage 1 proposed zone, to a zone type that has not been notified in Stage 1 (ie, a rezoning to a Stage 2 zone or a zone excluded from the DPR). For example, submissions seeking a rezoning from rural to industrial.</p>	<p>The land in question has been notified with a proposed zone on the Stage 1 PDP planning maps, and any submissions are therefore "on" a Stage 1 area of land. They must be considered by the Hearings Panel in Stage 1, although it is noted that there may be issues as to precisely what relief is sought in the absence of a known set of proposed plan/zone provisions.</p>
<p>Category 5: Submissions that relate to a particular property or zone that was notified on the Stage 1 planning maps with a Stage 1 proposed zone, but that also seek to submit on District wide provisions that are not part of Stage 1 of the PDP (e.g. signs, earthworks, transport).</p>	<p>Submissions on full District-wide chapters (ie. topics or subject matter) from the ODP that have not been notified as a PDP chapter, are not "on" Stage 1 of the PDP. These topics are:</p> <ul style="list-style-type: none"> - <i>Stage 2:</i> Transport, Hazardous Substances and Open Space Recreation; and - <i>Excluded from DPR:</i> Signs and Earthworks.

SCHEDULE 4

RESPONSE TO PANEL'S MEMORANDUM TO COUNCIL DATED 16 FEBRUARY 2016

Para	Extract from Panel's Memorandum	Proposed Action	Explanation
4 (2 and 3 also relevant)	We are of the view that the PDP should contain a clear explanation as to what is within and what is outside of this part of the Review so as to avoid ambiguities. We will detail further ambiguities and inconsistencies below.	No change proposed to the PDP. The Council will issue guidance / an information sheet and is in the process of updating the PDP website to better explain what is in Stages 1 (and 2) of the District Plan Review.	<p>The Council's position is that it is not appropriate to put a diagram or explanation in the PDP that relates to the mechanics of delivering a (partial) District Plan Review, as it would represent a snapshot in time and could swiftly become out of date, if for example decisions around matters such as withdrawals or variations are taken into account. If the Introduction chapter was to include a clear explanation or a diagram as to what is within and what is outside of Stage 1 of the Review, new text would need to be added in Stage 2 to explain that Stage. To remove or update the explanation would require a variation or plan change.</p> <p>The Council does however recognise that its guidance on this topic could be improved and will seek to quickly deliver an information sheet better explaining the staging of the District Plan Review. This information will also be made available on the PDP website.</p>

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5	The individual map legends applying to Special Zones do not distinguish between those Special Zones that are in Part 1 and those that are not.	Use Clause 16(2) of Schedule 1 to better distinguish between the Special Zones that are in Stage 1 for all of the planning maps legends (i.e., Jacks Point, Millbrook and Waterfall Park only) by including the word "(Operative)" after all other Special Zones in the planning map legend.	<p>The Special Zones notified in Stage 1 are Jacks Point, Millbrook and Waterfall Park. The issue of Jacks Point Special Zone (Chapter 41 of the PDP) and Hanley Downs (PC44) is under consideration (see response to para 7 below).</p> <p>Altering the planning map legends to clarify which Special Zones are proposed, and which ones are Operative (the latter being shown for information purposes only), is a change to clarify what is clearly intended by the chapters that have been notified in Stage 1, and does not make a change to the plan which alters its meaning.</p>
5	In many cases the individual map legends are confusing as the notations listed are not separated between those in Part 1 and those that are operative.	Use Clause 16(2) of Schedule 1 to better separate the zones listed that are in Stage 1 and those that are operative (and shown for information purposes) by amending the ordering of the notations / zones in all planning map legends.	For the same reasons set out directly above.

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6	Map 11 appears to apply a Commercial Precinct within Stage 1 over Township Zone which is excluded. This appears to be inconsistent.	Use Clause 16(2) of Schedule 1 to add the word ("Operative") to the Map legend after the Commercial precinct notation.	<p>Townships zones will be addressed in Stage 2 of the District Plan Review. The Township Zones are shown on the Map Legend as Operative. A similar annotation needs to be applied to the Commercial Precinct.</p> <p>All "Commercial Precinct" overlays shown on all planning maps are the operative ones.</p>
7	On Map 13 the identification of the Resort – Jacks Point Special Zone also has the notation "PC 44". It is unclear whether this area is within Stage 1 or not.	Further analysis is underway to determine how to address the inconsistency between the 'Legend and User Information' for the planning maps and the introduction of objectives, policies, rules and a structure plan that relate to the PC44 area.	<p>The advice note on the Map Legend on the first page of the Planning Maps says:</p> <p><i>"2 Plan Changes. Land that is subject to a current Plan Change is not part of the District Plan Review and has been included for information purposes only. The zonings of the Operative District Plan apply to these areas, and Operative zones are shown in the legend where relevant".</i></p> <p>This advice note applies to the area covered by PC 44 – Hanley Downs. An Independent Commissioner recently released recommendations on PC 44 and this decision was adopted by Full Council on 24 February and is being advertised on 9/10 March 2016.</p> <p>The notified Jacks Point Special Zone is acknowledged to include provisions that apply specifically to the area covered by PC 44, and submissions have been received on these provisions.</p>

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8	Map 18 lists the Open Space Zone as if it were included in Part 1.	Use Clause 16(2) of Schedule 1 to clarify the Open Space zone is not part of Stage 1 by adding the word "(Operative)" after the wording in the Legend.	<p>No Open Space Zone / chapter has been notified in Stage 1. Clarifying on the planning map legend that the zone is an operative zone would rectify an inaccuracy in the map legend, rather than change the substance of the notified Stage 1 chapters.</p> <p>It is noted that Submitters 145.23 and .34 (Upper Clutha Environment Society – UCES), and 640.5 (John Wellington), sought that "All provisions relating to the Open Space Zone – Landscape Protection are retained in the District Plan in the exact same form as they appear in Part 20 of the Operative District Plan and in the exact same form as Open Space Zone – Landscape Protection areas are delineated on maps in the Operative District Plan" (from summary of submissions).</p> <p>These submissions fall within Category 3 in Schedule 3, in that they are not on Stage 1 of the PDP as the submission is about a zone and topic (i.e. Open Space) that has not been notified as a proposed zone in the PDP, nor on the Stage 1 planning maps.</p> <p>Because these submissions points are not "on" Stage 1, the addition of the word 'operative' does not prejudice these submitters. Those submitters need to address their concerns regarding the Open Space Zone when Stage 2 is notified.</p>

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9 – first concept	The body of Map 19 appears to show a Building Restriction Area but there is no notation for that in the map legend on that page.	Use Clause 16 of Schedule 1 to add the "Building Restriction Area" into the Map Legend.	Rule 11 in the Large Lot Rural zone relates to this Building Restriction Area, and the overlay on Map 19 is a Stage 1 method.
9 – second concept	In the same map legend [Map 19] the Open Space Zone is not notated as operative.	Use Clause 16(2) of Schedule 1 to clarify the Open Space zone is not part of Stage 1 by adding the word "(Operative)" after the wording in the Legend.	No Open Space Zone chapter or provisions have been notified in Stage 1. Clarifying on the planning map legend that the zone is an operative zone would rectify an inaccuracy in the map legend, rather than change the substance of the PDP.
10	Map 20 lists the Open Space Zone as if it were included in Part 1.	Use Clause 16(2) of Schedule 1 to clarify the Open Space zone is not part of Stage 1 by adding the word "(operative)" after the wording in the Legend.	As per (9) – second concept above.

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11	<p>On Maps 21 and 23 there is a notation "Potential Open Space (Stage 2 DP Review)". We are unsure of the status of this notation. We note it is also shown on the Legend and User Information page under "Everything Else" and on Map 23.</p>	<p>Use Clause 16(2) of Schedule 1 to remove the 'Potential Open Space (Stage 2 DP review)' from the planning maps and the legend.</p>	<p>The "Potential Open Space (Stage 2 DP Review)" annotation was shown on Maps 21 and 23 to illustrate that an open space zone would be notified in Stage 2 as a buffer between the Stage 1 and Stage 2 zones. It was shown on the planning maps for information purposes only and to assist landowners affected by the Stage 1 zones, in understanding what would come in Stage 2. The information can be removed from the Stage 1 planning maps.</p> <p>Submitters will have an opportunity to submit on this land in Stage 2 when the Open Space Zone is notified.</p>
12	<p>Map 24b lists the Open Space Zone as if it were included in Part 1.</p>	<p>Use Clause 16(2) of Schedule 1 to clarify the Open Space zone is not part of Stage 1 by adding the word "(operative)" after the wording in the Legend.</p>	<p>As per (9) – second concept above.</p>

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13	Map 25b appears to apply a Commercial Precinct within Stage 1 over Township Zone which is excluded. This appears to be inconsistent.	Use Clause 16(2) of Schedule 1 to add the word "(Operative)" to the Map legend after the Commercial precinct notation.	As per (6) above.
14	Map 26 lists the Town Centres Zone as operative rather than in Stage 1. On Maps 27 and 28 which are enlargements of the relevant area, the Town Centres Zone is shown as part of Stage 1.	Use Clause 16(2) to remove the word "(Operative)" after Town Centres from the Legend on Map 26.	This is an error on Map 26. The more detailed / enlarged planning maps confirm that the Town Centres Zone is a Stage 1 zone, and Chapter 14 has been notified titled "Arrowtown Town Centre".
15	Map 31a lists the Industrial A Zone as if it were in Stage 1.	Use Clause 16(2) to add the word "(Operative)" after the 'Industrial a zone' in the Map legend.	Other map legends specify that the operative Industrial zones are shown for information purposes only. The word "(operative)" was excluded from Map 31a in error. No proposed Industrial Zone has been notified in Stage 1, and including the word in the legend therefore clarifies what is intended by the document and does not in any way make a change to it which alters its meaning.

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16	<p>We also note that the Visitor Accommodation Subzone has been applied throughout the maps with the same notation on proposed zones and operative zones. It is unclear what this notation relates to in the PDP.</p>	<p>This matter is being considered further.</p>	<p>To avoid any confusion, specific provisions relating to Visitor Accommodation were withdrawn under clause 8D of Schedule 1 of the RMA, by public notice, in November 2015 (see Schedule 2). The clause 8D notice withdrew the provisions from the following chapters of the PDP:</p> <ul style="list-style-type: none"> • Chapter 7 – Low Density Residential • Chapter 8 – Medium Density Residential • Chapter 9 – High Density Residential • Chapter 10 – Arrowtown Residential Historic Management Zone • Chapter 11 – Large Lot Residential <p>The definition of "Visitor Accommodation" and the Visitor Accommodation provisions that are included within the following rural zones were not withdrawn, and these sub-zones are correctly shown on the planning maps:</p> <ul style="list-style-type: none"> • Chapter 21 – Rural • Chapter 22 – Rural Residential and Rural Lifestyle <p>The Council is considering the matter of the planning maps further.</p>

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17	<p>We also note that the listing of the legend on the right hand side of the individual maps is potentially confusing as it appears to indiscriminately list zones and other notations whether they are within Stage 1 or not. A clear separation in the legend between those notations in Stage 1 and those merely shown for information purposes would have been more helpful.</p>	<p>Use Clause 16(2) to amend all map legends to list notations and zones as either part of Stage 1, or "Operative" or "Shown for information purposes only".</p>	<p>This change relates to the order in which zones are listed in the legend, it does not change the merits or the substance of the PDP.</p>
18	<p>Chapter 2 - Definitions This contains a number of definitions that only apply to zones that are not within Part 1 of the Review. This appears to be inconsistent with the statement that those zones are not part of this stage. We</p>	<p>Use clause 16(2) to remove the underlined text so that a clean chapter remains. The matter of the notification of defined terms that are not used in Stage 1 chapters, is being considered further.</p>	<p>The definitions chapter should not have been notified with strikeout and underlined text. What this shows is the difference between ODP and PDP definitions. A clean version of the chapter should have been notified.</p>

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	<p>are also unsure of the relevance of showing some definitions with strike-out and/or underlining, notwithstanding the explanation at the commencement of the Chapter.</p>		
19	<p>Chapter 27 – Subdivision Rule 27.5.1 sets minimum site sizes for zones which are not included in Stage 1. Similarly Rule 27.5.4 applies rules to zones that are not in Stage 1. Section 27.7.1 also refers extensively to the Open Space Zone provisions, although that is not part of Stage 1.</p>	<p>This matter is being considered further.</p>	

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20	<p>Chapter 36 – Noise</p> <p>The rules in this chapter appear to apply to zones which are not included in the PDP to date. In addition to the apparent inconsistency, it is not clear whether the rules apply to operative zones with the same name as zones in the PDP.</p>	<p>This matter is being considered further.</p>	